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S.A.No.550 of 2007
and M.P.No.3 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

S.A.No.550 of 2007

and

M.P.No.3 of 2007

Vetrivel

..Appellant

vs.

1.Palaniammal (Died)
Perumal (Died)
2.Subbanna Gounder
3.Malayammal
4.Rangasmay
5.Muthusamy
6.Iyyasamy
7.P.Nachammal
8.Sankaramurthy
9.Murugambal
10.Lakshmi @ Selvi
11.Nachimuthu (Died)
12.Jayaramamurthy
13.Komaladevi
14.Gopalakrishnan

..Respondents

(R1 died, R11 to 14 are brought on record as LR's of the deceased R1 vide Court order dated 09.09.2022 made in CMP.Nos.15434 to 15436/2017 in S.A.No.550/2007. Subsequently R11 died and since his legal heirs were already on record as R12 to R14 the same was recorded vide order of this Court dated 24.01.2023)



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PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the decree and Judgment dated 23.08.2005 in AS.No.69 of 2004 on the file of the Principal District Court, Erode, upholding the final decree and Judgment dated 29.09.2003 in I.A.No.338 of 1999 in O.S.No.100 of 1999 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

For Appellant : Mr.D.Selvaraju
For RR2, 4 & 5 : Mr.V.S.Kesavan
For RR12 to 14 : Mr.P.Saravanan
RR1, 3, 8 &11 : Died

JUDGMENT

This Second Appeal is filed challenging the the decree and Judgment dated 23.08.2005 in AS.No.69 of 2004 on the file of the Principal District Court, Erode, upholding the final decree and Judgment dated 29.09.2003 in I.A.No.338 of 1999 in O.S.No.100 of 1999 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and in appropriate places, their rank in the present second appeal would also be indicated.



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3. The brief facts of the case are as follows:

- i. One Palaniammal (plaintiff) filed a suit for partition against her brother Perumal in O.S.No.472 of 1986 before the learned District Munsif, Erode, seeking for partition of the suit properties into two equal shares and to allot one such share to her and for mesne profits. The said suit was transferred to the Court of District Munsif cum Judicial Magistrate, Kodumudi and the same was renumbered as O.S.No.100 of 1999.
- ii. The trial Court decreed the suit filed by the plaintiff vide decree and judgment dated 28.11.1994.
- iii. Since Perumal (1st defendant) during his lifetime alienated one acre of land to one Subanna Gounder, he was impleaded as a party in the suit. Perumal's children and wife were also impleaded as the defendants 4 to 6 and they filed an appeal in A.S.No.50 of 1995 before the II Additional District Court, Erode.
- iv. The learned II Additional District Judge, Erode after analysing the oral and documentary evidence adduced on both sides, modified the preliminary decree passed by the trial Court by allotting one acre to



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the defendants 2, 4, 5 & 6 since Perumal executed a sale deed (Ex.B2) in respect of one acre of land in their favour.

- v. Thereafter, no appeal was filed against the same.
- vi. Subsequently, the plaintiff filed an application in I.A.No.338 of 1999 in O.S. No.100 of 1999 for passing a final decree by appointing an Advocate Commissioner to divide the suit property as per the preliminary decree.
- vii. The Advocate Commissioner inspected the suit property and divided the same in accordance with the preliminary decree and at the time of passing of final decree the eleventh respondent filed an application in I.A.No.11 of 2001 to get himself impleaded as a party to the final decree proceedings.
- viii. The said petition was allowed and the learned District Munsif passed the final decree, vide his decree and judgment dated 29.09.2003. No share was allotted to the eleventh defendant, aggrieved over which he filed an appeal in A.S.No.69 of 2004 before the Principal District Court, Erode.
- ix. The main contention of the appellant/eleventh defendant is that after passing of preliminary decree and before passing of final decree he



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purchased 2.16 acres of land from the legal heirs of the deceased Perumal vide a sale deed dated 30.01.1995 and therefore, he must be allotted the said portion of land in his favour.

x. The first appellate court, after analysing the oral and documentary evidence adduced on the side of the eleventh respondent and the plaintiff, had observed as follows:

(a) The sale deed in favour of the eleventh respondent/appellant was subsequent to the passing of preliminary decree.

(b) The eleventh respondent did not prefer any appeal as against the preliminary decree and he got himself impleaded as eleventh respondent only at the time of passing of final decree.

(c) The eleventh respondent has not also paid any court fee for allotting share in his favour.

xi. Aggrieved over the decree and judgment passed by the first appellate court, the present second appeal is filed.



