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A.S.No.158 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2025

CORAM:
THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

A.S.No.158 of 2022
and
C.M.P.No.5726 of 2022

D.Saravanan

.. Appellant/Defendant

Vs.

1.D.Devaki
2.D.Kusalakumari
3.D.Baba
4.D.Abhirami

.. Respondents/Plaintiffs

PRAYER: Appeal Suit is filed under Section 96 of C.P.C, to set aside the judgment and decree dated 30.01.2020 passed by learned 7th Additional City Civil Court, Chennai in I.A.No.51 of 2018 in O.S.No.6806 of 2015.

For Appellant : Mr.D.R.Raghunath

For R1 : Mr.S.Namasivayam

For R2 to R4 : Mr.A.C.Chandrasekar

JUDGMENT



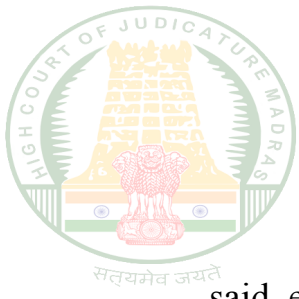
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This Appeal is filed against the final decree passed by the VII Additional City Civil Court, Chennai, based on the reports submitted by the Advocate Commissioner and the Engineer. The subject property been divided by metes and bounds in the draft plan. The same has been accepted by the Court below and final decree passed in terms of the Commissioner's report 1 and Engineer's report 2 along with sketch.

2. The said final decree is challenged on the ground that another property situated at Panappakkam in Arakkonam District not been subjected to partition and therefore, the partition effected is incomplete and bad in law. The other ground is that the improvements made to the property were not taken into consideration by the Advocate Commissioner.

3. The learned counsel for the appellant submitted that PW.1 has categorically admitted during cross examination that the appellant/defendant had incurred expenditure for the family. The trial Court, while passing the preliminary decree, had also taken note of the



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said expenditure and given liberty to the appellant/defendant to raise those plea during the final decree proceedings. Therefore, the Court below ought not to have ignored the said plea.

4. This Court, after perusing the records, finds that the plea of partial partition was not raised or challenged at the stage of the preliminary decree. Hence, a plea that ought to have been raised against the preliminary decree cannot be agitated after passing of the final decree.

5. Likewise, though it is true that the trial Court, while passing the preliminary decree, granted liberty to the appellant to raise the plea regarding the expenditure incurred for the benefit of the family so as to give due credit at the time of division, no material evidence was placed before the Court during the final decree proceedings to substantiate any substantial improvements made to the property. Therefore, the trial Court has rightly rejected the said claim and accepted the draft plan submitted by the Advocate Commissioner and the Engineer.

6. In the result, this Appeal Suit is dismissed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.



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

To

- 1.The VII Additional City Civil Court, Chennai
- 2.The Section Officer, High Court of Madras, Chennai.

DR.G.JAYACHANDRAN,J.

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