



A.S.(MD)No.225 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.225 of 2021

and

C.M.P.(MD)Nos.7244 of 2021 & 5439 of 2023

J.S.Jasmin Stella

...Appellant / Petitioner / Plaintiff

Vs.

1.J.S.Godwin

2.The Correspondent,

Angels Matriculation Higher Secondary School,

Dhiraviyam Gardens,

Rajapalayam.

...Respondents / Respondents /
Defendants

PRAYER: This Appeal Suit is filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 12.10.2020 made in I.A.No.91 of 2014 in O.S.No.165 of 2004 on the file of the learned Principal District & Sessions Judge, Virudhunagar at Srivilliputhur.

For Appellant : Mr. H.Lakshmi Shankar

For Mr.M.Solaisamy

For R1 : Mr.D.R.Ragunath



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JUDGMENT

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The order of the learned Principal District & Sessions Judge, Virudhunagar at Srivilliputhur, dated 12.10.2020 made in I.A.No.91 of 2014 in O.S.No.165 of 2004, making allotment in the final decree proceedings, is under challenge in this Appeal Suit.

2.The trial Court has passed final decree in respect of the suit property, which constitutes 1 acre 36 cents. The eastern side of the property admittedly is the residential building and the western side of the property is the school building and the said buildings are still in existence. The trial Court, considering the second plan submitted by the Commissioner and also the evidence of C.W.2, had adopted the value for 68 cents on the western side as Rs.3,08,57,000/- (Rupees Three Crores Eight Lakhs and Fifty Seven Thousand Only) and adopted the value of Rs.2,15,78,000/- (Rupees Two Crores Fifteen Lakhs and Seventy Eight Thousand Only) in respect of 68 cents on the eastern portion, however, taking note of the fact that the first defendant / 1st respondent herein, who is the brother of the plaintiff / appellant herein, had availed loan from the bank for constructing the residential house, allotted eastern portion to the 1st defendant and western portion to the plaintiff.



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3. Aggrieved by the same, the present Appeal Suit is filed by the plaintiff / appellant herein.

4. This Court, vide order dated 01.11.2021 made in C.M.P.(MD)No.7246 of 2021 in A.S.(MD)No.225 of 2021, had appointed an Advocate Commissioner, who had also filed a report before this Court, agreeing with the report submitted by the Commissioner appointed by the trial Court.

5. The main contention of the appellant before this Court is that though the land has been divided equally, the eastern portion allotted to the 1st respondent has more advantages, which has direct access to the main road State highway, whereas, the western portion did not have such access to the State highway.

6. In the light of the above submission, now the point arise for consideration in this appeal is:-

“Whether the allotment made by the trial Court in the final decree proceedings is proper or not?”

7. I have perused the entire files. Besides, this Court also directed the parties to produce exact photographs, indicating the site view of the locality.



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Pursuant to which, photographs have been produced before this Court. On perusal of the same, the contention of the appellant that the eastern portion has direct access to the main road cannot be countenanced for the simple reason that very next to the eastern portion, a sewage canal is passing through. Therefore, the contention of the appellant regarding direct access from the highway to the eastern portion is ruled out. Similarly, the division is made in the eastern and western side and both have access to the link road and both have sufficient frontage in both sides.

8.It is further to be noted that the trial Court, in fact, divided the property equally and the eastern side portion consisting 68 cents is allotted to the 1st respondent, whereas the western side portion of 68 cents is allotted to the appellant herein. When this Court directed both sides to produce the present guideline value of the property, it is submitted that the entire area guideline value is Rs.5,055/- (Rupees Five Thousand and Fifty Five Only) per sq.mt. Since the guideline is one and the same over the entire area and both portions earmarked by the trial Court are also having sufficient frontage to the link road, this Court is of the view that allotment made by the trial Court cannot be found fault. Despite the fact that the Commissioner's report had suggested that an additional amount of



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Rs.37 lakhs has to be paid by the appellant to the 1st respondent, considering the value, the trial Court had adopted the allotment based on the area and divided the suit property equally.

9.The photographs filed by the appellant is marked as Ex.C14. The said photographs shall also form part of the records.

10.Considering the photographs filed before this Court and the guideline value and considering the fact that both area earmarked by the trial Court has sufficient link and direct access to the link road, this Court is of the view that there is no infirmity in the allotment made by the trial Court. Accordingly, I do not find any merits in this appeal, hence, the allotment made by the trial Court and the final decree passed by the trial Court is confirmed. Therefore, the point is answered and this Appeal Suit is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

27.06.2023

NCC : Yes/NO

Index : Yes/No

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Document received before this Court:

Ex.C14--- photographs of the area in question

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N.SATHISH KUMAR, J.

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To

- 1.The Principal District & Sessions Judge,
Virudhunagar at Srivilliputhur.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
A.S.(MD)No.225 of 2021

27.06.2023