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4. Notice of motion was issued to the respondents and after several adjournments, the case was posted today for final hearing. Substantial questions of law raised by the appellant in the grounds of appeal are as follows:

- i. "Whether the Courts below are right in passing a decree following the Commissioner's report while there is a shortage of vast extent of land from that of the extent which was specified in the preliminary decree ?
- ii. Whether the Court below are right in passing the final decree without considering the objections filed to the report of the Commissioner and allotting the shares as decided by the Commissioner himself, ignoring the interest of the respondents in the I.A. ?
- iii. Whether the Courts below are right in effecting a division of partition while the Commissioner had not taken account of the value of the coconut trees and other tress standing in the respective portions divided by the Commissioner ?



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5. Heard Mr.D.Selvaraju, learned counsel for the appellant, Mr.V.S.Kesavan, learned counsel for the respondents 2, 4 & 5 and Mr.P.Saravanan, learned counsel for the respondents 12 to 14.

6. It is rightly observed by the first appellate court that the sale deed in favour of the eleventh respondent/appellant was subsequent to the passing of preliminary decree against which he did not also prefer any appeal and he got himself impleaded as eleventh respondent only at the time of passing of final decree. In fact, the First Appellate Court in Para 9 & 10 has observed thus:

"9. Point No. 1: Admittedly the appellant purchased the property through a sale deed subsequent to the passing of preliminary decree. The respondents 2, 4, 5 and 6 preferred appeal against the preliminary decree in A.S.No.50/95 and the learned Second Additional District Court, Erode was pleased to modify the preliminary decree by allotting 1 acre as per Ex.B2 to the respondents 2, 4, 5 and 6 since their father purchased the same from the erstwhile first defendant in the suit. That decree passed by the first appellate court in I.A.No.50/95 had become final and there is no appeal against the same. The present



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appellant got himself impleaded as 11th respondent in the final decree and he has not preferred any appeal against the preliminary decree. As such he is not entitled to agitate the allotment of share to the first respondent and the respondents 2, 4, 5 and 6. Before passing the final decree dated 29.09.2000, the learned trial Munsif was pleased to go through the preliminary decree and appointed the commissioner giving a direction to him to divide the suit property which is 4 acres 32 cents into 2 shares and to allot one such share to the first respondent and to allot one acre from the remaining share to the respondents 2, 4, 5 and 6 as per Ex.B2 and he was also directed the commissioner if necessary to seek the assistance of surveyor and the local village administrative officer. After getting the assistance of the surveyor the commissioner was pleased to allot the share in accordance with the plan submitted by the surveyor dividing the property by providing cart track also and by providing channel to the properties. As such according to the commissioner's plan the trial munsif was pleased to allot the yellow coloured portion to the first respondent and blue coloured portion to the respondents 2, 4, 5 and 6. Since the present appellant has not paid any court fees before the trial court and since he has purchased the property subsequent to the



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passing of preliminary decree from the first respondent, he is not entitled to agitate at this stage with regard to the allotment share. The perusal of the Commissioner's report and commissioner's plan would not go to show any malafide on the part of the commissioner. As such this Court considers that the appeal of the appellant does not deserves any merit to be considered with and as such this point is answered in favour of the respondent and as against the appellant.

10. Point No.2 : Before appointing the commissioner, the learned District Munsif - Cum- Judicial Magistrate, Kodumudi has passed a detailed order on 31.07.2022 where by appointing the commissioner and to allot half of the suit property to the first respondent and to allot one acre as per Ex.B2 to the respondents 2, 4, 5 and 6. The trial Court has detailedly discussed the reason in allotting such share to the parties and commissioner's plan and report also does not go to show any malafide on the part of the commissioner as contended by the appellant before this court. As such this court considers that the final decree of the trial court is to be confirmed, since no valuable points have been put forward before this court by the appellant so as to interfere with the conclusion of the trial court. Originally the suit was filed in the year 1986 and taken on



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file as O.S.No.472/1986 and the same has been successfully dragged for about 19 years. Even then the appellant/11th respondent is protracting this proceedings by taking this matter unnecessarily to the court on appeal and as such it has to be dismissed."

The above observation of the First Appellate Court cannot be said to be perverse and therefore, I do not see any reason to interfere with the same.

7. In the result,

i. the Second Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

ii. the decree and Judgment dated 23.08.2005 passed in AS.No.69 of 2004 on the file of the Principal District Court, Erode, and the final decree and Judgment dated 29.09.2003 passed in I.A.No.338 of 1999 in O.S.No.100 of 1999, on the file of the District Munsif cum Judicial Magistrate, Kodumudi, are upheld.

27.04.2023



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mtl

Index : Yes/No

Speaking / Non-speaking order

R.HEMALATHA, J.

mtl

To

1. The Principal District Court, Erode.
2. The District Munsif cum Judicial Magistrate, Kodumudi.
3. The Section Officer, VR Section, High Court, Madras.

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