



A.S.No.505 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.505 of 2021
and
C.M.P.No.20891 of 2021

Mrs.Prema

..Appellant

Vs.

1.Mrs.Krishnaveni

2.Mrs.Mythili

3.Sub Registrar,
Papanasam,
Valangaiman Taluk,
Tiruvarur District.

4.District Registrar,
Tiruvarur,
Thanjavur Registration District.

5.District Collector,
District Collector Office,
Thanjavur District.

..Respondents



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Appeal filed under Section 96 of C.P.C., praying to set aside the Judgment and final Decree dated 19.11.2018 passed in I.A.No.194 of 2017 in O.S.No.27 of 2014 on the file of the District and Sessions Court, Thiruvarur.

For Appellant	: Mrs.S.Suseela Devi
For R1 and R2	: Mr.V.V.Sathya
For R3 to R5	: No appearance

JUDGMENT

The Appeal Suit has been filed to set aside the Judgment and final Decree dated 19.11.2018 passed in I.A.No.194 of 2017 in O.S.No.27 of 2014 on the file of the District and Sessions Court, Thiruvarur.

2. The appellant is the first defendant in the suit and the respondents 1 and 2 herein are plaintiffs, instituted a suit for Partition.

3. The preliminary decree was passed, which became final and the rights of the parties are crystallized. Final decree proceedings were initiated through Interlocutory Application filed in I.A.No.194 of 2017 and the trial



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Court appointed an Advocate Commissioner to divide the property. Pursuant to the orders, the Advocate Commissioner visited the land, conducted survey and divided the land by metes and bounds. Based on the report of the Advocate Commissioner, final decree was passed by the trial Court in I.A.No.194 of 2017 dated 19.11.2018.

4. The learned counsel for the appellant mainly contended that the Advocate Commissioner, while conducting survey and dividing the land as per the preliminary decree, committed a serious error and even as per the sketch, there is no pathway to reach the land allotted to the appellant. There is an ambiguity with reference to the division made and thus, the appellant is unable to enjoy her portion of the property, since there is no pathway to reach her property even as per the sketch.

5. In order to resolve the issues, this Court directed the parties to be present. Accordingly, both the appellant and the respondents 1 and 2 are present before this Court today.



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6. The first respondent / Smt.Krishnaveni, after seeing the sketch relied on by the trial Court, which was submitted by the Advocate Commissioner, has stated that the sketch is wrong and there is a main road in front of the property allotted to the appellant. As per the sketch, there is no pathway for reaching the portion of the property allotted to the appellant. Further, the first respondent has stated that the sketch prepared by the Advocate Commissioner seems to be wrong.

7. That being the case, this Court is unable to form an opinion, whether there is a main road on the western side of the subject property or the road is situated on the eastern side of the property. The parties are unable to enjoy the fruits of the preliminary decree on account of this ambiguity and thus, this Court thought fit to remand back the matter for appointment of new Advocate Commissioner to survey the land and divide the same based on the decree already passed, enabling the parties to take possession of their respective portion for enjoyment.



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8. The learned counsel for the appellant, on instructions from the appellant, made a submission that in fact there is no pathway to reach the property allotted and the sketch also reveals the same.

9. Considering the facts and circumstances, the judgment and final decree dated 19.11.2018 passed in I.A.No.194 of 2017 in O.S.No.27 of 2014 is set aside and the Interlocutory Application in I.A.No.194 of 2017 is taken on file. Accordingly, the matter is remanded back to the District and Sessions Court, Tiruvarur for appointing a new Advocate Commissioner, who in turn, shall conduct re-survey of the subject property and divide the land as per the decree. The said exercise is directed to be done within a period of two months from the date of receipt of a copy of this judgment.

10. It is needless to state that the District and Sessions Court, Thiruvarur, shall ensure that pathway is provided to the divided properties enabling the parties to enjoy their respective portion of the properties peacefully.



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11. Consequently, the Appeal Suit in A.S.No.505 of 2021 stands

allowed. No costs. Connected miscellaneous petition is closed.

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Index : Yes

Speaking order: Yes

Neutral Citation: Yes

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To

The District and Sessions Court,
Thiruvarur.



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S.M.SUBRAMANIAM, J.

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