



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.NO.808 OF 2021

AND

C.M.P.NO.15530 OF 2021

A. Chandirakandan

...Appellant / Defendant

Vs.

Vasanthamma

...Respondent / Plaintiff

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, challenging the judgment and decree dated 25.02.2021 passed by the Subordinate Judge, Panruti in Appeal Suit in A.S.No.50 of 2018, confirming the order and decretal order dated 07.11.2017 passed by the District Munsif Court, Panruti in I.A.No.974 of 2011 in O.S.No.114 of 2004.

For Appellant : Mr.Govind Chandrasekhar

For Respondent : Mr.N.Ramesh
for Mr.T.Thiyagarajan

J U D G M E N T

This second appeal is filed challenging the judgment and decree in A.S.No.50/2018 of the file of Subordinate Judge, Panruti, which had been filed against the order passed in fair and decretal order in I.A.No.974/2011 in O.S.No.114/2004 of District Munsif Court, Panruti.

2. When this second appeal is taken up for hearing today, the learned counsel for the appellant filed an affidavit signed by appellant Thiru. A.Chandrakandan.

3. It is seen from the affidavit that the respondent Vasanthamma filed the suit in O.S.No.114/2004, before the District Munsif, Panruti for the relief of partition and separate possession. A preliminary decree for partition was passed on 30.09.2011. The respondent filed I.A.No.974/2011 under Order 26 Rule 13, for appointment of Advocate Commissioner for passing final decree. This application was allowed on 27.02.2015. Appellant filed appeal in A.S.No.6/2015. The first



appellate Court set aside the order dated 27.02.2015 and directed the property to be measured afresh by the Advocate Commissioner after taking the assistance of the surveyor. In pursuance of this direction, the Advocate Commissioner and surveyor inspected the property. This appeal is filed against the order passed by the Courts below in final decree proceedings.

4. It is further submitted that appellant is occupying T.S.No.107, which is the subject matter of this appeal, and running a hotel. In the prevailing pandemic situation, it may not be possible for him to take immediate steps to oversee the handing over of 2/3 share identified by the Commissioner in the suit property. He requests that six months time from today may be granted so as to enable him to make alternative arrangement to relocate the hotel and handover physical possession of 2/3 share in the suit property to the respondent. He undertakes to handover physical possession of 2/3 share in the suit property, within a period of six months from today. Thus, he prayed that this undertaking may be recorded and appeal be disposed in terms of this undertaking.

5. Learned counsel for the respondent accepted the request by the appellant seeking six months time to handover physical possession of 2/3 share in the suit property. However, he submitted that there is an arrears of rent and the respondent may be given an option to pursue the arrears of rent by a separate proceedings.

6. Considered the submissions of the learned counsel appearing for the parties and perused the affidavit filed by the appellant. In view of the affidavit filed by the appellant Thiru.A.Chandirakandan, he is granted six months time from today to hand over physical possession of 2/3 share in the suit property, which was identified by the Commissioner, in the suit property. Respondent is given an option to pursue the alleged arrears of rent by way of separate proceedings.

7. In the result, this second appeal is disposed of, as per the above terms and the affidavit shall form part of the decree. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

AT



To

1.The Subordinate Judge,
Panruti.

2.The District Munsif,
Panruti.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.Govind Chandrasekhar, Advocate Sr.No.5590

S.A.No.808 of 2021

EV(CO)
RVM(09/05/2022)