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A.S.No.66 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.07.2025

Pronounced on : 15.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

A.S.No.66 of 2025

and

C.M.P.No.1077 of 2025

J.Sankar Parameswaran

.. Appellant/Defendant

Vs.

Chitra Devi

.. Respondents/Plaintiff

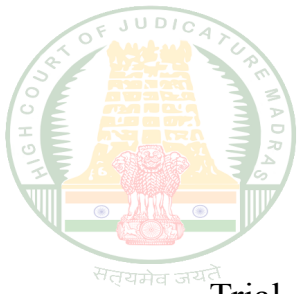
PRAYER: Appeal Suit is filed under Section 96 of C.P.C, to set aside the order and decreetal order in I.A.No.114 of 2018 in O.S.No.157 of 2014 dated 12.07.2024 on the file III Additional District Court, Coimbatore.

For Appellant : Mr.V.Raghavachari, Senior Counsel
for Mrs.V.Srimathi

For Respondent : Mr.P.M.Duraiswamy

JUDGMENT

In a suit for partition filed by the sister, Chitra Devi, against her brother, Sankar Parameswaran, a preliminary decree was passed by the



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Trial Court on 24.01.2017. Thereafter, the plaintiff filed applications under Order XX Rule 12 and Order XXVI Rule 13 of the Civil Procedure Code seeking division of the suit schedule property in accordance with the preliminary decree and for appointment of an Advocate Commissioner to demarcate and effect partition of the property.

2. The Court below, based on the Commissioner's report and other materials on record, passed the final decree as follows:

"2.that the petitioner be and the same is hereby allotted the green colour marked B4 porition in Ex.C3 in Item No.1 of the schedule property which includes 0.96 acres with coconut trees in 216/3part and 7.44 acrres in S.F.No.216/3 and 217/3 in total 8.40 acres.

3.that the respondent be and the same is hereby allotted the blue marked portion A4 in Ex.C3 plan which lies in S.F.No.216/3 and in 217/1, 219/1. 220/1. The open well is to be trated as common, the bore-wells are to be enjoyed separately.

4.With respect to the house property since the petitioner be and the same is hereby allotted the front portion in the agricultural lands and as she is ready to take any portion in the house property, the petitioner be and the same is hereby allotted B1 in Ex.C5 and the respondent be and the same is hereby allotted



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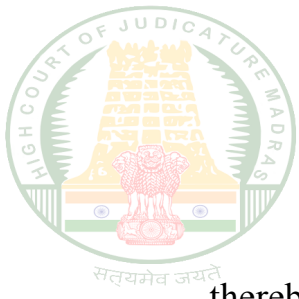
the front portion A1 in Ex.C5.

5.that Ex.C3 and Ex.C5 plans shall form part of the final decree.

6.Since the pathway measures 1.30 acres and the same can be used as common pathway by both parties, taking into consideration of the guideline value and $\frac{1}{2}$ right of the petitioner over the pathway portion, this Court holds that an amount of Rs.4,55,000/- is to be paid as value for the pathway right by the petitioner to the respondent, if both agree to use the portion as common pathway. If the petitioner, does not want to use the pathway as common pathway along with the respondent then she has to work out her remedy."

3. The present appeal has been filed by the defendant alleging that the Advocate Commissioner's report is unclear regarding the mode of division of the landed properties. It is contended that the land has been divided in such a manner that the portion allotted to the plaintiff is in close proximity to the highway, whereas the portion allotted to the defendant is away from the highway and of inferior quality.

4. It is further contended that the bore-wells and electric motor pump set are located entirely within the portion allotted to the plaintiff,



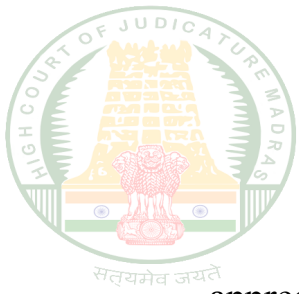
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thereby leaving the defendant with land lacking irrigation facilities.

