



A.No.4661 of 2021 in C.S.No.901 of 2016

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G.CHANDRASEKHARAN,J.,

A.No.4661 of 2021 is filed to order sale of 1/7th share i.e. 348.29 sq.ft of the suit schedule property allotted to the defendant to the plaintiff for a reasonable market value as fixed by this Hon'ble Court within a time frame.

2.A.No.843 of 2021 is filed to appoint an Advocate Commissioner to inspect and suggest the mode of division of the plaint schedule mentioned property morefully described in the accompanying judges summons, in terms of the preliminary decree dated 05.10.2020 passed in the above suit.

3.As per the orders of this Court, learned Advocate Commissioner inspected the suit property and filed two reports, dated 06.08.2021 and 26.11.2021. The first report of the Advocate Commissioner shows that the respondent/defendant is eligible for a total plinth area of 335 sq. ft. He opined that considering the stability and age of the structure, it is impossible to accommodate the plinth area of the respondent/defendant 335 sq.ft on the



ground and first floor and it is also not practical to make more structural changes in the building. It is almost impossible to cut in any manner the share of the respondent/defendant. Thus, he suggested the respondent/defendant and applicant/plaintiff may occupy the existing living premises. Then, he filed the second report along with three plans giving options for division. He further stated that in all the three options, either office building or portion of the residential house would have to be demolished, which would render the entire building and property useless. That apart, with 349 sq.ft, the defendant cannot develop the property or construct anything in the said portion as informed by the Civil Engineer that minimum requirement to obtain development rights from Corporation, Metro Water, EB and other local authorities is 775 sq.ft. Therefore, the Civil Engineer and the Advocate Commissioner are of the view that the respondent/defendant will not be able to construct anything in the 349 sq.ft. His suggestion is that either of the parties can buy the whole of the property, ie., to buy the share of the other party to use the entire property to proper use.



4.This report of the Advocate Commissioner is strongly opposed by the learned counsel for the respondent/defendant on the ground that the Advocate Commissioner's report is one sided. As per the three options shown in the plans, may be there is a necessity for demolishing the portion of the office area of the building as shown in option 2. Options 1 and 3 of the plan did not require any demolishing of any part of the building. Therefore, he submitted that the respondent/defendant may be allotted 14x25 area as shown in option 3.

5.The learned counsel for the applicant/plaintiff came up with another suggestion/option stating that the applicant/plaintiff is prepared to give an area of 12x29 sq.ft on the south western portion. The respondent/defendant is not prepared to take this option.

6.Considering the diametrical opposite position taken by the parties, this Court on going through the materials placed before it and going through the copies of the photographs and options 1, 2 and 3 of the plans finds that option 1 is the right choice that can be provided to the respondent, so that



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there is sufficient space available between the building and the proposed area to be allotted to the respondent/defendant.

7.Thus, final decree is passed as per option 1 of the plan filed by the Advocate Commissioner allotting 14x25 sq.ft area as shown in option 1 to the respondent/defendant and rest of the portion is allotted to applicant/plaintiff.

8.It is reported by the learned counsel for the applicant/plaintiff that the respondent/defendant is living in the second floor. Exercise of allotting the area under option 1 plan should be completed within a period of three months from the date of receipt of a copy of this order and on such allotment, the respondent/defendant should vacate the area in his occupation in the second floor and give possession to applicant/plaintiff immediately within a period of one month thereafter. The Advocate Commissioner's report and option 1 of the plan is ordered to be form part of the decree. Accordingly, final decree is passed. No costs.

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