



A.S.No.531 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.531 of 2021
and
C.M.P.No.21479 of 2021

K.Dhevanathan

... Appellant

Vs.

1. Minor Prasanna @ Gopalakrishnan
(Rep. by next friend mother 2nd plaintiff Maheshwari)

2.Maheshwari

... Respondents

Prayer:- Appeal is filed under Section 96 of C.P.C to set aside the judgement and decree dated 29.03.2021 passed in I.A.No.78 of 2017 in O.S.No.14 of 2014 by Additional District Judge, Villupuram.

For Appellant : M/s.R.Thamaraiselvan

For Respondents : No Appearance



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JUDGEMENT

Challenging the final decree passed against him the defendant is the appellant before this Court. Given below is a brief narration and the facts which have led to the filing of the above Appeal and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiffs who are the minor son and wife of the defendant had filed the suit O.S.No.14 of 2014 for the following reliefs:-

" i) Past maintenance for I & II plaintiffs @ Rs.5,000/- p.m. each (for 1 y 4 m)

ii) Past Annual maintenance for I & II plaintiff @ 10,000/- p.a. each (for 1 y 4m)

iii) Future Annual maintenance for II plaintiff @ 5,000/- p.a. for one year period.

iv) Creating a charge upon the suit the schedule A property for



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the due payment of the maintenance amounts;

v) Passing a preliminary decree for partition and separate possession of the first plaintiff's 1/2 shares in the schedule A property.

vi) Ordering the mesne profits to be determined by a separate proceedings under order 21 Rule 12 C.P.C."

3. Originally the suit was filed as a pauper O.P. and subsequently it has been numbered as aforesaid. The plaintiffs would contend that the 2nd plaintiff and the defendant had got married on 15.03.1996 as per Hindu Rights and Customs and out of the wedlock they had two children. The elder son being the 1st plaintiff and the younger one was a daughter who died young.

4. According to the plaintiffs, A schedule property was a Joint Hindu Family Property belonging to the defendant and the 1st plaintiff. This property had fallen to the share of the defendant under a partition



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between him and his brothers on 17.12.2008. Suit items 1 to 3 were allotted to the share of the defendant and the property which was allotted to his share was described as C schedule in the partition deed. In the said partition, the eldest brother had got a huge residential house as his share and therefore he had compensated his brothers to the tune of Rs.1,50,000/- each. Out of this amount, the defendant herein had purchased the 4th item of the suit A schedule property under a registered sale deed dated 06.04.2009. Therefore, that property also partakes the character of a joint family property and the plaintiffs had sought for a partition of that property as well.

5. The plaintiffs would submit that the defendant had come into contact with another woman, namely, Valliammal who was employed in the Government Hospital at Valavanur and since the 2nd plaintiff had started questioning the defendant, the defendant had started ill-treating the plaintiffs which constrained the 2nd plaintiff to prefer a



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complaint to the All Women Police Station at Villupuram. However, no action was taken.

6. After some time, the defendant stopped coming home and he started living with the said Valliammal in a rented house. The plaintiffs also came to learn that the defendant was making arrangements to sell away the suit property and to buy a property in the name of his companion. Therefore, the 2nd plaintiff had decided to retain the original documents in her safe custody.

7. The suit house in the item no.2 of the schedule 'A' property had been constructed by the 2nd plaintiff with the help of her relatives. Meanwhile, The defendant had also initiated proceedings for dissolving the marriage between him and the 2nd plaintiff herein in HMOP No.161 of 2012 on the file of the Principal Sub Judge, Villupuram. The plaintiffs would submit that the 2nd plaintiff is working in a small



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organization earning just a sum of Rs.2,000/- per month after deductions and they are leading a hand to mouth existence. Hence the Suit.

8. The defendant had not entered appearance in the suit and an ex parte decree for partition came to be passed on 28.11.2014.

9. Thereafter, the plaintiffs had filed I.A.No.38 of 2013, on the file of the Principal District Judge, Villupuram seeking a final decree by partitioning the properties by metes and bounds by appointing an Advocate Commissioner. The defendant had contested the said application. The Advocate Commissioner who had visited the premises had submitted his report to which objections have also been filed by the defendant. Ultimately, the learned Additional District Judge, Villupuram had finally decreed the suit in which the suit 1st and the 2nd items were allotted to the share of the plaintiffs. Challenging the same, the defendant has filed the instant appeal before this Court.



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10. The only point for consideration that arises in the above appeal is *"Whether the allotment of share suggested by the Advocate Commissioner is an unequal partition?"*

11. Mr. R.Thamariselvan, learned counsel appearing on behalf of the defendant/appellant would submit that the Advocate Commissioner had committed an error in allotting the 2nd item of property in favour of the plaintiffs particularly when the defendant is in occupation of the same and except for this house the defendant has no other place to live especially when the defendant does not have the necessary wherewithal. He had also submitted that the 4th item of the property has already been sold and allotting that property to the share of the plaintiffs is an unequal allotment.

12. Heard the counsel for the appellant and perused the records.



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13. The first argument of the learned counsel that the defendant is in possession of the 2nd item of property has to necessarily be rejected in the light of the objections that he has himself submitted to the Advocate Commissioner's Report. In his objection, the defendant has clearly and categorically stated that both the plaintiffs together earning nearly a sum of Rs.47,000/- per month. That apart, the defendant is residing in a rented premises whereas the plaintiffs are residing in the 2nd item of the suit property. Further, his argument that the 4th item of the property has been sold out and therefore allotting it to the share of the plaintiffs is an unequal allotment, cannot be countenanced as the defendant has not pleaded so in his counter or in the objections to the Advocate Commissioner's Report. Even assuming without admitting that he has sold the 4th item of the property, the defendant has enjoyed the fruits of the sale and therefore, he will not be in any manner prejudiced.



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14. The Court below has allotted the shares in a just fashion and I see no reason to interfere with the said judgement and decree. Therefore, the point for consideration is answered in favour of the plaintiffs and consequently, the above First Appeal is dismissed with costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Additional District Judge, Villupuram.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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