



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**A.S. (MD)No.238 of 2021
and
C.M.P(MD)No.7798 of 2021**

A.Arputha Raj ... Appellant/Respondent/
Defendant

Vs.

1.A.Philominraj

2.A.Paulraj

... Respondents 1 & 2 /
Petitioners 1 & 2/Plaintiffs 1 & 2

PRAYER: Appeal Suit filed under Order 41 Rule 1 & 2 r/w under Section 96 of the Code of Civil Procedure, to set aside the Fair and Decretal order of Final Decree passed by the learned II Additional District Judge, Tiruchirappalli, dated 17.03.2021 in I.A.No.73 of 2014 in O.S.No.95 of 2011.

For Appellant : Mr.N.Dilip Kumar
For Respondents : Mr.S.Vinayak

JUDGMENT

[Order of the Court was made by DR.G.JAYACHANDRAN, J.]

Suit is for partition. The respondents 1 & 2 as plaintiffs have succeeded in getting 2/3rd shares of the suit properties. While the divisible as per decree, the residential house is indivisible. Hence, petition for final decree filed by the decree holder for auction sale allowed and aggrieved against the same, this appeal has been filed.

2. When the matter came up for admission, after considering the representations, this Court on 17.11.2021 passed the following conditional order:-

" This appeal is filed against the final decree and judgment passed by the II Additional District Judge, Tiruchirappalli, in I.A.No.73 of 2014 in O.S.No.95 of 2011,



dated 17.03.2021.

2. The grounds of appeal centers around short facts regarding the final decree in respect of two categories of property viz., the residential house and the agricultural lands. In respect of the residential house, where the appellant is presently residing, being an indivisible property, the value was fixed at Rs.63,72,000/-, and it was proposed to sell it in auction and the money to be proportionately given to the sharers. The appellant, being in occupation of the dwelling house, wants to exercise the preemptive rights of purchase and has offered Rs.75,00,000/- and ready to pay the 2/3rd share of the respondents that is Rs.50,00,000/-, whereas, the respondents initially resisted this offer on the ground that the present value of the property is one crore and the 2/3rd share of the respondents would be around Rs.67,00,000/-. Hence, this Court directed the parties to consider the additional affidavit filed by the appellant and come out with proposal, acceptable by both the parties.

3. When the matter is taken up for hearing today, the respondents agreed to the proposal made by the appellant in para 17 of the additional affidavit, which runs as below:-

"17. I submit that value fixed by the Trial court for the House Property is Rs.63,72,000/- (rupees sixty three lakhs seventy two thousand only). I submit that as I am residing in the house property, I may be permitted to retain the house property for Rs.75,00,000/- (rupees seventy five lakhs only), though in the open market, it may fetch even more. The 2/3rd share of Respondents will be Rs.50,00,000/- (rupees fifty lakhs only).

4. Further, the respondents submitted that insofar as the agricultural land, which is divisible, the proposal of the appellant in paragraph 18 cannot be accepted. The learned counsel for the appellant submits that he will forgo the proposal regarding the agricultural land and as far as the payment towards the value of the residential property, he is ready to deposit Rs.50,00,000/-, for the 2/3rd shares of the respondents over the residential house shown as first item in the suit schedule and seeks 60 days time from today to deposit the same.

5. Recording the above submission, the matter is adjourned to 19.01.2022, for reporting compliance.,

6. In view of the above compromise arrived by the



parties, the respondents are directed not to press for execution of the decree before the execution Court, till 19.01.2022."

3. The present appeal is filed against the passing of final decree on the short point that being residential house as indivisible, the appellant had offered to pay the 2/3rd value of the property to the respondent and retain the property. In view of the said fact, this Court gave 60 days time for the appellant herein to deposit the agreed amount of Rs.50,00,000/-, so that the respondents/plaintiffs will be satisfied with their value of 2/3rd share. Since the appellant failed to avail the precapture right of purchase and has not complied with the order. The remedy left to the decree holder is to proceed with the Execution.

4. Recording the same, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

am

To

The II Additional District Judge,
Tiruchirappalli.

COPY TO:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-1950[F] dated 20/01/2022)

A.S. (MD) No.238 of 2021
19.01.2021

RD(24.02.2022) 3P 5C