



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

S.A. (MD)No.1181 of 2009

and

M.P. (MD)No.1 of 2009

Gnanaseela Mathivadhana ... Appellant /
Appellant/Petitioner/Plaintiff

-Vs-

1.Shantha
2.Gnanajothi
3.M/s.Sundaram Non Conventional
Energy Scheme Private Limited,
No.98A, 7th Floor, Dr.Radhakrishnan Salai,
Mylapore, Chennai.

4.Samuel Gnansundar
5.John Samuel Raja
6.John Visili ... Respondents/Respondents/
Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 27.08.2009 in A.S.No.144 of 2007 on the file of the Sub Judge, Valliyur confirming the judgment and decree dated 27.06.2006 in I.A.No.106 of 2005 in O.S.No.644 of 1994 on the file of the Principal District Munsif, Valliyur.

For Appellant : Mr.V.R.Shanmuganathan
For R1 : Mr.A.Sivaji
For R3 : Mr.K.R.Laxman
For R2 : Mr.V.Balaji

JUDGMENT

The plaintiff in O.S.No.644 of 1994 on the file of the Principal District Munsif Court, Valliyur is the appellant herein. This second appeal arises out of final decree proceedings.

2. The plaintiff was given 1/3rd share in the suit properties. The suit properties were originally three in number. As regards the third item which is a house property, a compromise has already been arrived at. In the final decree, the Court below was concerned only with the land in Survey No.1002/1 measuring 2.79 acre and the



lands comprised in Survey Nos.1013/2A and 1013/2B measuring 28 acre and 1.94 acre respectively. During the pendency of the partition suit proceedings, even before passing the preliminary decree, the third respondent herein had purchased the undivided share of the defendants. Therefore, while allotting the share to the appellant herein by metes and bounds, the Court below had allotted northern side of Survey No.1002/1. This was challenged by the petitioner before the first Appellate Court. The first appellate Court by the impugned judgment and decree dated 27.08.2009 confirmed the decision of the trial Court made in I.A.No.106 of 2005 on 27.06.2006. That is challenged in this second appeal.

3. The learned counsel appearing for the appellant pointed out that the Commissioner had allotted 64 ½ cents in Survey No.1013/2B and 93 cents in Survey No.1002/1. However, the grievance of the appellant is that the trial Court had disregarded the commissioner's recommendation while making the allotment in the final decree.

4. It is true that the trial Court has not gone by the Commissioner's recommendation. The Court below had taken note of the fact that the third respondent herein after purchasing the undivided share from the defendants had put up a wind mill in Survey No.1002/1. If the site on which, the windmill is located, is allotted to the petitioner / plaintiff, then, the third respondent will have to dismantle the windmill that has already been put up. This would definitely cause huge financial loss and hardship to the third respondent. The trial Court had gone clearly by equitable considerations. Of-course, the learned counsel for the appellant would contend that a person who had purchased during the pendency of a partition suit proceedings, cannot claim any equity. Be that as it may, the Courts below have concurrently made the allotment on equitable considerations. I do not find any substantial question of law arising for consideration. This is all the more so because, the counsel for the third respondent without prejudice to their contention that the Courts below have correctly made the allotment, have come forward to pay a sum of Rs.1,00,000/- to the petitioner herein within a period of eight weeks from the date of receipt of a copy of this order.

5. The third respondent had made the said offer, when this Court pointed out the third respondent that in survey No.1013/2B, there is a well to which the petitioner probably would have been entitled to and that the third respondent should come forward to compensate for the same. The suggestion made by the Court was readily agreed to by the third respondent. I am satisfied that the petitioner can no longer have any grievance.

6. Recording the undertaking of the third respondent to pay a sum of Rs.1,00,000/- to the appellant within a period of eight weeks from the date of receipt of a copy of this order, the second appeal



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is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

- 1.The Sub Judge, Valliyur.
- 2.The Principal District Munsif, Valliyur.
- 3.The Section Officer, (2C)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.SIVAJI, Advocate (SR-23368[F] dated 20/07/2021)

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20.07.2021

KS (CO)

KB(14.09.2021) 3P 6C