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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

A.No.328 of 2020
in C.S.No.1169 of 2009
and A.No.329 of 2020

- 1.V.Parvathy
- 2.C.Maheshwari
- 3.A.Ravi
- 4.N.Jayalakshmi
- 5.A.Manikandan
- 6.J.Usha
- 7.N.Chitra

...Applicants/Plaintiffs

Vs.

A.Elumalai

...Respondent/Defendant

Prayer: Application filed under Order XIV Rule 8 of O.S. Rules read with Order 22 Rule 4 of CPC, to pass Final Decree in terms of the Preliminary Decree.

For Applicants : Ms.Jayashree Balaji

For Respondent : Mr.N.Poovanalingam



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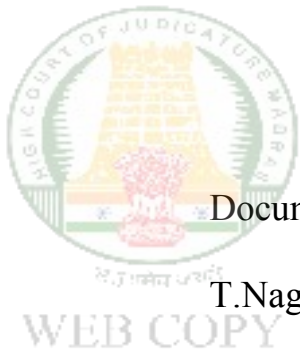
ORDER

This application has been filed by the applicant to pass Final Decree in terms of the Preliminary Decree.

2.Heard Ms.Jayashree Balaji, learned counsel appearing for the applicants/plaintiffs and Mr.N.Poovalingam, learned counsel appearing for the respondent/defendant.

3.The case of the plaintiffs is that the suit property at No.1, Poes Road, 3rd Street, Teynampet, Chennai – 18, more fully described in the schedule hereunder originally belonged to late N.Appavu, who is the father of the plaintiff's 1, 2 and the defendant and the grand father of the plaintiffs 3 to 7 herein. The suit property is the absolute and self acquired property of the said late N.Appavu, who originally purchased larger extent of the said property along with his brother Govindhan by way of registered Sale Deed dated 26.03.1958 bearing Doc:No.323/58 at SROT, Nagar from Mrs.Dhakshayani Ammal and another.

4.It is also the case of the plaintiffs that the said Late N.Appavu and his brother Govindhan entered into a partition by way of registered



Document dated 07.12.1963 bearing Document No.3666/1963 at SRO, T.Nagar, wherein the suit schedule mentioned property allotted to the share of late N.Appavu. By virtue of the above, the said late N.Appavu became the absolute owner of the suit schedule mentioned property.

5.The plaintiffs submitted that 1.V.Parvathy, 2.C.Maheshwari/the plaintiffs 1 & 2 herein, 3.A.Kuppammal and 4.A.Elumalai/the 1st defendant herein are the four legal heirs of the said deceased N.Appavu. A.Kuppammal died on 07.03.2006 leaving behind the plaintiffs 3 to 7 as her legal heirs. In the circumstances, the 1st and 2nd plaintiffs, the defendant are each entitled to 1/4th share undivided share, and the plaintiffs 3 to 7 are jointly entitled to 1/4th share in the suit scheduled mentioned property. The said late Appavu had one more daughter viz., Mrs.Shanta, wife of Krishnan, who both died issueless.

6.The suit was filed by the plaintiffs for the following reliefs:

(a)partition and separate possession to the 1st & 2nd plaintiff each being entitled to 1/4 share and plaintiffs 3 to 7 herein are jointly entitled to 1/4 share in the plaint scheduled mentioned property hereunder be effected and divided and allotted to the parties hereto or in the alternative the said properties to be sold and after deducting the cost of the suit, the



residue be divided among the parties of which $1/4^{\text{th}}$ share each to be given to the 1st and 2nd plaintiff herein and another $1/4^{\text{th}}$ to plaintiff 3 to 7 herein;

b) That a commissioner be appointed to divide the immovable property in the schedule hereunder by metes and bounds or in the alternative if it cannot be divided or allotted as the shares of the parties are entitled to sell the same;

c) That the costs of the parties hereto may be paid out of the assets of the family and for that the defendant may be ordered to pay the same;

d) For such other relief as the Court may deem fit in the circumstances of the case and render justice.

7. The Advocate Commissioner was appointed in A.No.329 of 2020 and he visited the property on many occasions along with the parties to find out the feasibility of dividing the property. The Advocate Commissioner visited the property and given various plan. According to the Advocate Commissioner, final plan is the total extent of land 2470.00 sq.ft. and the defendant has purchased 2 shares from the plaintiffs 1 and 2 and now he got $3/4$ share. As per Advocate Commissioner's Report, existing building area (North-East side) and the vacant land on the rear side of the building i.e. $30' 3'' \times 48' 9'' = 1474.68$ sq.ft. as indicated in red colour in the sub-division plan can be allotted to the defendant as he has



now 3/4 share; North West side of the plot/land i.e. 30' 3" x 16' 3" = 491.56 sq.ft. as indicated in green colour in the sub-division plan can be allotted to the plaintiffs 3 to 7 as they have 1/4 share; the plaintiffs 3 to 7 and the defendant have equal rights to use the entire common passage running East to West on the Southern side to an extent of 503.76 sq.ft. as indicated in yellow colour in the sub-division plan.

Extract of sub-division which reads as follows:

For plaintiffs 3 to 7	:	491.56 sq.ft.
For Defendant	:	1474.68 sq.ft.
Common passage	:	503.76 sq.ft.

		2470.00 sq.ft.

8.The sketch (coloured sub-division plan) in the Advocate Commissioner's Report shall form part of this Order.

9.On perusal of the Report filed by the Advocate Commissioner dated 22.11.2021, it is seen that the plaintiffs 3 to 7 and the defendant agrees to divide their respective shares as per the Advocate Commissioner's sub-division plan. It is made clear that the common passage has to be maintained common for all the parties free easy ingress and egress, laying underground water and drainage pipeline and electricity connection beneath the said 503.76 sq.ft. width common



causing hindrance to one another, both the parties cannot extend their own building in the common passage, the entire stretch of common passage to remain always open to sky, both shall contribute for maintaining the common passage. Each parties are entitled to park one vehicle i.e. two wheeler in the said common passage which will not cause hindrance to the passing through. The said sub-division plan has been done as per Engineer's Report dated 01.09.2021, the parties have no issues regarding the division and this Court is inclined to pass Final Decree partition as per the Report filed by the Advocate Commissioner.

10. In view of the above facts, the application is allowed. There shall be no order as to costs. Consequently, connected application No.329 of 2020 is closed.

31.03.2022

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V.BHAVANI SUBBAROYAN, J.

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