



S.A.(MD) No.594 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

**S.A.(MD) No.594 of 2023
and
C.M.P.(MD) No.13877 of 2023**

R.Krishnaveni

..Appellant

Vs.

K.Subramaniyan

...Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the decree and judgment dated 20.07.2023 passed in A.S.No.19 of 2022 on the file of the Subordinate Court, Ambasamudram, and to set aside the final decree and judgment dated 13.12.2021 passed in I.A.No.148 of 2017 in O.S.No.691 of 1986 on the file of the Additional District Munsif Court, Ambasamudram.

For Appellant : Mr.M.Ponniah
For Respondent : Mr.N.Vignesh

JUDGMENT

This second appeal is filed challenging the judgment of the learned Subordinate Judge, Ambasamudram in A.S.No.19 of 2022 confirming the order passed in the final decree petition in I.A.No.148 of 2017 in O.S.No.691 of 1986 on the file of the learned Additional District Munsif, Ambasamudram.



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2.It is the submission of the learned counsel for the appellant that the father of the respondent, namely Kalathinathan Chettiar filed a suit in O.S.No.691 of 1986 seeking the relief of partition of 1/4th share in the suit properties. The suit was decreed on 26.08.1992. Against the said judgment and decree, the appellant/respondent filed an appeal in A.S.No.287 of 1992 on the file of the Sub Court, Ambasamudram and that was dismissed on 17.07.1996. Challenging the dismissal of the first appeal, the respondent filed S.A.No.924 of 1997 and that also ended in dismissal on 24.08.2015. Thereafter, the respondent filed a final decree petition in I.A.No.148 of 2017.

3.An Advocate Commissioner was appointed in the final decree petition and he filed his report and plan. On the basis of the Advocate Commissioner's report and after conducting enquiry, the learned Additional District Munsif passed final decree on 13.12.2021. During the course of enquiry, the learned Additional District Munsif found that out of the 5 suit properties, item Nos.2 and 4 are classified as Sarkar Poramboke and therefore, they cannot be subjected for partition. Excluding these properties, the final decree was passed in respect of item Nos.1, 3 and 5.



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4.The main ground, on which this second appeal is filed by the appellant, is that during the course of enquiry, he produced Ex.R3 to show that the appellant purchased part of item No.3 of the suit properties. However, this document was not considered and item Nos.3 and 5 in its entirety were allotted to the respondent leaving the appellant with item No.1 alone. His grievance is that in item No.3 also, the appellant should have been allotted his part of the share.

5.In response, the learned counsel for the respondent submitted that the Advocate Commissioner, considering the indivisibility nature of the property, enjoyment of the parties and taking into consideration the value adopted by the Engineer, rightly and appropriately allotted the share. Thus, he prays that this second appeal may be dismissed confirming the final decree passed by the trial Court.

6.Considered the rival submissions and perused the records.

7.It is the fact that the respondent's entitlement for 1/4th share is confirmed up to this Court. The only point to be considered is whether the division of share in the final decree by the learned Additional District Munsif is just right and appropriate?



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8. Reading of the Commissioner report shows that out of the 5 suit properties, item Nos.2 and 4 are classified as Sarkar Poramboke and therefore, they cannot be subjected for partition. The Advocate Commissioner in his report stated that item No.1 situates in S.No.423/4 and the appellant is residing in the property. As per the value adopted by the Engineer, the value of item No.1 is Rs.11,70,000/-. As per the 1/4th share entitled to the respondent, the respondent is entitled for Rs.2,92,500/-.

9. The 3rd item of suit property situates in S.No.423/4 and it is shown as BGEF in the rough sketch. There is a tiled roof house. As per the valuation report of the Engineer, the value of this property is Rs.2,12,000/-. The respondent's share of 1/4th comes to Rs.53,150/-. The 5th item of the suit property situated in S.No. 423/18 is shown as LMNI in the rough sketch. It is a vacant site. As per the value adopted by the Engineer, the value of this vacant land is Rs.91,000/- and the respondent is entitled for Rs.22,750/- towards his 1/4th share. Thus, the respondent is totally entitled for a sum of Rs.3,68,250/- in monetary value towards his 1/4th share of item Nos.1, 3 and 5 of the suit properties.

10. Taking into consideration the factum of enjoyment of the property, the learned Additional District Munsif, Ambasamudram, allotted item Nos.3 and 5 of the properties towards 1/4th share to the respondent. Similarly, considering the



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fact that the appellant is entitled for $\frac{3}{4}$ th share, he was allotted item No.1, which is valued Rs.11,04,750/-. It appears that to arrive at this decision, the learned Additional District Munsif considered the fact that the appellant was residing in item No.1 of the suit property and therefore, this property was allotted to the appellant.

11. With regard to the submission of the learned counsel for the appellant that Ex.R3 was not considered by the learned Additional District Munsif, Ambasamudram, while passing the final decree, this Court on going through this document found that the appellant purchased certain items of properties including 50% of item No.3 of the suit properties. It is his submission that this document was not considered. The appellant already purchased 50% of the property in item No.3 through the sale deed, however, this property also subjected for partition. This Court is of the view that after this distant point of time, especially after the trial Court, first appellate Court and second appellate Court, had passed the decree in favour of the respondent of $\frac{1}{4}$ th share in the suit properties, cannot receive and consider this document. The appellant ought to have filed this document and produced evidence in support of this document during the trial in O.S.No.691 of 1986. Having failed to do so before the trial Court and the first appellate Court, appellant cannot seek the Court to look into this document. Therefore, this Court is of the considered view that the learned



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Additional District Munsif, Ambasamudram had considered every aspects, ie., the value of the property, enjoyment of the parties in respect of the properties and made allotments and that was confirmed by the first appellate Court, which in the considered view of this Court needs no interference.

12.In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co. Ltd., 1962* reported in *AIR 1962 SC 1314*, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. *Whether it is of general public importance (or)*
2. *Whether it directly and substantially affects the rights of parties **and if so,***
3. *Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or)***
4. *The question is not free from difficulty and calls for discussion of alternative views.*

13.In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.



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14.In this view of the matter, this Second Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

13.10.2023

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To

- 1.The Subordinate Judge,
Ambasamudram.
- 2.The Additional District Munsif,
Ambasamudram.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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