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CMA.No.2518 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.2518 of 2023
& CMP.No.23347 of 2023

Mrs.U.Rajathi

... Appellant

-Vs-

1.T.V.Balasubramaniam

2.T.V.Manoharan

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Order 43 Rule 1 of CPC, against the Judgment and decree dated 04.07.2022 passed in A.S.No.118 of 2021 on the file of the XXII Additional City Civil Court at Allikulam, Chennai – 3 whereby reversing the Judgment and Decree dated 10.03.2020 passed in I.A.No.1561 of 2016 in O.S.No.3757 of 2011 on the file of the VIII Assistant City Civil Court at Chennai.

For Petitioner	: Mr.C.Prakasam
For R1	: Mr.R.Ganesh Kumar
For R2	: Mr.N.Sivaprakash

JUDGMENT

The appellant herein is the plaintiff in O.S.No.3757 of 2011 on the file of the VIII Assistant City Civil Court, Chennai. The suit is laid for



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partitioning 1/3rd of two items of suit properties. These two properties lie adjointly and there are two houses in them. Combinedly, the properties measure 2,660 Sq.ft. The trial Court passed a preliminary decree for 1/3rd share of the plaintiff and this has become final after multiple rounds of appeal. The plaintiff would then file I.A.No.1561 of 2016 for passing a final decree and the trial Court had appointed a Commission, who had visited the property and filed his report, taking together the two items of properties and dividing them into three equal parts.

2.This was challenged by the defendants before the first Appellate Court in A.S.No.118 of 2021 before the XXII Additional City Civil Court. The first Appellate Court had found that the final decree as passed by the trial Court needs to be interfered with, since the sketch provided by the Commissioner was inadequate in particulars. Accordingly, it set aside the final decree passed by the trial Court and remanded the matter back to the trial Court with a direction to appoint a Commissioner. This order of remand is under challenge in this Appeal.



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3.The only issue involved is whether the Commissioner appointed by the trial Court to enable it to pass a final decree, has done a complete job.

This Court was taken to page no.33 of the typed-set of papers of the appellant, wherein, it finds a sketch with four sides and two vertical lines dividing it into three parts. There is hardly any reference to any buildings therein. In other words, the nature of report as filed by the Commissioner first appears to go against the very physical features of the suit properties and it does not enable the Court to understand whether the properties are divisible or indivisible. This Court therefore, concludes that the approach of the first Appellate Court cannot be faulted.

4.This Court does not want to interfere with the order of remand passed by the first Appellate Court and it directs the trial Court/VIII Assistant City Civil Court, Chennai to appoint a Advocate Commissioner, who is reasonably regular in his appearance before the Court and also has reasonable standing in the civil part and to require him to prepare and file a report with appropriate sketch. The Commissioner will also be assisted by a qualified Surveyor/Engineer for the purpose.



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5.The trial Court/ VIII Assistant City Civil Court, Chennai is required to appoint a Commissioner on or before 03.11.2023 and the Commissioner will have three (3) months time thereafter to file its report. The remuneration of the Commissioner will be fixed by the trial Court/ VIII Assistant City Civil Court, Chennai.

6.The Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

17.10.2023

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To

- 1.The XXII Additional City Civil Court at Allikulam,
Chennai – 3.
- 2.The VIII Assistant City Civil Court at Chennai
- 3.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

Tsg

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