



A.S.(MD).No.63 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.11.2021

DELIVERED ON : 27.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

A.S(MD).No.63 of 2021
and
C.M.P(MD).No.2465 of 2021

V.Ashok Kumar

...Appellant

Vs.

1.A.Sudhahar

2.A.Saravanan

3.V.Baskaran

...Respondents

PRAYER:- First Appeal filed under Section 96 r/w O.41 of C.P.C, against the Final Decree dated 20.02.2020 passed in I.A.No.1 of 2019 in O.S.No. 21 of 2011 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur.



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For Appellant : Mrs.S.Mahalakshmi

For Respondents : Mr.S.M.Anantha Murugan

J U D G M E N T

The plaintiff in O.S.No.21 of 2011 on the file of the learned Principal District Judge, Virudunagar District, Srivilliputhur is the appellant in this first appeal. The suit was filed for partition and passing final decree to divide the suit schedule properties by metes and bounds and for allotting 1/3 share to the plaintiff and for handing over separate possession. Preliminary decree was passed on 30.08.2012. Challenging the same, the defendants filed A.S.No.33 of 2014 before this Court. The appeal was dismissed. Thereafter, I.A.No.1 of 2019 was filed by the defendant Nos.2, 4 and 6 for passing final decree. In the said final decree proceedings, an Advocate Commissioner was appointed. He also filed his report on 23.01.2020 proposing a particular division of the suit property. The appellant herein filed his statement of objections. Thereafter, the impugned decree came to be passed. Questioning the same, this first



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appeal has been filed.

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2. The learned counsel appearing for the appellant submitted that the division and allotment of shares are not proper and she called for setting aside the final decree and remanding the matter back for fresh consideration.

3. Per contra, the learned counsel appearing for the contesting respondents submitted that the Advocate Commissioner had correctly divided the properties, after ascertaining the market value. It is further submitted that the learned Trial Judge had carefully gone through the report of the Advocate Commissioner and thereafter, accepted the division proposed therein. According to him, the allotment has been made in a just and equitable manner and that it does not call for any interference.

4. I carefully considered the rival contentions and went through the evidence on record. The only point that arises for determination is as



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follows:-

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Whether the mode of division and the allotment of shares adopted by the Trial Court is in accordance with law?

5.The suit schedule comprises two items of the properties. The Advocate Commissioner had clubbed them together. He earmarked 10 cents of land as common pathway. He, thereafter, divided the land into three plots (i.e.,) A, B and C. The appellant being the youngest son, was allotted the northern plot, namely, A. This approach adopted by the Advocate Commissioner was questioned by the appellant herein by filing his objections. However, the trial Court chose to accept what was set out in the Commissioner's report and made allotment on that basis. It is true that apart from the suit properties, there were other properties belonging to the joint family and they were amicably partitioned. As per the customary mode, the elder brother is allotted on the western/southern side while younger brother is allotted on the eastern/northern side. Such an approach can definitely be adopted if partition is effected outside the Court. Once the matter comes to the Court, it is not proper to adopt



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customary mode of allotment and one has to go by the provisions of the Partition Act. I, therefore, hold that the approach adopted by the Court below is clearly not in accordance with law. That apart, a mere look at Ex.C3 would show that while Plots B and C are having regular shape, namely, rectangular and square, the one allotted to the appellant is having a triangular shape. The appellant had also clearly shown that the property allotted to him is low lying and that it is not having the same value as that of the other two plots. The earmarking of 10 cents of land as common pathway also appears to be excessive. The Court below rightly came to the conclusion that the schedule items individually are not capable of being divided into three plots. It could have resorted to the procedure set out in Section 2 of the Partition Act. Of course, there is nothing wrong in clubbing both the items together and thereafter, dividing the same into three plots. But which plot is to be allotted to whom could have been decided only by auctioning each plot amongst the parties. In this case, plots have been arbitrarily allotted without taking into account the objections placed by the appellant. The mode of allotment is not in accordance with law. The impugned Final Decree



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dated 20.02.2020 made in I.A.No.1 of 2019 in O.S.No.21 of 2011 is set aside and the matter is remanded back to the file of the trial Court. The Trial Court will follow the procedures set out in Sections 2 and 3 of the Partition Act and pass final decree.

6. Accordingly, this First Appeal is allowed. No costs.
Connected miscellaneous petition is closed.

27.04.2022

Index : Yes/No
Internet : Yes/No
ssb/skm

To

The Principal District Judge,
Virudhunagar District at Srivilliputhur.

Copy to :
The Record Clerk, (VR)
Madurai Bench of the Madras High Court,



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G.R.SWAMINATHAN, J.

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