



**A.No.6051 of 2023**  
**&**  
**A.Nos.55 of 2020, 2974 of 2022**  
**in**  
**C.S.No.504 of 2018**

**N.Sathish Kumar, J.**

This matter is posted today for passing of final decree. This Court originally appointed Mr.Muthusamy, Senior Counsel as an Advocate Commissioner to suggest division of the property. Thereafter, taking in to consideration the nature of lis between the parties, the Advocate Commissioner himself has mediated the issue between the parties with regard to the allotment of the property. Accordingly, mediation has been conducted and the all parties have accepted for partition, except the sixth defendant, who is none other than the subsequent purchaser.

2. Admittedly, the sixth defendant had purchased the property from the first defendant, who is one of the sharer in the property. The seventh respondent is a tenant. According to him, he has paid a sum of Rs.30 lakhs as an advance to the defendants 1 to 4 at the time of entering into a lease agreement. During the mediation, the defendants 2, 3 and 4 have agreed to return their respective share of the advance amount, viz., Rs.7,50,000/-.

3. The learned counsel appearing for the seventh respondent would submit that if his advance amount is given, he will immediately vacate the premises. Whereas, the contention of the sixth defendant is that the rent has not been paid and the rent payable to him has to be adjusted



in the advance. When all other defendants, who are original lessors, have agreed to refund their respective share of the advance amount, subsequent purchaser is claiming adjustment.

4. The learned Advocate Commissioner/Mediator with the concurrence of all the parties suggested mode of division of the property. The first defendant has also signed in the sketch prepared by the Advocate Commissioner/mediator accepting allotment of the portion shown in the annexure 7 of the interim report filed by the Advocate Commissioner . All other defendants namely Defendants 2 to 4 have also given concurrence for allotment. The plaintiff also has no objection for allotment as per the sketch.

5. In such view of the matter, this Court is of the view that the sixth defendant, being the subsequent purchaser from one of the co-sharer, at this stage, cannot take a difference stand. The share eligible to his vendor would go to sixth defendant. His vendor, has agreed for the allotment which is annexed in the annexure 7 of the interim report filed by the Advocate Commissioner. Hence, this Court is inclined to pass final decree in terms of the annexure 7 sketch found in the typed set filed along with the interim report filed by the Advocate Commissioner, which is accepted by all the parties.

6. Accordingly, final decree is passed as per the sketch found in annexure 7 of the typed set filed by the Advocate Commissioner. The interim Report along with its annexures form part of the decree and judgment. As far as the advance amount is concerned, the defendants 2 to 4 have already agreed to pay their respective shares and they are



directed to pay the said amount to the tenant. In the meanwhile, the tenant shall vacate and hand over the key to the Advocate Commissioner/Mediator. As far as the share payable by the first defendant is concerned, the said amount has to be paid either by the first defendant or by the subsequent purchaser. If the amount is not paid by them, the amount shall be treated as a charge over the property allotted to the sixth defendant. Further, if the amount payable by the defendants 2 to 4 is not paid immediately, charge will be created over the property allotted to them. It is up to the seventh respondent to enforce the charge and to recover the amount and he is at liberty to proceed against them.

7. The Advocate Commissioner has filed a memo seeking additional remuneration. Considering the work done by the Advocate Commissioner and the fact that mediation has also been conducted by the Senior Counsel and put a rest to the lis and brought the litigation to an end, the plaintiff and the defendants 2 to 6 are directed to pay a sum of Rs.1,00,000/- [Rupees one lakh only] to the Advocate Commissioner. Consequently, connected applications are closed.

**11.03.2024**

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**N.Sathish Kumar, J.**

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