



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATISH KUMAR

A.S(MD)Nos.284 and 285 of 2008

and

C.M.P(MD)No.10007 of 2022

A.S(MD)No.284 of 2008

1.H.Kamalesh Kumar

2.H.Rajesh Kuma(died),

3.H.Hukumchand

4.Seema Singhal

5.Minor Umang Singhal

(the fifth appellant, minor, is represented by his mother and guardian, the fourth appellant Seema Singhal)

(Appellants 4 and 5 are bring on record as Lrs of the deceased second appellant as per order of this Court made in C.M.P(MD) No.2985 of 2017 in A.S(MD)No.284 of 2008, dated 27.03.2017)
:Appellant/Defendants 1 to 3

.vs.

K.Manikaraja

:Respondent/Plaintiff

A.S(MD)No.285 of 2008

H.Kamalesh Kumar

:Appellant/Plaintiff

.vs.

K.Manikaraja

:Respondent/Defendant



PRAYER: Appeal Suits filed under Section 96 of the Civil Procedure Code against the judgments and decrees made in O.S.No.452 of 2004 and O.S.No.14 of 2007, dated 17.10.2007, on the file of the Additional District Judge(Fast Track Court No.II), Madurai.

For Appellant-1 :Mr.G.Sudalayandi
in A.S(MD)No.284/2008
and Respondent in
A.S(MD)No.285 of 2008

For Respondent :Mr.G.Aravinthan
in both appeals

COMMON JUDGMENT

A.S(MD)No.284 of 2008 is filed against the judgement made in O.S.No.452 of 2004, filed for preliminary decree for partition and A.S(MD)No.285 of 2008 is filed against the judgment made in O.S.No.14 of 2007 filed for recovery of arrears. O.S.No.452 of 2004 is partly allowed in respect of preliminary decree and past damages and in other aspects, the suit is dismissed and O.S.No.14 of 2007 is dismissed. Challenging the decree and judgment in both the suits, these two appeal suits are filed.

2.The brief facts leading to the filing the appeals are as follows:



WEB COPY

The suit property originally owned by one Mohammed Ibrahim Rowther and Hajee K.Hussain Rowther. Both had undivided half share in the suit property. The first defendant namely, the appellant in A.S(MD)No.284 of 2008, has purchased 1074 sq ft from the legal heirs of Mohammed Ibrahim Rowther. In the meanwhile, the plaintiff has also purchased 450 sq.ft from the remaining share of Mohammed Ibrahim Rowther and he has filed a suit for partition. The above suit has been contested only by the first defendant, namely, the first appellant in A.S(MD)No.284 of 2008 and the suit has been decreed for 1/6th share in favour of the respondent herein, who was the plaintiff in O.S.No.452 of 2004. Similarly the appellant in A.S.No.284 of 2008 also filed a suit in O.S.No.14 of 2007 for recovery of arrears of rent which has been declined by the trial Court.Challenging the same, A.S(MD)No.285 of 2008 is filed. Even in the partition suit, the only contestant is the appellant No.1 in A.S(MD)No.1284 of 2008.The others were made only as formal parties.After their death, their legal heirs have been added as parties in the proceedings.

3.It is the contention of the learned counsel for the first appellant that he is the only contestant before the trial Court during the pendency of these appeals,the matter has been amicably



settled between the first respondent and himself and the first respondent's share of 450 sq.fts has already been demarcated and allotted to him. In such view of the matter, no further adjudication is required and the appeals may be dismissed confirming the judgments of the trial Court.

4. Since the first appellant is the main contestant before the trial Court and other appellants are husband and grand-father of the third appellant. This Court is of the view that the main issue itself is amicably settled, since the rights of the other appellants are declared by the trial Court, the appellants 2 and 3 can work out their remedy in the final decree proceedings.

5. Since no further adjudication is required, both the appeals are dismissed as settled out of Court. The appellant/s are entitled for refund of Court fee as per the rule in force. No costs. Consequently, connected Miscellaneous Petition is closed.

03.03.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
vsn



To

1.The Additional District Judge,
(Fast Track Court NO.II),
Madurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



N.SATISH KUMAR.,J.

vsn

COMMON JUDGMENT MADE IN
A.S(MD)Nos.284 and 285 of 2008
and
C.M.P(MD)No.10007 of 2022

06.03.2023