Additionally, the Court has granted access to the plaintiff's portion through the defendant's land, without valid justification for abandoning the existing pathway. This, according to the appellant, is irrational and warrants interference.

5. It is also alleged that in respect of the residential house, while the Advocate Commissioner had reported to be indivisible, the Court has directed a horizontal division, allotting the front portion to the defendant and the rear portion to the plaintiff, which, according to the appellant, would cause inconvenience to both parties. He claims the house, in which he is currently residing, should have been allotted exclusively to him and the half the value of the property ought to have been given to the plaintiff or adjusted with the agricultural land.

6. The appellant also contends that the plaintiff approached the Court with unclean hands, having projected a fabricated *Will*, and therefore ought not to have been granted any relief without a proper

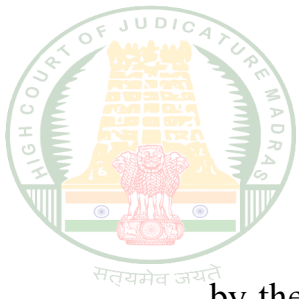


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appreciation of the facts. The Commissioner's report, which is neither pragmatic nor fair, relied upon by the Court below, contrary to the views expressed by both the Hon'ble Madras High Court and the Hon'ble Supreme Court in the earlier proceedings.

7. The learned senior counsel appearing for the appellant submitted that in an earlier round of litigation, during the challenge to the preliminary decree, the Hon'ble High Court had suggested that the dwelling house, i.e., the 'B' schedule property, be allotted to the appellant, since he has been residing in the house since the time of his marriage. The 'A' schedule property was proposed to be allotted to the respondent/plaintiff, and any difference in market value was to be compensated by the appellant. This suggestion was made in the order dated 25.02.2019 in A.S. No. 429 of 2018, which was subsequently challenged by the respondent/plaintiff before the Hon'ble Supreme Court. The Hon'ble Supreme Court set aside the said order insofar as it related to the allotment of 'A' and 'B' schedule properties in the appeal against the preliminary decree and left the issue open for consideration



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by the trial Court at the stage of final decree proceedings, without being influenced by any prior observations. Despite this, the Court below proceeded to pass the final decree without properly appreciating the Commissioner's report, the objections raised, and the evidence adduced by the parties.

8. Per contra, the learned counsel appearing for the respondent/plaintiff submitted that the Commissioner's report and the accompanying sketch have clearly explained the nature of the properties and suggested multiple options for division. As the portion allotted to the plaintiff is landlocked, the trial Court rightly provided access to her share through the defendant's land, ensuring access. However, the Court below has appropriately awarded compensation for the loss of land, and the respondent/plaintiff was given the option either to pay the compensation and retain the right of pathway or to make her own arrangements for alternate access. Further, it is not correct to say the appellant left without irrigation facility. The common open Well is given to both the parties to enjoy it equally.



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9. Insofar as the residential building, the counsel states that the plaintiff's rightful share cannot be denied merely because the defendant currently resides in it. The property, being of higher value than the agricultural land and having appreciation potential, cannot be excluded from partition. The plaintiff has expressed her willingness to accept either the front or rear portion of the house and she is not particular about it.

10. The Advocate Commissioner's report, particularly Mode 1, suggests that division of the house is practically feasible as the property is a corner plot with access on two sides. The total area measures 4,439 sq. ft., and the building situated in the middle includes a ground floor residential portion of 1,611 sq. ft., and a shop of 733 sq. ft. The first floor plinth is 1,611 sq.ft. The Commissioner's report has proposed alternative modes of division, including: Vertical partition of the building or Complete demolition of the structure and equal division of the vacant land.



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11. The Court below accepted the mode 1 suggested by the Advocate Commissioner, allotting the front portion of the residential property to the appellant. Therefore, it was submitted that the property has been divided equitably among the sharers, and the present appeal has been filed only with the intention to delay the division and demarcation of the property.

12. Point for Determination:

Whether the final decree is not pragmatic or unreasonable?.

