



S.A.(MD) No.624 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.624 of 2011

and

M.P.(MD) Nos.1 of 2011 and 1 & 2 of 2013

Nadankutty Nadar

... Appellant/Appellant/
1st Defendant

Vs

1.Esthar @ Rethinam

2.Rethinaraj

3.Suseela

... Respondents 1 to 3/
Respondents 1 to 3/LRs of Plaintiffs

4.Janaki (Died)

5.Nelson

6.R.S.Mariadhas

... Respondents 4 to 6/
Respondents 4 to 6/Defendants 3 to 5

7.Leela

8.Pushpaleela

9.Prabhakaraj

10.Kanagaraj

11.Indira

12.Ravindran

13.Sasikumar

14.Sunilkumar

... Respondents 7 to 14



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[Respondents 7 to 14 were brought on record as LR's of the deceased 4th respondent vide order dated 15.07.2022 made in M.P.(MD) No.1 of 2015 in S.A.(MD) No.624 of 2011]

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 08.12.2010 made in A.S.No.32 of 2007 on the file of the Subordinate Court, Kuzhithurai, confirming the judgment and decree dated 18.07.2006 made in I.A.No.516 of 1987 in O.S.No.328 of 1976 on the file of the I Additional District Munsif Court, Kuzhithurai.

For Appellant	:	Mr.V.Balaji for Mr.M.Saravanakumar
For Respondents	:	Ms.J.Anandhavalli for R1 to R3
	:	Mrs.K.Rama Prabha for Mr.K.Sreekumaran Nair for R6
	:	No appearance for R5

JUDGMENT

This appeal is preferred by the first defendant challenging a final decree passed by the trial Court in I.A.No.516 of 1987 in O.S.No.328 of 1976 on the file of the I Additional District Munsif Court, Kuzhithurai. There are eight items of properties in the suit, but the dispute now relates to only two



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items of properties, and they are covered in (a) S.No.1624/8/1; (b) S.No.1624/8/8; and (c) S.No.1624/8/17. For narrative convenience, the parties are referred to by their rank before the trial court.

2. The contention of the first defendant/appellant herein is as follows:

- The property in S.No.1624/8/1 is divided and allotted in terms of Ext.C.6, the plan made available by the Commissioner appointed for determining metes and bounds division of the properties. This property in terms of Ext.C.6 is a quadrilateral property, but appears as a rectangular more. The plaintiff has been allotted the north-western portion with a house therein. Immediately to the south of plot 'A' is plot 'D'. To the immediate east of Plot 'A' and Plot 'D' is situate Plot 'B'. This Plot 'B' is allotted to the first defendant/appellant herein. In this plot also, there is a house. In Plot 'B', there are at least four graveyards of the ancestors of parties. The plaintiff had conceded that the house in Plot 'A' has been built with contributions from the plaintiff, first defendant and also their father. But no share has been given to the first defendant in the house in Plot 'A'. Secondly, the first



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defendant had not been given an equal advantage of a road frontage, which is on the far west, as has been given to Plot 'A' and Plot 'D'. A narrow strip of land providing access to Plot 'B' in the southern extremity of Plot 'D' is far too inadequate.

- Turning to the properties in S.Nos.1624/8/8 and 1624/8/17, the relevant plan of the Commissioner is Ext.C.7. The property looks more like a funnel or a nozzle. Here, the plaintiff has been allotted two plots, both marked as 'A' plots, and these two plots are in two extremities of the entire property in Ext.C.7. The middle portion is again divided into two plots and both are denoted as 'B' Plots and these sandwiched 'B' Plots that lie between the two portions of 'A' Plot are allotted to the first defendant/appellant. His grievance is that even in this plot, there are two graveyards of ancestors of the parties. Besides, the plots allotted to him are not contiguous like the two plots allotted to the plaintiff.



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3. The response of the plaintiffs/respondents 1 to 4 is that:

- So far as the property covered by Ext.C.6 (S.No.1624/8/1) is concerned, Plot 'D', which lies to the south of Plot 'A', which was allotted by the trial Court to the share of the fifth defendant, indeed had been sold by the first defendant to the fifth defendant. In other words, it is the first defendant who had created the situation. Whatever road frontage the first defendant was entitled to has already been transferred to his purchaser, the fifth defendant, and a pathway too has been provided along the southern boundary of Plot 'D' allotted to the fifth defendant. If the first defendant/appellant is unhappy about the width of the pathway so granted, he has to proceed only against his purchaser, the fifth defendant and not against the plaintiff. So far as the allegation about the existence of graveyards in Plot 'B' is concerned, the Commissioner has not indicated the existence of any graveyard in Plot 'B'. So far as the claim of share in the house in Item-I is concerned, valuation has already been done and the plaintiff was directed to pay the owelty in lieu of allotment in the house, and



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it had already been done. At any rate, this is an aspect which is covered under the preliminary decree, it cannot be read down at this point of time.

- Turning to the property covered under Ext.C.7 (S.No.1624/8/8 and S.No.1624/8/17), the trial Court has taken into consideration that the first defendant had sold most of the properties abutting the road and hence, it has granted road frontage advantage in this property by allotting it to the plaintiff. The further allegation that there is no road access for the two plots both noted as Plot 'A' in plan Ext.C.7 is also wrong, since the Commissioner's report has clearly indicated about the existence of a well-demarcated access to Plot 'A'. Indeed at the tail end of Plot 'B' lies the second plot of Plot 'A' allotted to the plaintiff and this pathway runs till this tail piece. If only there were no pathway, then there would be no way even for the plaintiff to reach the second part of Plot 'A' that lies at the southern tip of the property covered under Ext.C.7.



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4. The first appellate court rejected the objection of the 1st defendant and hence this second appeal. This appeal is admitted for considering the following substantial questions of law:

“(i) Whether the Courts below are right in accepting the report and plan submitted by the advocate commissioner and his allotment of shares to the appellant?”

(ii) Whether the allotment of share to the appellant on the basis of the Exhibits C.6 & 7 are legally sustainable? and

(iii) Whether the appellant is not entitled to his ½ share equally as per the preliminary decree passed in O.S.No.328 of 1976 dated 18.07.2007?”

5. Heard both the sides and both sides projected the case stated as in paragraphs 2 and 3 above. Hence they are not reproduced. Principally the issue raised is only on facts, and this Court does not find that the approach of the first appellate court is perverse to warrant an interference. And de hors of this, this Court finds considerable merit in the submissions of the



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counsel for the respondent.

6. In conclusion, this Court does not find any merit to interfere with the judgment and decree dated 08.12.2010 made in A.S.No.32 of 2007 on the file of the Subordinate Court, Kuzhithurai, confirming the judgment and decree dated 18.07.2006 made in I.A.No.516 of 1987 in O.S.No.328 of 1976 on the file of the I Additional District Munsif Court, Kuzhithurai. The Second Appeal is dismissed without costs. Consequently, connected miscellaneous petitions are closed.

02.11.2022

Internet: Yes
Index: Yes/No

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To:

1. The Sub Judge, Kuzhithurai.
2. The I Additional District Munsif,
Kuzhithurai.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

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