



C.M.A.(MD)No.232 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.232 of 2023

and

C.M.P.(MD)No.2717 and 3815 of 2023

The Idol of Arulmighu Subramaniaswamy,
Kumaraveyalur,
Rep. by its Executive Officer,
Having office at Devasthanam Office,
Kumaravayalur,
Trichy District.

...Appellant/Petitioner/
4th Respondent/4th Defendant

Vs.

1.T.Dhanalakshmi

...1st Respondent /1st Respondent/Petitioner
/Plaintiff

2.S.Mallikha

3.V.Tamilselvi

4.Vijaya

5.Kala

6.S.Kannan

...Respondents 2-6/Respondents 2-6
/Respondents 1,3,5,6,7/defendants 1,3,5,6 & 7

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of Civil Procedure Code, to set aside the order dated 10.02.2023 passed in E.A.No.11 of 2022 in E.P.No.573 of 2019 in O.S.No.198 of 2008 on the file of the III Additional District Court, Tiruchirappalli.



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For Appellants : Mr.M.P.Senthil
For R1 : Mr.P.Arun Jayatram
For R2 to R6 : No Appearance

JUDGMENT

The present Civil Miscellaneous Appeal has been filed challenging the order dated 10.02.2023 passed in E.A.No.11 of 2022 in E.P.No.573 of 2019 in O.S.No.198 of 2008 on the file of the III Additional District Court, Tiruchirappalli.

2.Challenge has been made over the order passed under Order 21 Rule 97 CPC and Section 151 CPC. The first respondent, who claimed to have purchased 2/3 share in the northern portion of the suit property, had filed a suit for specific performance in O.S.No.198 of 2008 on the the file of the III Additional District Court, Tiruchirappalli and the said suit was decreed in favour of the first respondent / plaintiff. It is admitted by both sides that the remaining 1/3 share belongs to the appellant herein, who was the fourth defendant in the suit.

3.When an application has been filed for delivery of possession by the first respondent / plaintiff in E.P.No.573 of 2019, the dispute arose as to which portion has to be delivered, since the property was undivided. Hence, in the above



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Execution Petition, an obstruction petition in E.A.No.11 of 2022 has been filed by the appellant / fourth defendant under Order 21 Rule 97 CPC and Section 151 CPC. However, the same came to be dismissed. Challenging the same, the present appeal is filed by the appellant / fourth defendant.

4.Taking note of the fact that the issue mainly revolves around the division of the property and the ratio of the property is not disputed, this Court had appointed an Advocate Commissioner, namely Mr.H.Arumugam, Advocate, MS.No.947/2003, Uthangudi, Madurai-625 107, Ph:94420 26880, to inspect the property and suggest a mode of division by an order dated 17.04.2023.

5.Pursuant to the above said order dated 17.04.2023, the Advocate Commissioner inspected the suit property in the presence of both sides and filed a detailed report with two suggestions and plans for dividing the suit property to give a quietus to the entire issue. The said suggestions and plans are as follows:

“Suggestion No.1

[i] If it is divided as 3 parts of the North-South, all the three parts will have access from the southern side road. The East-West measurement on the South is 36 ft. and on North is 32.14 Ft. The total extent available is nearly 1836 sq. ft. alone. If it is divided into 3 equal parts each part would be 612 Sq. ft. Out of the total width of 36



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ft. on road facing, 12 ft. on eastern side is available as vacant site with an abandoned wall of the dilapidated toilet without any roof. If that 12 ft. marked with green colour shown as "BCDE" in the Rough Plan No.1 is allotted for the 1/3rd share, the remaining portion on the western side marked with red colour shown as "ABEF" can be allotted to the remaining 2/3rd share.

[ii] In that case the extent of 1/3rd share on the eastern side is with measurement of East-West 12 Ft. on South & 11 Ft. on the North and the North-South measurement 51.5 Ft. on the east & 55.76 Ft. on the west. The total extent for the 1/3rd share is 616 Sq.Ft., though the actual extent entitled is 612 sq ft. The remaining East-West measurement on South is 24 Ft. and on the North is 21 Ft. and North - South measurement on West is 56 Ft. and 4 inches and on the East is 55.76 Ft, totally 1224 sq ft., would be available to the 2/3rd share.

