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S.A.No.824 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.824 of 2017

and

C.M.P.Nos.587 and 588 of 2018

1.Ramasamy Pillai

2.Sundarambal

... Appellants

vs.

Sethu

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 06.11.2014 and made in A.S.No.4 of 2010 on the file of Principal District and Sessions Judge, Tiruvarur confirming the Final Decree and Judgment dated 18.08.2008 and made in I.A.No.195 of 2000 in O.S.No.472 of 2000 on the file of Subordinate Judge, Tiruvarur (Preliminary Decree and Judgment dated 26.07.1996 were passed in O.S.No.311 of 1993 by the Principal Subordinate Court, Nagapattinam).

For Appellants : Mr.Muthumani Doraisami



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For Respondent : Mr.S.Balasubramanian

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J U D G E M E N T

The defendants in a suit for partition have filed this second appeal challenging the final decree passed by the Courts below in pursuance of the preliminary decree obtained by the respondent.

2. The respondent herein is claiming under one R.Kunjaiya Pillai. The said R.Kunjaiya Pillai filed a suit for partition and obtained a preliminary decree for his half share in Suit A and C Schedule Properties. The suit was dismissed in respect of B schedule property. Thereafter, he filed a petition for passing of final decree in I.A.No.195 of 2000 on the file of the Sub Court, Tiruvarur. Pending that application, he died and the respondent herein was brought on record as his legal representative in I.A.No.72 of 2007 in I.A.No.195 of 2000. The Court below appointed an Advocate Commissioner for suggesting modes of division. The Advocate Commissioner visited the A and C Schedule Properties and filed a report containing 4 Schedules. The entire suit properties in original plaint A and C Schedules were divided into 4 Schedules in Advocate Commissioner's report. The A Schedule in Advocate Commissioner's report (except house) was



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allotted to the share of respondent/plaintiff. The B Schedule in Advocate Commissioner's report (except D Schedule) was allotted to the share of appellants/defendants. The C Schedule in Advocate Commissioner's report consists of land acquired by the Government. Since the house portion in A Schedule Property was fully allotted to the share of appellant as per no objection given by the respondent. Certain portions of lands in B Schedule of Advocate Commissioner's report were shown as D Schedule Properties and the same was also allotted to the respondent/plaintiff. The Courts below accepting the mode of divisions suggested by the Advocate Commissioner passed a final decree allotting entire A Schedule to the Advocate Commissioner's report to respondent/plaintiff, except the house, which stands thereon and certain portions of B Schedule to the Advocate Commissioner's report which was shown as D Schedule in his report to the respondent/plaintiff. Aggrieved by the same, the appellant preferred an first appeal in A.S.No.4 of 2014 on the file of Principal District and Sessions Judge, Tiruvarur. The First Appellate Court confirmed the findings of the Trial Court and challenging the same, the appellants have come by way of this second appeal.



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3. The learned counsel appearing for the appellant submitted that a preliminary decree was passed in favour of the respondent only in respect of Suit A Schedule and C Schedule and the suit for partition filed by the respondent was dismissed in respect of B Schedule. In such circumstances, the Courts below erred in allotting certain portions of B Schedule Properties to the share of respondent/plaintiff. The learned counsel further submitted that while passing final decree, the Court cannot go beyond the terms of preliminary decree and hence, the final decree passed by the Courts below allotting certain portions of B Schedule Properties to respondent is liable to be set aside.

4. A reading of Advocate Commissioner's report and plan and also the order passed by the Courts below would make it clear that Advocate Commissioner filed his report suggesting mode of division only in respect of Suit A and C Schedule Properties. While suggesting the mode of division, he divided the Suit A and C Schedule Properties into 4 Schedules namely A B C D. The entire A Schedule has been allotted to the share of respondent except the house portion. Since half share of the respondent in house portion was also allotted to the share of appellants, certain portions of the land in



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Advocate Commissioner's B Schedule Property were carved out and shown as D Schedule property in his report. The Suit D Schedule Property was allotted to the share of respondent. It is only to give him compensation for giving up his share in the house property stands in A Schedule to the Advocate Commissioner's report. Merely because, the Advocate Commissioner while dividing the Suit A and C Schedule Properties has adopted the very same classification as schedule A B C and D, it cannot be said Advocate Commissioner allotted portions of Suit B Schedule Property to the respondent. It is clear that certain portions of land in B Schedule to the Advocate Commissioner's report is allotted to the share of respondent but not the portions of land in the original B Schedule in the suit. Therefore, the said submission made by the learned counsel appearing for the appellant is not acceptable to this Court. The learned counsel for the appellant has not raised any other point while assailing the final decree passed by the Courts below. Accordingly, finding no substantial question of law arising for consideration in this second appeal, the same is dismissed by confirming the final decree passed by the Courts below.

In Nutshell:-



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(ii) Consequently, the connected civil miscellaneous petitions are closed.

(iii) In the facts and circumstances of the case, there will be no order as to costs.

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Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
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To

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1.The Principal District and Sessions Judge,
Tiruvarur.

2.The Subordinate Judge, Tiruvarur.



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S.SOUNTHAR, J.

dm

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