13. The total extent of the first schedule property, which is agricultural land is 17.77 acres. This land was ordered to be divided equally between the plaintiff and the defendant.

14. According to the schedule description, there is a well in Survey No.217, equipped with a 7.5 HP electrical motor, and the parties are entitled to a 2/7th share in the Well and Motor, along with the right to draw water two days a week in line. The sketch indicates that the Well is



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located in the portion allotted to the plaintiff. Additionally, two bore-wells are marked in the sketch, though they are not specifically mentioned in the suit schedule property. They are also in the plaintiff's position

15. The trial Court, considering the existence of one open Well and two bore-wells, directed that:

- The open Well shall be treated as common property, and
- The bore-wells may be used separately by each party.

The landed property is measuring 17.77 acres as per title documents (and 17.64 acres as per the Commissioner's report), 1 acre 30 cents is earmarked for a common pathway. Thereafter:

- 8.19 acres were allotted to the appellant, and
- 8.40 acres were allotted to the respondent.

A lesser extent of land given to the appellant, considering that his portion contains 125 yielding coconut trees, while the respondent's portion has only 58 yielding coconut trees. Hence, on this score, the appellant cannot have any grievance.



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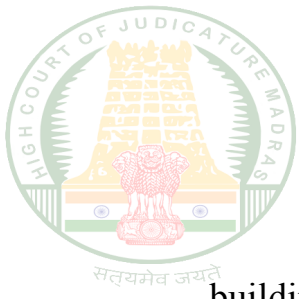
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16. The contention of the appellant that he has been left without irrigation facilities is not fully correct. The right to draw water from the open Well is given to him. As per the earlier settlement, both parties originally shared the Well two-days in line per week. By division, each would have one day a week for water access.

17. However, it is also a reality that the yield from a single open Well once a week may not be sufficient to irrigate the entire extent of land, which is about 17 acres, that is why two additional bore-wells were installed. Therefore, this Court is of the view that the bore-wells should also be treated as common, similar to the open Well, ensuring with access to irrigation for both parties.

18. Except for this modification, no other interference is warranted with respect to the division of the agricultural property.

19. With regard to the residential house, the appellant contends that since he has been residing in the house since 1999, the entire



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building ought to have been allotted to him exclusively. Taking note of the fact that the residential land and building are more valuable than the agricultural land and that the division of the building is feasible, the Court below had rightly accepted the Commissioner's report regarding the proposed division. The rear portion, which includes a commercial/shop area measuring 733 sq.ft., is allotted to the respondent/plaintiff, whereas the front portion, having access on two sides, one from Pollachi-Coimbatore Main Road and another from Kamarajar Street is allotted to the appellant/defendant.

20. The approved building plan and the Commissioner's sketch indicate that a wall is required to be erected along East-West direction to divide the building. While some amenities will require modification or rearrangement, such changes are not impracticable. Therefore, this Court finds no valid ground to interfere with the division of the residential house, which is Schedule 'B' property in the suit. No major structural change, if it likely to damage the other portion be done without the consent of other party.



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21. In the result to facilitate equitable irrigation as far as the Schedule 'A' agricultural property is concerned, except for a minor modification that both parties shall jointly enjoy the use of the bore wells along with the open Well for irrigation, no further alteration is necessary.

- Both parties shall share the water from the open Well and the bore-wells subject to need and mutual convenience, and
- Parties shall permit free passage of water through their respective lands to reach the other party land. The use of electric motor pump sets and water channels shall be common.

22. In the result, this *Appeal Suit is partly allowed*, subject to the above modification. Consequently, the connected Civil Miscellaneous Petition is closed. There shall be no order as to costs.

15.07.2025

Index: Yes/No
Speaking/Non Speaking order
Internet: Yes
Neutral Citation: Yes/No
rpl

To

1.The III Additional District Court, Coimbatore.

2.The Section Officer, V.R.Section, High Court of Madras, Chennai.

12/13



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DR.G.JAYACHANDRAN,J.

rpl

Judgment made in

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