



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2024

PRONOUNCED ON : 04.09.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

**A. No.4922 to 4925 of 2023
in
C.S. No. 132 of 2013**

(i) A. No.4922 of 2023:

This application has been filed to grant leave to amend the
plaint by including 0.37 cents in the B Schedule property, particulars of
which are morefully described in the application.

(ii) A. No.4923 of 2023:

This application has been filed to amend the B Schedule property by
including 0.37 cents of land in the preliminary decree passed by this Hon'ble
Court dated 03.01.2018.



(iii) A. No.4924 of 2023:

This application has been filed to grant leave to amend the final decree Application in A. No.3911 of 2018, by amending the B Schedule property, by including 0.37 cents of land in the same

(iv) A. No.4925 of 2023:

This application has been filed to direct the learned Advocate Commissioner to revisit the suit property and divide 0.37 cents of land in S.No.9/4 and 9/5, Padappai Village, Kundrathur Taluk, Chengalpet District and allot 0.0915 cents of land approximately to the plaintiff herein.

2.The learned Counsel for the Applicant submits that after death of 1st respondent, mother of the applicant/1st defendant in the suit, pending final decree, the above Application has been filed seeking for 6/24th share in the B Schedule property and deliver separate possession to the applicant. This Court by order dated 02.02.2023, allowed to amend B



WEB COPY

Schedule property and thereafter, issued a fresh warrant to the commissioner on 15.02.2023 to file a better plan with all roads and streets available in and around B Schedule property and their approximate width. After revisiting the B Schedule property, the Learned Commissioner has filed a fresh report dated 15.06.2023 wherein it does not refer to the existing pathway and access to the properties allotted to the respective parties. During the revisit in the said suit property, the Commissioner has found that in S.No.9/4 measuring about 0.35 cents and S.No.9/5 measuring about 0.02 cents in all measuring about 0.37 cents, which was sold to the 7th Defendant is situated in the eastern side. The Commissioner has further found that 0.37 cents was in possession of the 7th Defendant who has constructed a house in the said land with a compound wall and was sold to one Mr.Aldos Huxly.

3. It has been further submitted by the learned counsel for the applicant that as the aforesaid 0.37 cents was sold vide Document No.1068 of 2003, to the 7th defendant without partition and without getting consent from the applicant/Plaintiff. The said sale has been objected by the applicant in the Plaint. In the said 0.37 cents, the applicant is entitled to



WEB COURT

0.0915 cents approximately and the same has been sold to the 7th Defendant including the applicant's share in the property. The same is also evident by the latest sale deed and Document No.3088 of 2018, which is a deed of ratification, executed by the 4th Defendant in favour of the 7th Defendant and the said document is clearly an evidence that the applicant's share has also been included in the sale made to the 7th Defendant.

4.The learned counsel for the applicant further submits that the above fact came to light only after the Learned Commissioner filed the present report along with the earlier report dated 20.11.2021, and that the B Schedule property will have to be further amended by including 0.37 cents in S.No.9/4 and 9/5. Further, this Hon'ble Court has also stated the same clearly when the preliminary decree was passed on 03.01.2018 observing that the alienee will have to work out their remedy during the final decree proceedings. Therefore, there could be no objection whatsoever in including the 0.37 cents in the present B Schedule property, and the same is also evidenced from the present report filed by the Commissioner. Hence, these applications are filed seeking the relief stated therein.



WEB COPY

5.The learned counsel for the respondents 1 to 4 and 7 submits that in the written statement itself, the respondents admitted that they have no objection to allot the share to the plaintiff. This Court also passed the preliminary decree on 03-01-2018 in C.S. No. 132/2013 accepting our version and gave suggestion for divide the alienated property as per the details given below:

“Since all the alienations are prior to suit the rights of the alienee will be worked out during the final Decree Proceedings. The division can be made in such a manner that the alienation is preserved and the property alienated is allotted to the share of the alienating parties viz., the defendants 1 to 4.

Since the judgment has been pronounced like that the respondents/defendants 1 to 4 are take that responsibilities and liabilities to give the share for the earlier alienation sale deed, registered to and in favour of the 7th respondent/defendant in respect of S.No.9/4, and S.No.9/5 mentioned in 'B' schedule property from the other land available in 'B'



schedule property.

WEB COPY

6. It has been further submitted by the learned counsel for the respondents that the land available in S.No.9/4 and 9/5 is not in the possession of the 7th respondent/defendant and it has been already transferred to and in favour of one third party after pronounced the judgment in C.S. No.132 of 2013 and the said third party is being in possession and enjoy the same covering the pucca compound wall and thereafter the respondents/defendants 1 to 4 have no objection to get the right share from the remaining 'B' schedule property extent of 0.9 cents for the earlier alienation made in S.No.9/4 and S.No.9/5 extent of 0.37 cents. Hence, he prays to direct the Advocate Commissioner accordingly.

7. Heard both sides and perused the materials available on record.

8. On a perusal of the records, it is seen that the applicant already filed the application Nos.985, 986 and 988 of 2022 seeking to



amend the extent of B Schedule Property as per the report filed by the Advocate Commissioner. Based on the report dated 20.11.2021, this Court by order dated 02.02.2023 amended the B Schedule property in the plaint as 2.995 acres instead of 2.96 by including 37 cents which is said to have been sold to third party. While being so, the applicant has filed the present application once again seeking the same prayer whereas the said 37 cents was already included in the B scheduled property and also effected in the plaint.

9. Further, once the Advocate Commissioner filed the report dated 20.11.2021, as per the Warrant issued by this Court, on re-visiting, he cannot act beyond the scope of the Warrant as per preliminary decree. On re-visiting, if he found any mistake, he is bound to bring the same to the knowledge of this Court for clarification and he has no role to create evidence beyond the scope of warrant passed as per the preliminary Decree.

10. Since this Court has already passed the order for the prayer in the present applications as early in the Applications Nos.985, 986 and 988 of



WEB COPY

2023 and the applicant has not challenged the aforesaid order, this Court cannot re-adjudicate again for the same prayer in the present applications seeking to amend the extent in the B Schedule property by including 37 cents. Hence, these applications are liable to be dismissed.

11. In the result, these applications stand dismissed. No costs.

04.09.2024

lbm

**A. No.4922 to 4925 of
2023
in
C.S. No. 132 of 2013**



WEB COPY



04.09.2024