



A.S.(MD)No.271 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.09.2023

PRONOUNCED ON:29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

A.S.(MD)No.271 of 2022

and

C.M.P.(MD)No.12439 of 2022

C.Palaniappan : Appellant/Respondent/Defendant

Vs.

R.Palanisamy : Respondent / Petitioner/Plaintiff

PRAYER:- Appeal Suit filed under Section 97 r/w Order 41 Rule 1 of the Code of Civil Procedure against the final decree passed in I.A.No.775 of 2014 in O.S.No.147 of 2011, dated 13.06.2022, on the file of III Additional District Court, Trichy.

For Appellant : Mr.A.Mohamed Haneef

For Respondent :Mr.P.Thiagarajan

: Mr.J.Bharathan
Advocate Commissioner



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JUDGMENT

The Appeal Suit is directed against the final decree passed in I.A.No.775 of 2014 in O.S.No.147 of 2011, dated 13.06.2022, on the file of III Additional District Court, Tiruchirappalli.

2. The respondent/plaintiff has filed a suit for partition against the appellant/defendant. The learned III Additional District Judge has passed the preliminary decree on 04.06.2013 declaring that the plaintiff is entitled to 1/2 share in the suit properties. The plaintiff, by alleging that the defendant has not chosen to comply with the preliminary decree, has filed the petition for final decree in I.A.No.775 of 2014.

3. An Advocate Commissioner has been appointed for effecting the division of the suit properties and after executing the commission warrant, the Commissioner has filed his report, rough sketch, field measurement sketch and enlargement sketch under Exs.C.1 to C.4. Both parties have not filed any objections to the Commissioner's report.



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4. The learned trial Judge, considering the division of the property into equal parts as ABCD and EFGH and taking note of the value of the building and convenience of the enjoyment of the parties, has allotted ABCD portion to the plaintiff and on that basis passed the final decree on 13.06.2022. Aggrieved by the final decree, the defendant has come forward with the present appeal.

5. When the appeal was taken up on 24.03.2023, the learned Judge of this Court, considering the submissions made by the learned Counsel on either side and taking note of the fact that the Advocate Commissioner appointed before the trial Court has allotted the portions on the basis of the constructions put up on that area and not on the basis of the extent, has appointed Mr.J.Bharathan, as an Advocate Commissioner to measure the suit property with the assistance of qualified Engineer/Surveyor and file a report suggesting the mode of allotment.

6. In pursuance of the commission warrant issued, the learned Advocate Commissioner has executed the same and filed his report along with report and sketches of the Engineer and memo of inspection filed by both parties. After the filing of the Commissioner's report on 16.08.2023,



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this Court has specifically posted the matter on 30.08.2023 for filing objections to the Commissioner's report if any. But both parties have not filed any objections to the Commissioner's report.

7. In the Commissioner's report, the learned Advocate Commissioner has stated that he had visited the property twice and measured the same with the help of the Engineer and his team and also had lengthy discussions with both the parties in the presence of their Counsel. The learned Advocate Commissioner has further stated that he has given two options viz., Option-I and Option-II to both parties, but both of them did not agree for both options and that as per his request, the Engineer has given Option – III, but both parties did not accept Option-III also. Subsequently, as directed by the learned Advocate Commissioner, the Engineer has given Option-IV sketch and the same was accepted by both parties.

8. The learned Advocate Commissioner has further stated that the entire building was divided into Northern portion and Southern portion having equal extent of 3864.5 sq.fts, that option IV is with the measurement of the land as per the sale deed and that since both parties



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have accepted for Option-IV, both of them have appeared before the Commissioner on 26.06.2023 and as agreed by both parties, the Commissioner has drawn two lots in the presence of parties and their Counsel and the lot was permitted to be taken by his junior and that as per their lots, the Northern portion is proposed to be allotted to the appellant and the Southern portion is proposed to be allotted to the respondent and that both of them were satisfied with the allotment. The Commissioner has further stated that the value of the Northern portion ie Part-I is at Rs.63,88,258/- and the Southern portion ie., Part-II is at Rs.49,15,166/-. Considering the difference in the value of the building between the portions I and II, the allottee of the Northern portion ie., the appellant has to pay a sum of Rs.7,36,546/- to the allottee of the Southern portion ie., to the respondent and both parties have consented for the same.

9. When the matter was taken up on 11.09.2023, the learned Counsel for the appellant as well as the respondent would submit that both parties are accepting the Commissioner's report and the allotment made by the learned Advocate Commissioner. The learned Counsel for the appellant would submit that the appellant may be given one month



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time for depositing the owelty amount fixed at Rs.7,36,546/- before the trial Court and he would further submit that the respondent may be directed to vacate the portion in his occupation within the time to be stipulated by this Court.

10. The learned Counsel for the respondent would submit that the respondent is ready to vacate the portion in his occupation within a period of one month and he may be permitted to withdraw the amount to be deposited by the appellant.

11. Considering the submissions made by the learned Counsel on either side and taking note of the Advocate Commissioner's report and the plans and the consent of both parties for the allotment made by the learned Advocate Commissioner, the Advocate Commissioner's report is accepted and recorded.

12. In the result, the Appeal Suit is allowed and the final decree passed in I.A.No.775 of 2014 in O.S.No.147 of 2011, dated 13.06.2022, on the file of III Additional District Court, Tiruchirappalli is set aside and the final decree is passed in terms of the Advocate Commissioner's report



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allotting Northern portion to the appellant and the Southern portion to the respondent. The appellant is directed to deposit the owelty amount of Rs.7,36,546/- within one month from the date of final decree before the trial Court and the respondent is directed to vacate the portion in his occupation within one month from the date of decree. The respondent is permitted to withdraw the amount to be deposited by the appellant from the trial Court, on production of his affidavit and proof for vacating the property. The Advocate Commissioner's report and plans will form part of the decree. The time for filing the Non-Judicial Stamp papers is one month. No costs.

29.09.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. The III Additional District Court, Trichy.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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