



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.1001 of 2009

and

M.P(MD)No.3 of 2009

A.Arogyam

:Appellant/Appellant/Defendant

.vs.

Antony(died)

1.Annammal(died)

2.A.Arulappan

3.A.Charles

:Respondents/Respondents/L.Rs'
of the respondent.

(Cause-title accepted as per order of this Court made in
M.P(MD)No.1 of 2009 in S.A.SR.No.21778 of 2008, dated
16.09.2009)

(Cause-title amended as per order of this Court made in M.P(MD)
No.1 of 2014 in S.A(MD)No.1001 of 2009, dated 12.09.2014)

(First Respondent died and respondents 2 and 3 who are already on
record are recorded as legal representatives of the deceased first
respondent as per order of this Court made in S.A(MD)No.1001 of
2009, dated 09.07.2024)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure
Code against the judgment and decree made in A.S.No.206 of 2003,
dated 6.11.2006, on the file of Additional District and Sessions
Judge-cum-Fast Track Court, Dindigul confirming the judgment and
decree made in O.S.No.133 of 1985, dated 14.7.1994, on the file of



Principal Subordinate Judge, Dindigul.

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For Appellant	:Mr.Antony Arul Raj
First Respondent	:Died
For Respondents 2 and 3	:No appearance

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.206 of 2003, dated 06.11.2006, on the file of Additional District and Sessions Judge-cum-Fast Track Court, Dindigul confirming the judgment and decree made in O.S.No.133 of 1985, dated 14.07.1994, on the file of Principal Subordinate Judge, Dindigul.

2.The defendant in the suit is the appellant. The respondents' predecessor-in-interest Antony filed a suit for partition claiming half share. The suit was decreed granting a preliminary decree granting half share. Thereafter, the respondents predecessor-in-interest filed I.A.No.409 of 1989 seeking passing of final decree. The trial Court passed a final decree by allotting respective shares to the parties. In the final decree, the trial Court directed the appellant/defendant to pay a sum of Rs.14,200/- towards the value of the existing trees standing in the property allotted to him.



Aggrieved by the same, the appellant preferred an appeal. The First Appellate Court affirmed the findings of the trial Court. Aggrieved by the same, the appellant is before this Court by way of this Second Appeal.

3.The respondents herein filed a petition for preliminary decree for allotment of half share and the same had attained finality. In pursuance of the preliminary decree, a final decree application has been filed for allotment of shares to the parties. The trial Court appointed an Advocate Commissioner to suggest the mode of division and he filed his report and plan marked as Ex.C1 to Ex.C4. Based on the Advocate Commissioner's report and plan, the Court below allotted plots A1 to A9 to the respondents and Plots B1 to B9 to the appellant. In respect of trees standing in the plots allotted to the appellant, he was directed to pay a sum of Rs. 14,200/- to the respondents.

4.The learned counsel for the appellant submitted that as per the valuation adopted by the Advocate Commissioner, the value of the trees standing in the property of the appellant was fixed at Rs. 13500/- +Rs.10,200/- + Rs.1,500/- = Rs.25,200/-.The value of the trees standing in the property of the respondents was fixed at Rs. 8,000/- +Rs.2,500/- = Rs.10,500/- Therefore, the appellant was



directed to pay the difference of Rs.14,200/- to the respondents.

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5.The learned counsel for the appellant submitted that the Courts below should have only directed the appellant to pay half of the excess amount and by directing the entire excess amount, the respondents got benefitted.

6.Based on the submission made by the learned counsel for the appellant, the substantial question of law arising for consideration of this Court is as follows:

Whether the direction issued by the Courts below to the appellant to pay a sum of Rs.14,200/- to the respondents is vitiated by non-consideration of valuation of trees adopted by the Advocate Commissioner?

7.Though the respondents are served with notice and their names appeared in the cause-list, there is no representation on behalf of them.

8.As rightly pointed out by the learned counsel for the appellant, the total value of the trees standing in the plots to be allotted to the appellant is arrived at Rs.25,200/- and the value of



the trees standing in the plots to be allotted to the respondents is arrived at Rs.10,500/-. Hence, the balance is only Rs.14,200/-. Since the lands are divided into half, the excess value of the trees should have been divided equally among the shares. However, the First Appellate Court adopted a wrong approach and directed the appellant to pay the entire excess amount to the respondents. The First Appellate Court failed to see if appellant is directed to pay entire difference in value of trees [Rs.14,200/-] to respondent, there will be no equal division of value of trees. The appellant is entitled to half of the excess trees towards his half share. Hence, he is liable to pay only value of half of the excess trees stand in the property to be allotted to him.

9.The learned counsel for the appellant submitted that the appellant has made an objection regarding the allotment of Plot A7 and A8 and B7 and B8 and the objection made by the appellant regarding the mode of division as suggested by the Advocate Commissioner was not properly taken into consideration. A perusal of Ex.C4-Advocate Commissioner's report and plan would suggest that he by taking into consideration the convenience of both the parties, allotted Plot A7 and A8 on the western side to one party and Plot B7 and B8 on the eastern side to other party, so that both the parties can enjoy the plots allotted to them in one block. The



said allotment made by the Advocate Commissioner was done after taking into consideration the convenience of both the parties to enable them to enjoy the land allotted to them in one block. Therefore the said allotment made by the Courts below need not be modified.

10. Therefore, the direction issued by the Courts below to the appellant to pay a sum of Rs.14,200/- to the respondents towards the value of the excess trees is modified as a direction to pay a sum of Rs.7,100/-. To that extent, the substantial question of law taken up for consideration is answered in favour of the appellant and the Second Appeal is partly allowed.

11. In fine, the Second Appeal is partly allowed, by directing the appellant to pay a sum of Rs.7,100/- to the respondents towards the value of the excess trees instead of Rs.14,200/- as ordered by the Court below. In all other aspects, the final decree passed by the Courts below are confirmed. No costs. Consequently, connected M.P(MD)No.3 of 2009 is closed.

09.07.2024



Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn/BTR

To

- 1.The Additional District and Sessions Judge-cum-Fast Track Court,
Dindigul.
- 2.The Principal Subordinate Judge,
Dindigul.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsn/BTR

JUDGMENT MADE IN
S.A(MD)No.1001 of 2009
and
M.P(MD)No.3 of 2009

09.07.2024