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A.S..Nos.627 & 452 of 2022
and CMP.Nos.16335 & 16337 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.Nos.627 of 2016 & 452 of 2022
and
CMP.Nos.16335 & 16337 of 2022

A.S.No.627 of 2016

M.P.N.Pardiban

.. Appellant in A.S.No.452/ 2022

Vs.

1.N.Mangaleshwari
2.MPN.Ezhil Arasu
3.Udhaya Banu
4.S.Chitra

.. Respondents in A.S.No.627/ 2016

PRAYER in A.S.No.627 of 2016: Appeal Suit is filed under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and Decree dated 11.12.2015 made in O.S.No.5463 of 2013 on the file of VI Additional City Civil Court, Chennai.



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A.S.No.452 of 2022

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M.P.N.Pardiban

.. Appellant in A.S.No.452/ 2022

Vs.

1.MPN.Ezhil Arasu
2.N.Mangaleshwari
3.Udhaya Banu
4.S.Chitra

.. Respondents in A.S.No.452/ 2022

PRAYER in A.S.No.452 of 2022: Appeal Suit is filed under Section 96 of the Code of Civil Procedure, praying to set aside the Judgement and Decree dated 20.03.2020 partially pertaining to Suit-B schedule property, passed by the learned VI Additional City Civil Court, Chennai in I.A.No.2 of 2019 in O.S.No.5463 of 2013.

For Appellant in both appeals : Mr. S. Sathish Kumar

For R1 & R2 in both appeals : Mr. D. Manimaran

For R3 & R4 in both appeals : No appearance

J U D G M E N T

The appellant challenging the findings of the final decree proceedings in I.A.No.2 of 2019 in O.S.No.5463 of 2013, on the file of VI Additional City Civil Court, Chennai, has preferred these appeals.



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2. The appellant is the plaintiff in the suit in O.S.No.5463 of 2013, filed against the defendants for a relief of partition.

3. The trial Court granted decree in favour of the plaintiff. Based on the final decree application in I.A.No.2 of 2019 filed by the 2nd defendant before the VI City Civil Court, Chennai, a Commissioner was appointed. Based on the Advocate Commissioner's report, a final decree was passed. Accordingly, the Western portion measuring 6232.2 sq.ft is allotted to the petitioner's 2/3rd share and eastern portion measuring 3117.6 sq.ft. is allotted to the 1st respondent / plaintiff's 1/3 rd share as per Plan-C of the Advocate Commissioner's report. But the trial Court failed to consider the encroachment made in the suit property. The measurement of the total area was not properly appreciated in the final decree proceedings. Challenging the same the appellant has preferred these appeals.

4. The matter is taken up for hearing today. By considering the slight variation in the measurement of the suit property at the instance of both side counsels, the Commissioner was appointed, along with the Surveyor. He was



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directed to measure the property afresh. Accordingly, he measured the suit property and submitted the plan along with sketch-C. More particularly, both the parties accepted sketch - C of the Additional Commissioner's report filed before this Court, today.

5. As per this new report, the staircase area is correctly demarcated. Both the parties agreed to pass final decree, in respect of sketch-C in the Additional Commissioner's report. Now, based on the sketch- C of the Commissioner's report final decree is passed. But, there was no encroachment in B-Schedule property.

6. As per the sketch -C, appellant is entitled to an extent of 3417 sq.ft as shown in the sketch. Both the parties are dividing the property as derived in the earlier order passed during the final decree proceedings. With regard to common Passage -1170 sq.ft, the said area has to be enjoyed by both the parties as per the plan sketch-C. However, in respect of other enjoyment, the order passed in the final decree proceedings are to be kept in force. In case of demolishing the property, by either side, no such damages shall be caused to



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others property.

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7. Accordingly, appeal is partly allowed. Additional Commissioner's Report shall form part of the decree. Consequently, connected Civil Miscellaneous Petitions are allowed. There shall be no order as to costs.

27.09.2023

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Index : Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1.The VI Additional City Civil Court, Chennai.

2.The Section Officer,

VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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