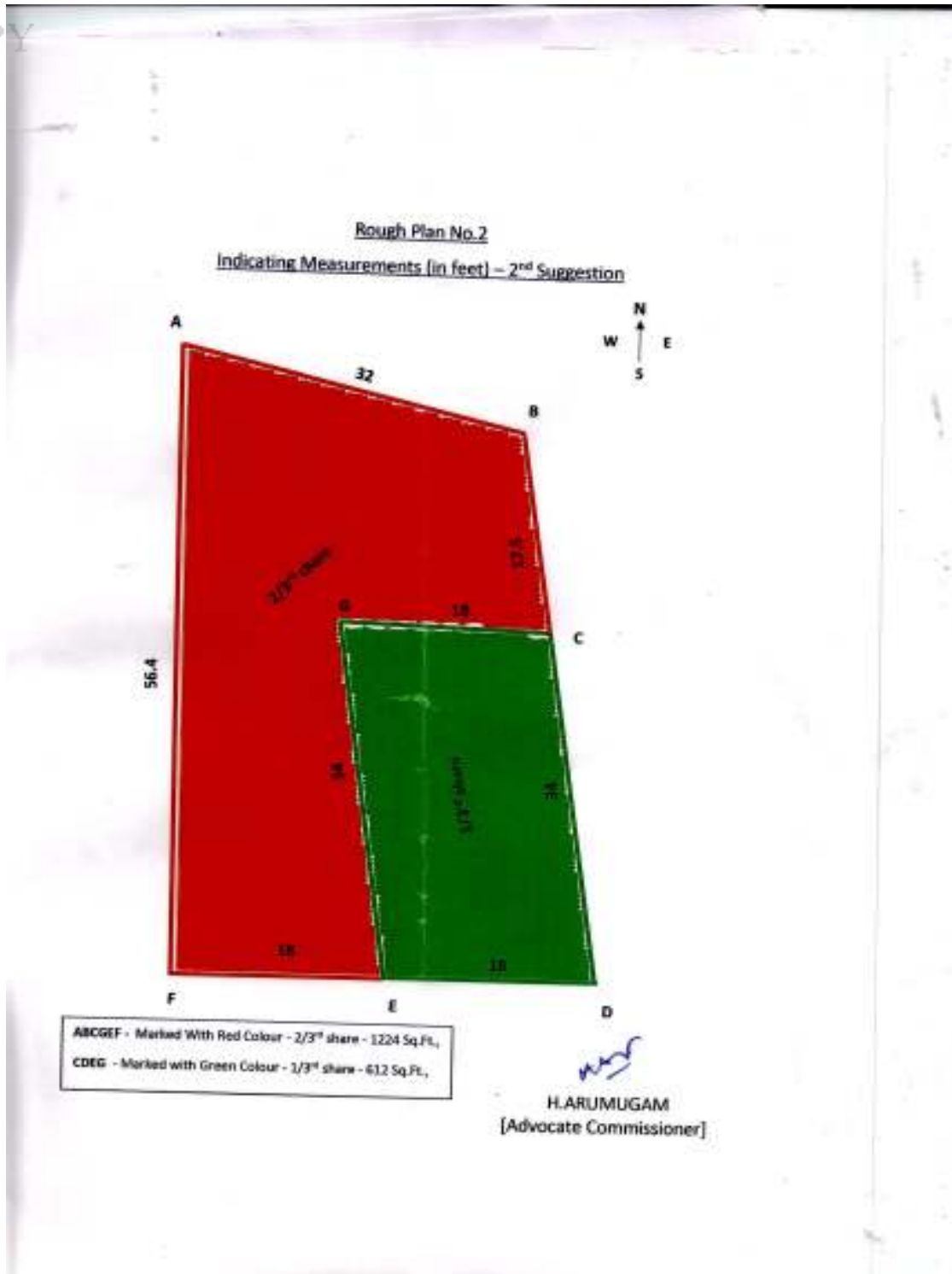
Suggestion No.2

The total 36 Ft. on the South can be divided into 2 equal parts of 18 ft. The Temple is entitled to 612 Sq. ft. and if 18 Ft. East-West and 34 ft. North-South is given to the Temple, the 1/3rd sharer would come to 612 Sq.Ft., marked with green colour portion, which is shown as "CDEG" in the Rough Plan No.2 and the remaining extent of 1224 Sq.Ft., marked with Red colour, which is shown as "ABCGEF" can be allotted to 2/3rd sharer."



