



A.No. 1850 of 2022
in
C.S.No. 714 of 2011

V.BHAVANI SUBBAROYAN, J.

This application is filed by the third defendant in C.S.No. 714 of 2011.

2. The suit in C.S.No. 714 of 2011 was filed for the relief of partition and mesne profits.

3. The plaintiff is the younger sister of the third defendant and the defendants 2 and 3 are brothers of the third defendant. The defendants 4 to 6 in the suit are the tenants in the suit property. Subsequently, the suit was decreed as ex-parte, pursuant to which, the learned Advocate Commissioner was appointed and he has also filed a report on 14.07.2021 containing Plan - I and Plan - II was submitted before this Court on 21.06.2021.

4. By order dated 17.11.2021, this Court passed a final decree in terms of the preliminary decree passed in favour of the plaintiff in the suit.

The order dated 17.11.2021 passed in A.No. 9183 of 2018 reads thus:-

"4. The learned Advocate Commissioner has



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visited the property and filed her report stating that he has suggested two modes of division of properties, she has filed two plans. Both the plans, she has divided the entire suit property into four plots and that this division of the plots into four, may not be of any immediate purposes, since this Court is concerned only with granting final decree to the plaintiff, as concerning her 1/4 share. Hence, this Court accepts the suggestions made vide Plan-II as it appears to be just, fair and equitable. According to the Commissioner, on the east, there are two plots and on the west, there are two plots. The entire property is surrounded by road or street on three sides. The details are as follows:-

	<i>Road/Street</i>	<i>Width of the Road</i>
East	Road (Bajanai Koil Street)	30.6"
North	Road (Bajanai Koil Street)	29.3"
South	Road (Bajanai Koil Street)	16.9"x 15.9"

This implies the plot on the east will have a road frontage of 30.6" with two other roads on two sides, one on the north and the other on the south. Based on this, the Commissioner has divided the property into four plots with different extent.



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south-western plot measuring ABEF in Plan-II which covers an extent of 1122 sqft. The remaining three plot are left for future allotment to the defendants as and when they obtain the preliminary decree.

6. There is a preliminary decree for *mesne* profits but the learned counsel for the plaintiff submitted on instructions that the plaintiff is giving up the claim for mean profits. The same is recorded.

7. The final decree be passed in terms herein above stated. The Plan - II in the Commissioner's report is required to be made part of the final decree. This application is accordingly allowed."

Subsequently, the first defendant in the suit has filed an application in A.No.1044 of 2022 to pass a preliminary decree in his favour. Accordingly, on 16.03.2022 a preliminary decree was passed in favour of the first defendant. Subsequently, on 16.03.2022 at the instance of the second defendant in A.No.1045 of 2022 was filed to pass a preliminary decree in his favour. Accordingly, on 16.03.2022 was filed an application by the second defendant and the same was allowed. Similarly, the third defendant herein has filed an application in A.No.1301 of 2022 and by order dated 24.03.2022, this Court passed a preliminary decree in favour



of the applicant.

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5. Now, the present application is filed by the third defendant seeking to pass a final decree in terms of the preliminary decree. It is seen that the present application is filed based on the order passed by this Court in A.No. 1301 of 2022 in favour of the present applicant/third defendant and in Para Nos.9 and 10 of the affidavit filed by the third defendant in A.No.1850 of 2022 states as follows:-

"9. I submit that subsequent to the order of this Court in A.No. 1301 of 2022, I am filing this application for allotment of my 1/4th share, by metes and bounds as per the Plan - II of the Report submitted by the Advocate Commissioner, namely, 1088 sqft., bearing the boundaries BCDE, in the North-Western portion of the suit schedule property.

10. I submit that no prejudice will be caused to the plaintiff or the defendants 1 and 2 if this application is ordered as prayed for, as the manner of allotment as per the said Plan-II of the Advocate Commissioner's Report, have been consented and agreed upon by all the parties to the above suit before this Court."

6. Having regard to the averments made in the affidavit filed in



support of this application and the order passed by this Court passing final decree in favour of the plaintiff and preliminary decree was passed in favour of the defendants 1 and 2, this Court is inclined to allow this application as prayed for.

7. Accordingly, there will be a final decree in favour of the applicant/third defendant allotting the 1/4 share of the Applicant/third defendant as per the Plan-II of the Report of the learned Advocate Commissioner, by dividing the Suit Schedule Property by metes and bounds, allotting the extent of 1088 sqft. bearing the boundaries BCDE, shown as the North-Western portion of the Suit Schedule Property therein.

29.04.2022

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