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C.R.P.No. 4115 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2024

C O R A M:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No. 4115 of 2023
and C.M.P.No.25148 of 2023

C.Murugan

... Petitioner

Vs.

C.Chellakani

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code praying to set aside the docket order dated 17.02.2023 passed by the Hon'ble III Additional City Civil Court, Chennai in I.A.No.18924 of 2014 in O.S.No.8475 of 2011.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.P.Rajendra Kumar

ORDER

This Civil Revision Petition has been filed as against the order passed by the learned III Additional City Civil Judge, Chennai. The order that is sought to be assailed is the order passed in the final decree in O.S.No.8475 of 2011.



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2. O.S.No.8475 of 2011 is a suit for partition and separate possession filed by the respondent herein. There is no dispute that the plaintiff and the defendant are siblings. The suit sought for half share in the Item Nos.1 and 2 of the suit schedule property. The learned Trial Judge decreed the suit as prayed for on 04.12.2013. Aggrieved by the same, a regular appeal was preferred before this Court in A.S.No.463 of 2014 and the appeal was partly allowed. The suit in so far as the 1st item of the property is concerned, it was dismissed and in so far as the 2nd item of property is concerned, it was decreed.

3. While dealing with the 2nd item, an objection was raised by the Civil Revision Petitioner, who was the appellant therein, that he had purchased a further extent in addition to the existing area of 36 sq.mt on 30.06.1995. Therefore, he claims that he is entitled for the remaining extent leaving 386 sq.ft. in common.

4. This argument was rejected by the judgment of this Court in A.S.No.463 of 2014, in which Paragraph No.19 reads as follows:



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“19. A perusal of the schedule to Ex.A.8 would indicate that the property which is the subject matter which has been allotted measures an extent of 36 sq.mt. Which is equivalent to 386 sq.ft. and that Plot Number has been shown as Plot No.970. This property is situate within the following boundaries:

<i>North by</i>	<i>-Street</i>
<i>East by</i>	<i>- Street</i>
<i>South by</i>	<i>- Plot Number 69</i>
<i>West by</i>	<i>- Plot Number 968</i>

It is the case of the defendant that he has purchased the adjacent land and put up construction. He would submit that he has purchased the adjacent property on 30.06.1995. However, the defendant has not produced any document to substantiate the same. Considering the fact that the 2nd item of the suit property has been jointly allotted in the name of the plaintiff as well as the defendant, the plaintiff is entitled to a partition in respect of the suit 2nd item of the property. The 3rd Point for Consideration is therefore answered in favour of the plaintiff.”

5. A perusal of paragraph No.19 makes it clear that this Court had



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rejected the argument of the learned counsel for the defendant that he is entitled

to additional area by virtue of purchase dated 30.06.1985. Apart from that, this Court also fixed boundaries for the properties. It is a settled position of law that boundaries prevail over extent.

6. Mr.Velmurugan, appearing on behalf of the petitioner would submit that the plaintiff would be entitled only to half share in 386 sq.ft as the remaining extent of property in the second item of suit schedule has been purchased by the defendant. I am not in agreement with Mr.Velmurugan for the simple reason the very same plea has been raised before this Court in A.S.No.463 of 2014 and it stood rejected.

7. The decree passed by this Court on 01.11.2021 has become final. Neither party has taken the matter to the Supreme Court by way of an appeal. The final decree Court is bound by the orders that are passed in the preliminary decree. The final decree cannot exceed the preliminary decree granted. When this Court has fixed the boundaries exercising its appellate jurisdiction and



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when the Advocate Commissioner has submitted a report in line with the boundaries fixed by this Court, it is not open to the learned final decree Court to vary or modify the same.

8. Learned Judge has only chosen a Plan. I have compared Plan-V with the boundaries given by this Court and I find that they tally. Therefore, I do not find any reason to interfere with the order of the Trial Court Judge. Hence, the Civil Revision Petition is dismissed. The order passed by the learned III Additional City Civil Court, Chennai in I.A.No.18924 of 2014 in O.S.No.8475 of 2011 dated 17.02.2023 stands confirmed. No costs. Consequently connected miscellaneous petition is closed.

24.06.2024

msv

Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order

Neutral Citation: Yes/No

To

The III Additional City Civil Court, Chennai



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V.LAKSHMINARAYANAN,J.

Msv

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