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O.S.A.No.242 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HON'BLE Mr. JUSTICE S.S.SUNDAR
AND
THE HON'BLE Mr. JUSTICE P.DHANABAL

O.S.A.No.242 of 2021

1.Gopi Mirpuri
2.Suresh Mirpuri
3.Shyam Mirpuri

.. Appellants

Vs.

1.Jaya Prem Mirpuri
Rep. by her power of attorney agent
Anju Rahul Gurnani

2.Mala Suresh Giani
Rep. by her power of attorney agent
Anju Rahul Gurnani

3.Anju Rahul Gurnani

4.Deepak Muralidhar Mirpuri

5.Ritu Mahesh Mirpuri

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules
read with Clause 15 of Letters Patent, against the order dated 29.05.2020
passed in C.S.No.702 of 2015.



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For Appellant : Mr.P.J.George

For R1 to R3 : Mr.K.V.Babu

For R4 & R5 : No appearance

J U D G M E N T

(Delivered by S.S.SUNDAR, J.)

This Original Side Appeal is directed against the order of the learned Single Judge, dated 29.05.2020, in C.S.No.702 of 2015, by defendants 3 to 5.

2.The respondents 1 to 3 filed the suit for partition of their 1/3rd share in the suit property and for consequential reliefs. The suit property is an extent of 3 Grounds and 857 sq.ft. in R.S.No.1591/1 (Part) in Mylapore Village, consisting of building in Ground Floor and First Floor. The suit was decreed. During trial, it is established that plaintiffs are entitled to 1/3rd share. Defendants 1 and 2 are the owners of another 1/3rd share and the appellants, who are defendants 3 to 5, are also entitled to 1/3rd. After the suit was decreed by the learned Single Judge, the appellants have purchased the 1/3rd share of respondents 4 and 5, who are the defendants 1 and 2. However, it is admitted that plaintiffs are the owners of the building in the First Floor whereas, the



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appellants are exclusive owners of Ground Floor by way of an agreement.

Having admitted that the entire First Floor building belongs to the plaintiffs, the learned counsel appearing for the appellants still contend that the suit for partition on the admitted facts, is not maintainable. Even though the appellants challenged the suit mainly on the ground that there was prior partition, the division established is only regarding the superstructure.

3.Learned counsel appearing for the appellants has not raised any dispute over the extent to which the parties are entitled to and their Undivided Share in the land. However, his argument is that, in the entire suit property, construction is put up by mutual consent and it is stated that an extent of 4500 sq.ft. or thereabouts, two Floors have been constructed. When plaintiffs are entitled to 1/3rd share in all the suit properties and the First Floor portion of the building, it is not as if division of the property by metes and bounds is not feasible.

4.The learned counsel for the appellants submitted that the suit itself is not maintainable, since there cannot division by metes and bounds. The learned counsel submitted that the plaintiffs who are entitled to 1/3rd share about which there is no dispute, again seek partition of 1/3rd share in the land and the entire first floor portion of the building. Referring to the admission portion that the



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plaintiffs are entitled to first floor of the building and the appellants are entitled to ground floor of the building, the learned counsel submitted that the decree of the learned Single Judge, cannot be sustained. He also submitted that the deeds executed by the defendants 1 and 2, is specifically in favour of the appellants and that the suit ought to have been dismissed. The fact that the appellants are in possession of the ground floor of the building, it is reiterated that partition is impermissible.

5.Considering the submissions of the learned counsel for the parties and the facts, without going into the issue, this Court requested to clarify whether the parties can go for a settlement. Unfortunately, this Court realised that the appellants have come forward with an offer of paying the guideline value of the 1/3rd share in the land. The learned counsel for the appellants have also filed an affidavit indicating the value of the entire property is more than Rs.30 crores. Considering the fact that there is no settlement, this Court is inclined to dispose this appeal on merits.

6.The only point that arises for consideration in the matter is whether the parties are entitled to a partition of 1/3rd share over the suit schedule property.

In the plaint, the suit property has been described as follows :



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“All that piece and parcel of property bearing old door No.2, new door No.5, Parthasarathy Gardens, Chennai 600 018, comprised in R.S.No.1591/1 (part) in Mylapore Village, Mylapore-Triplicane Taluk, Chennai District, measuring an extent of 3 grounds and 857 sq.ft., or thereabouts together with superstructure measuring an extent of 4500 sq.ft. or thereabouts in the ground floor, 4500 sq.ft. or thereabouts in the first floor existing thereon, and bounded on the :

NORTH BY : R.S.No.1591/1 (PART) BELONGING TO
THE U.S.S.R. CONSULATE

SOUTH BY : 40 FEET LAYOUT ROAD

EAST BY: R.S.No.191/1 (PART) BELONGING TO
FAMILY OF K.R.IYENGAR

WEST BY: R.S.No.1591/1 (PART)

situate within the Registration District of Central Chennai and Sub
Registration District of Joint-I Sub Registrar of Central Chennai.

7.The plaintiffs prayed for passing of a preliminary decree for partition and separate possession of the suit schedule property and allot 1/3rd share and also for other consequential reliefs. Though the plaintiffs claimed 1/3rd share from the whole property, it is admitted by them that they are entitled to only the first floor portion of the building. Since appellants are entitled to the ground floor and plaintiffs are entitled to the first floor portion exclusively, their right in the building will survive till the building is demolished. Even though the building is old and it is contended by plaintiffs that the building is dilapidated, appellants' dispute. The plaintiffs' one-third share in the land is admitted and



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hence, the judgment and decree of trial court has to be confirmed.

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8. Therefore, on admitted facts, this Court is of the view that the respondents 1 to 3 are entitled to partition of their 1/3rd share in the land along with the first floor of the building measuring 4500 sq.ft. If both the parties agreed for demolition, the property will remain as undivided and once the building is demolished, the plaintiffs would be entitled to 1/3rd share in the land. It is made clear that the appellants shall not put up any construction or any development in the suit property, without the consent of the other parties. In other words, both parties are directed not to interfere with the co-ownership right of the other till such time the division of suit land takes place. The appeal is disposed of however, subject to the directions indicated above. No costs.

[S.S.S.R.,J.] [P.D.B.,J.]
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