



S.A.No.825 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.825 of 2022
and
C.M.P.No.16935 of 2022

Chelladurai

... Appellant

Vs.

1.Selvarani

2.Rameshwari

3.Lakshmikantha

4.Aruchamy

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 24.09.2021 made in A.S.No.134 of 2019 on the file of the III Additional District Judge, Coimbatore confirming the Fair and Final decree dated 07.06.2017 in I.A.No.740 of 2012 in O.S.No.92 of 2009 on the file of the learned Subordinate Judge, Pollachi.

For Appellant : Mr.V.Anandhamoorthy



JUDGMENT

The 2nd defendant/respondent has filed this appeal challenging the final decree passed in I.A.No.740 of 2012 in O.S.No.92 of 2009 by the Sub Judge, Pollachi. The facts in brief are as follows:-

2. The respondents 1 to 3 herein had filed the suit O.S.No.792 of 2009 on the file of the Sub Judge, Pollachi seeking a preliminary decree for partition and separate possession of their 3/5th share in the suit schedule property. After contest, the suit was decreed on 22.02.2012 granting a preliminary decree for the 3/5th share of the respondents 1 to 3 herein. Thereafter, respondents 1 to 3 herein had filed I.A.No.740 of 2012 for passing a final decree in terms of the preliminary decree by appointing an Advocate Commissioner to divide the suit property with the help of Taluk Surveyor into 5 shares and allotting 3 shares therein to the appellant.

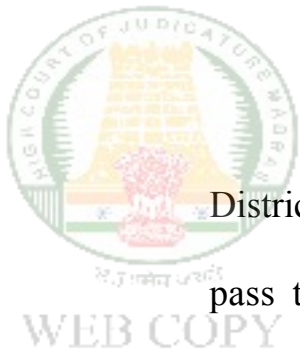
3. The appellant herein and the 1st defendant, his father had filed a counter *inter-alia* contending that the petition for passing of final decree was pre-mature and a fraudulent one in as much as the appellant has filed an appeal challenging the judgment and decree in OS.No.92 of 2009 and in the



above appeal was with a condone delay and the notice had been issued to the respondents 1 to 3 herein.

4. The appellant had further contended that the Advocate Commissioner had divided the property into two parts in the south. The appellant had also questioned the divisions that had been made by the Advocate Commissioner. The Advocate Commissioner had not divided the property properly and had not defined the pathway, bore well, common areas etc. However, the learned Sub Judge, Pollachi had passed the final decree allotting A to C schedules properties to the respondents 1 to 3 herein and the D and E schedule properties to the appellant and his father and the common well and common pathway was divided equally amongst the parties. Challenging the said final decree the appellant herein had alone filed an appeal in A.S.No.134 of 2019 on the file of the III Additional District Judge, Coimbatore.

5. The 1st defendant/4th respondent herein had not contested the final decree and in so far as the 1st defendant/4th respondent herein was concerned the final decree had attained finality. The learned III Additional



District Judge, by its judgment and decree dated 24.09.2021 was pleased to pass the final decree. The Appellate Court had observed that though the willingness of the appellant regarding the allotment of properties as shown in the Commissioner's Report was called for, the appellant had not come forward to exercise his option. The respondents 1 to 3 had also expressed their willingness to give up the A Schedule property to the appellant and that they were ready to take the properties described in the C, D and E schedules which clearly shows that they were not interested in taking the farm house. The Court had observed that only reason for the appellant and the 1st defendant for not participating and exercising their option was to prolong the final decree proceedings. The appellate Court had analyzed each of the objections taken by the appellant and given a finding thereon. Challenging the same the appellant is before this Court.

6. Heard the counsel appearing for the appellant.

7. The ground of challenge is that the Commissioner had not valued the farm house and had not mentioned the correct particulars regarding the common well and bore well with their measurements. The appellant had also



contended that the Commissioner has wrongly allotted the A Schedule property to the 1st respondent which is a farm house of considerable value, apart from raising other objections about the allotment. The Courts below have observed that the 1st contention of the appellant regarding the measurement of the property cannot be countenanced since the measurement has been taken as per the revenue records and the patta of both the parties. As per these documents the total property available was an extent of 8.88 acres and not 9.50 acres as contended, the Commissioner who has visited the site had measured and arrived at this conclusion. With regard to the allotment of the farm house, the appellant would contend that the Court below has failed to appreciate that if one party is allotted the farm house along with his share it would result in a disproportionate allotment of shares.

8. The Courts below have found that even pending the final decree proceedings the respondent had offered the A schedule property with the farm house to the appellant herein and the Court below had called for his willingness, however, the appellant has not chosen to respond to the above request.



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9. With reference to the demarcation of the common well, bore well and path way, the Courts below have held that the area along the common well and borewell as also the pathway leading to it has to be kept in common and the measurements of the common well area and common pathway has been provided by the Commissioner. Therefore each and every one of the objections raised by the appellant has been considered by the Courts below and a finding given against the appellant. Therefore, this Court sitting in appeal cannot re-appreciate the finding of the Court's below especially when the appellant has not been able to show that such finding is perverse and contrary to ground reality. Therefore, taking note of the above and also the fact that no Substantial Question of Law arises in the above Second Appeal the same is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed, if any.

12.10.2022

Index : Yes/No
Internet : Yes/No
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To

1.The III Additional District Judge, Coimbatore.

2.The Subordinate Judge, Pollachi.

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P.T. ASHA, J,

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