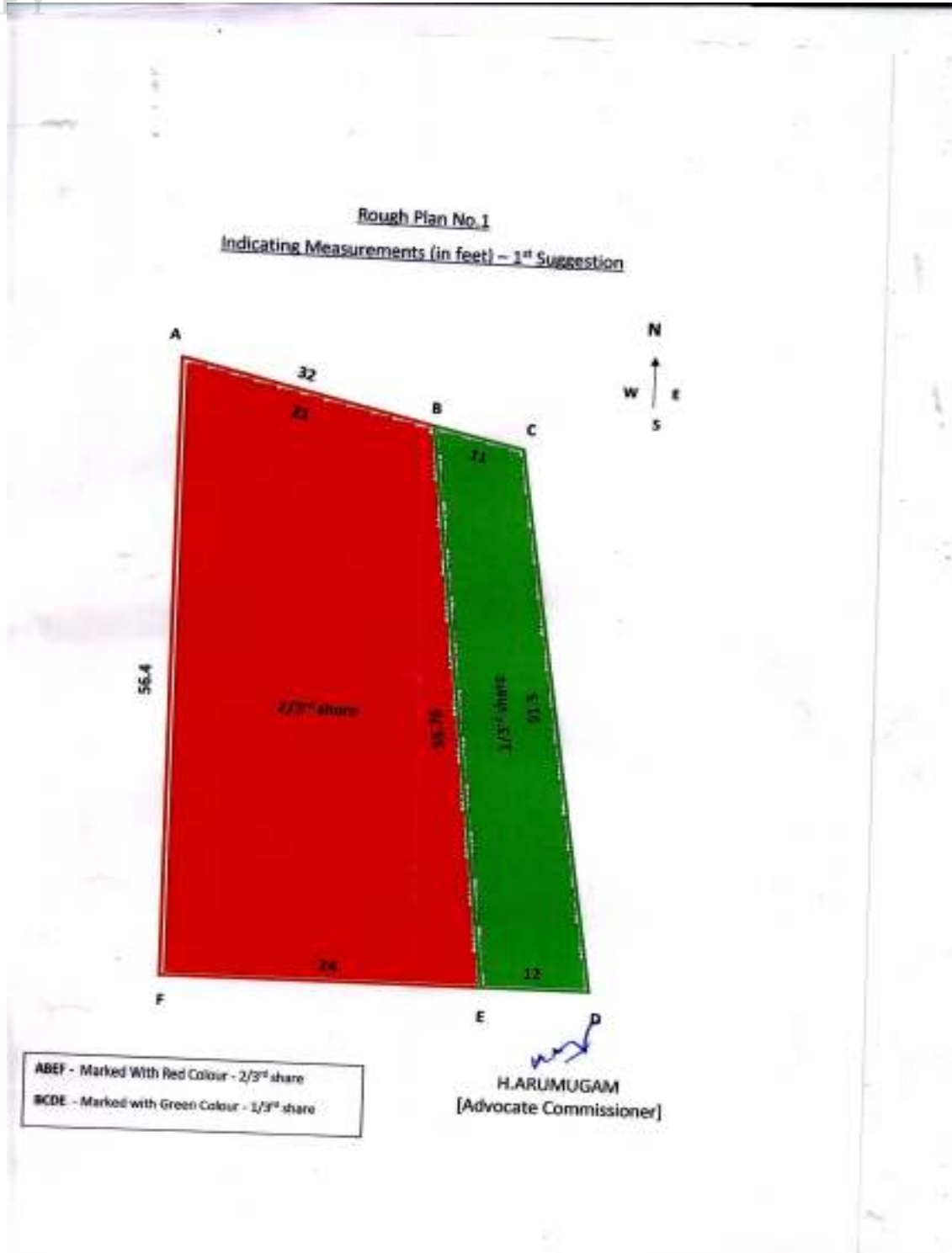
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6. On perusal of the above, this Court is of the view that plan No.2 and suggestion No.2 will be more convenient to both the parties for an effective and proper division of the suit property. The learned counsel for the appellant also submitted that Plan No.2 will be suitable to protect the interest of the Temple.

7. In such view of the matter, the report filed by the Advocate Commissioner is taken on record and Plan No.2 is accepted. The first respondent / plaintiff is entitled to have the delivery of portion of 2/3 share of the suit schedule property marked in red colour and the appellant / fourth defendant is entitled to have the delivery of portion of 1/3 share of the suit schedule property marked in green colour in Plan No.2 of the Advocate Commissioner's report.

8. With the above observation, this Civil Miscellaneous Petition is ordered and the order passed in E.A.No.11 of 2022 in E.P.No.573 of 2019 in O.S.No.198 of 2008 on the file of the III Additional District Court, Tiruchirappalli is set aside. The report of the Advocate Commissioner shall form part and parcel of this judgment. Since the parties agreed to plan No.2, the respondent/plaintiff is directed to take delivery of the portion delineated in red colour in Plan No.2 and the Temple /appellant is directed to take delivery of the portion, which is



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delineated in green colour in Plan No.2 of the Advocate Commissioner's report.

Accordingly, the matter is disposed of here itself and the connected execution proceeding is also closed recording the division of the property as shown above. No costs. Consequently, connected miscellaneous petitions are closed.

9.The respondents shall pay another sum of Rs.20,000/- (Rupees Twenty Thousand only) as additional remuneration to the Advocate Commissioner.

13.06.2023

NCC : Yes/No
Index : Yes/No
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To

1.The III Additional District Court, Tiruchirappalli

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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