



S.A.(MD).No.333 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 30.07.2024

DELIVERED ON : 14.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.333 of 2024
and C.M.P.(MD).No.7729 of 2024

R.Paripoornam ... Appellant/Appellant/2nd Defendant

Vs.

1.B.Konammal ... 1st Respondent/1st Respondent/Plaintiff

2.G.Loganathan ...2nd Respondent/2nd Respondent/3rd Defendant

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree passed in A.S.No. 39 of 2022 dated 20.02.2024 on the file of the VI-Additional District Court, Madurai confirming the Judgment and Decree passed in final decree petition in I.A.No.411 of 2015 in O.S.No.201 of 2009, dated 23.07.2021 on the file of the III Additional Sub Court, Madurai.

For Appellant : Mr.H.Arumugam

For Respondents : Mr.M.Rajaraman for R1

Mr.S.Ayyanar Premkumar for R2



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JUDGMENT

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This appeal has been filed against the Judgment and Decree passed in A.S.No.39 of 2022 dated 20.02.2024 on the file of the VI-Additional District Court, Madurai confirming the Judgment and Decree passed in final decree petition in I.A.No.411 of 2015 in O.S.No.201 of 2009, dated 23.07.2021 on the file of the III Additional Sub Court, Madurai.

2.The facts in brief:

Suit in O.S.No.201 of 2009 was filed by the Konammal, who is the first respondent herein against one Rama Chandran, Paripoornam and Loganathan before the III Additional Sub Court, Madurai, seeking the relief of partition, separate possession of her half share, permanent injunction and cost.

3.The suit was decreed as prayed for with costs. Later, she filed application in I.A.No.411 of 2015 for passing final decree. At that time, Ramachandran was dead. So the third respondent was brought on record as the legal representative of the Ramachandran. That was resisted by the appellant herein namely Paripoornam by filing counter. Final decree



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application was allowed. Taking into account the commissioner report, plan and sketch etc. the portion mentioned as '2' in the Engineer Plan annexed with the Commissioner Report was allotted to Konammal. The portion shown as '1' was allotted to the third respondent namely Loganathan. The lane situated on the northern and western side were ordered to be used by the plaintiff/petitioner and third respondent commonly.

4.Against which appeal was preferred before the appellate authority namely VI Additional District Judge, Madurai, in A.S.No.39 of 2022. That appeal was dismissed. Final decree passed by the trial Court was confirmed.

5.Against which, this second appeal is preferred. At the time of admission the following substantial question of law were framed.

1. Whether the Courts below are right in giving a finding that the appellant has no right or locus to contest the final decree petition after execution of the sale deed dated 10.02.2016 in favour of the 2nd respondent, without even considering that the appellant sold



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only a portion of property and she can still exercise his equity in the final decree proceedings?

2. Whether the Courts below are right in allotting the properties accepting the advocate commissioner's report, without even considering the objections raised by the appellant, which warrants interference under Section 100 of Civil Procedure Code?
3. Whether the Courts below are correct in not scrapping the report of the advocate commissioner and appoint a new advocate commissioner to inspect the suit property as per the provisions of Order 26, Rule 9 and 10 of C.P.C ?

6.Now we will go to the grievance expressed by this appellant before the trial Court during the final decree proceedings. The facts set out with regard to the earlier dismissal of the suit filed by Konammal and appeal, etc., facts, which we need not concentrate very much. It is admitted that ultimately, suit was decreed, declaring that the plaintiff is entitled for $\frac{1}{2}$ share in the properties. She purchased second item from the second defendant measuring about 535 $\frac{3}{4}$ sq. feet on 10.02.2016. From the date onwards, he was in possession and enjoyment. Only after



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receiving the notice, he came to know about the final decree proceedings.

At that time of purchase the second respondent informed her that she has filed second appeal in S.A.(MD).No.423 of 2015 and stay was also obtained. We can ignore that issue also now.

7.He further contended that since he has purchased the second item under equity, that item may be allotted to his vendor namely the second respondent. So that his right may be protected. That was also admitted by the plaintiff/petitioner. Now his grievance has been duly redressed by the trial Court by allotting portion No.2 to the plaintiff/petitioner and item No.1 to the third respondent namely Loganathan, who is the purchaser from Paripoornam.

8.Not satisfied with that the second respondent namely Paripoornam, who is the appellant herein filed A.S.No.39 of 2022 before the appellate Court. What right was left in the hands of this appellant is not known. Even at the time of admission a specific question was put to the appellant herein as to What else remains with her in subject to claim any interest. She submitted that her objection was not addressed by the



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trial Court, after receiving the commissioner report and plan. She also retains some portion, after sale to Loganathan. So according to her, the second appeal may be disposed of on merits.

9.Per contra, the learned counsel for the plaintiff would submit that reading of the trial court order will give answer to the question raised by the appellant herein. He also referred to para 9, 10, 11 and 12 of the trial court order. Para 10 of the trial Court order may be extracted hereunder.

“10.Though the 2nd respondent sold the 2nd item of the property which measures more than his ½ share to the 3rd respondent, he is resisting the final decree petition unnecessarily. After selling the 2nd item of the property which measures more than the measurement of the 1st item property, the 2nd respondent has no right or locus standi to claim any share in the suit properties. Having purchased the 2nd item of the property, 3rd respondent stepped into the shoes of the 2nd respondent and he is entitled to the share and allotment of the properties which is liable to be allotted to the 2nd respondent. Having sold his share that too more than the property for which he was entitled, he has no right to object the allotment of property to the petitioner and the 3rd respondent who



purchased the property from the 2nd respondent. The petitioner and the 3rd respondent who are now entitled to divided to the suit properties have agreed for allotment of property amicably and on the basis of equity.”

10. So reading of the above said paragraph shows that Paripoornam, who is the appellant herein sold more than the extent than what she was entitled. So naturally the affected party is the plaintiff/petitioner. Only she was entitled for equity. Para 11 of the order of the trial Court answered this issue also.

“Both petitioner and 3rd respondent agreed to allot the 1st item property to the petitioner and the 2nd item property to the 3rd respondent. But the 2nd respondent who already sold his share and who has no share as on date in the property has unnecessarily raised defences and resisted the passing of final decree solely on the ground that procedure followed by the commissioner in inspecting the property and filing the commissioner report is not correct.”



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11. But reading of the above said order does indicate that the plaintiff/petitioner was magnanimous enough to forgo the overty. This appellant has raised unnecessary issues stalling the final decree proceedings. The concluding portion in para 12 of the order may be relevant for extraction.

“12. Even if it is considered that overty has to be given for the excess measurement of 30 sq., it is The 2nd respondent who sold the said 30 sq. excess measurement to pay the overtyes or the 3rd respondent who purchased the property from 2nd respondent to pay the overty to the petitioner. However the learned counsel for the petitioner has submitted that the petitioner waived the claim of overty and it is enough for him the allot 1st item of the property.”

12. Having sold in excess what she is entitled, the appellant herein is successfully stalling the final decree proceedings which amounts to abuse of process of the court. So no question of law is involved here and in view of the above said finding no equity is available to the appellant herein after selling the property to Loganathan. As mentioned above, the appeal itself is clear abuse of the process of the court.



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13. Accordingly, this second appeal is dismissed with costs.

Consequently, connected miscellaneous petition is closed.

14.10.2024

Index : Yes / No
Internet : Yes / No
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To

1. The VI Additional District Judge, Madurai.
2. The III Additional Sub Judge, Madurai.
3. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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