



A.S.(MD)No.134 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.134 of 2024
and
C.M.P(MD)Nos.7083 & 8151 of 2024

V.Chakrapani (Died)

1.C.V.Kamakshi

2.C.Baskar

3.C.Swaminathan

...Appellants

Vs.

1.M.Meenakshi

2.G.Chitraleka

3.V.Krishnamurthi

4.R.Nagarathinam

5.R.Sitalaxmi

...Respondents



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PRAYER: This Appeal Suit filed under Section 96 of C.P.C., to reverse and set aside the order and decree of the Lower Court in I.A.No.218 of 2020 in O.S.No.71 of 1985 on the file of the Principal Subordinate Judge, Kumbakonam, dated 02.09.2022 and allow this appeal.

For Appellant	: Mr.S.Ramesh
For R-1 & R-2	: Mr.B.Muthu Prakash
For R-3	: No appearance
For R-4	: Mr.P.Vadivel
For R-5	: Mr.Ananth C. Rajesh

JUDGMENT

The suit was filed for partition to divide the property 1/6th equal share. The litigation went up to Hon'ble Supreme Court of India and the preliminary decree was confirmed. Thereafter, final decree petition was filed and the Advocate Commissioner was appointed to divide the property. The Advocate Commissioner has divided the property and submitted a report.



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2. The appellant herein has not filed any objection to the commissioner report before the Trial Court. However, had filed C.M.P.(MD) No.8151 of 2024 along with the present appeal to receive objection to the commissioner's report. The objection of the appellant is that the property was not equally divided. Further the access road to the property on the southern side is not available. On perusing the division, as far as part 1, 2 and 3 is concerned, there is no dispute. However, for part 4, 5 and 6 is concerned, especially for part 4, there is no access road to the property. Hence, the C.M.P(MD)No.8151 of 2024 is allowed and the appellant is permitted to submit his objection.

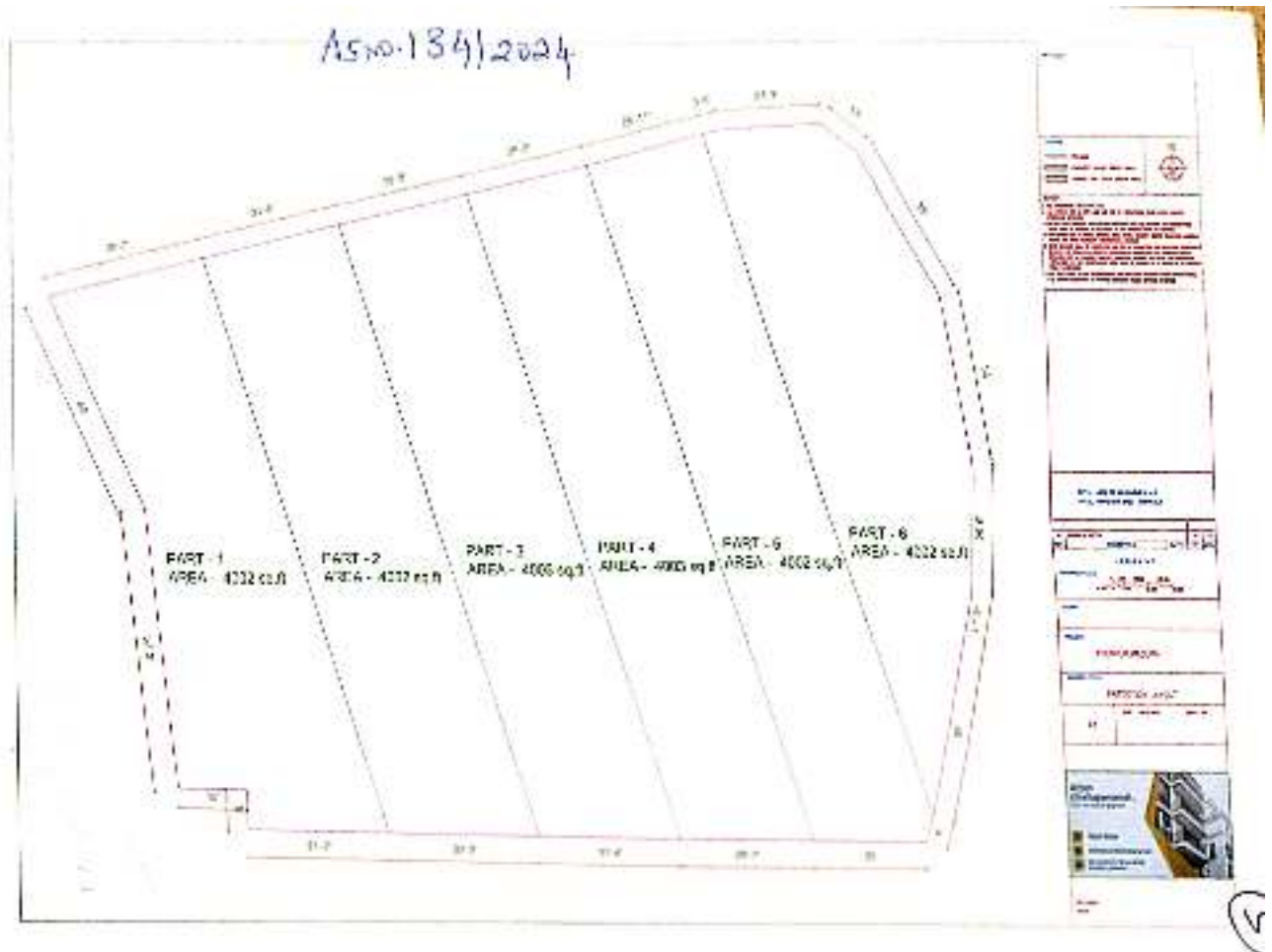
3. After hearing the parties, this Court is convinced that all the part should be equally divided in a same length and breadth. The appellant had submitted several proposals but the proposed sketch wherein the property divided into equal strips is accepted. The said sketch is annexed hereunder:



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4. The present issue is related only to the 'A' schedule property alone. As far as other properties are concerned, the preliminary decree passed by the Trial Court is confirmed. Therefore, the Trial Court is directed to accept this modified division and proceed further. The present division as part 1 to 6 shall form part of the judgment and decree of this appeal. The Trial Court is directed to divide the property as stated in the above sketch. The case is remanded back to the Trial Court.

5. The learned Counsel appearing for the appellant further submitted that the respondent had deposited an amount to the tune of Rs.3,00,000/- for the old furniture. The appellant is permitted to raise the said issue before the Trial Court. Apart from these two issues, other issues are confirmed.

6. With the above said observations, the Appeal Suit stands disposed of. There shall be no order as to costs. Consequently, C.M.P(MD)No.7083 of 2024 stands closed.



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NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

Note: While despatching the order copy, Registry is directed to take colour print out for page Nos.3 and 4.

To

- 1.The Principal Subordinate Judge,
Kumbakonam.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

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