



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.79 of 2022

and

C.M.P.No.3022 of 2022

Mrs.R.Sakunthala

... Appellant

Vs.

Mr.Shanmugam (Deceased)

1.Mr.Venkatesan

2.Mrs.Seethalakshmi

3.Mr.Mahesh

4.Mrs.Padma

... Respondents

Prayer: Appeal Suit is filed under Section 96 of the Code of Civil Procedure, to set aside the final decree dated 16.04.2021 in I.A.No.3 of 2019 in O.S.No.6288 of 2019 on the file of the I Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.G.Bhaskar

For R1 to R3 : No Appearance

For R4 : Mr.P.Dhanajayan



J U D G M E N T

The Appeal Suit has been instituted against the final decree dated 16.04.2021 passed in I.A.No.3 of 2019 and O.S.No.6288 of 2019.

2. The appellant is the plaintiff, who instituted a Suit for partition of the suit property and allotment of 1/3rd share to the plaintiff and for passing final decree after appointing a Commissioner to divide 1/3rd share of the plaintiff by metes and bounds. Thus, it is not in dispute that the plaintiff filed the Suit claiming 1/3 share of the suit mentioned property.

3. The Trial Court adjudicated the Suit and the defendants 1 to 5 filed a written statement. Preliminary decree was passed by the Trial Court in O.S.No.6288 of 2019 on 19.09.2019. Pertinently, the preliminary decree passed by the Trial Court was not objected by the appellant / plaintiff and it became final. Thus, the rights of the parties in the suit mentioned property were crystallised and there was no dispute between the plaintiff and the defendants.



WEB COPY

4. Subsequently, an Interlocutory Application for passing final decree was filed in I.A.No.3 of 2019. The Trial Court appointed an Advocate Commissioner, who in turn conducted a survey and filed a report dividing the properties into three portions, such as A, B and C. Accordingly, the respective portions of the plaintiff and the defendants were demarcated. The sub-division plans / sketch filed by the Advocate Commissioner reveals that the area allotted for each portion is 914 Sq.ft and 5 feet passage was also provided to reach the property for all the portions.

5. It is not in dispute between the parties that the 5th defendant had already constructed a house in 'A' portion and is in occupation of the same. Further, it is not in dispute that 'C' portion is occupied by the appellant / plaintiff, who is having a house in the said 'C' portion. Therefore, the Trial Court allotted 'C' portion to the appellant / plaintiff, 'A' portion to the 5th defendant and 'B' portion to the defendants 1 to 4, who are the legal heirs of the deceased Meena, who is the elder sister of the appellant / plaintiff. Accepting the Commissioner's report, the Trial Court passed the final decree granting 'A' portion of the property to the 5th defendant, 'B' portion of the



property to the defendants 1 to 4 and 'C' portion of the property to the appellant plaintiff.

WEB COPY

6. The learned counsel for the appellant / plaintiff mainly contended that the plaintiff had taken care of her deceased parents during their life time and dedicated her life for them and therefore, she must be allotted 'A' portion of the property instead of 'C' portion. However, in the 'A' portion, the 5th defendant was allowed to construct a house long back, during the life time of her parents and she continued to be in occupation of the house constructed therein, for several years.

7. It is not in dispute that the 5th defendant constructed a house in the 'A' portion during the life time of her parents, who permitted the 5th defendant to construct a house. Therefore, the appellant / plaintiff at this length of time cannot raise any objection in this regard. Similarly, the appellant / plaintiff was also permitted to construct a house in the 'C' portion by her parents and she had constructed a house in the 'C' portion, during the life time of her parents. That being the factum established, the division and the allotment made, on the basis of occupation of the parties in their



A.S.No.79 of 2

respective portions, which was accepted by the Trial Court cannot be construed as infirm. Thus, there is no reason whatsoever to interfere with the final order and the final decree passed by the Trial Court.

8. Accordingly, the fair order and final decree passed in I.A.No.3 of 2019 in O.S.No.6288 of 2019 dated 16.04.2021 stands confirmed and consequently, the Appeal Suit in A.S.No.79 of 2022 is dismissed. No costs. Connected Miscellaneous Petition is closed.

28.02.2023

Jeni

Index : Yes

Speaking order : Yes

Neutral Citation : Yes

To

The Judge,
I Additional City Civil Court,
Chennai.



WEB COPY

A.S.No.79 of 2



S.M.SUBRAMANIAM, J.

Jeni

A.S.No.79 of 2022

28.02.2023