

A.S.No.258 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit. No.258 of 2024

and

C.M.P.No.8878 of 2024

1. Srinivasan

2. Subramani

3. Muni lakshmama

4. Muni Venkatamma ... Appellants/Respondents/Defendants

-Vs-

1. Jayalakshmiamma

2. Venakatalakshamma

3. Prabhavathiamma

4. Saraswathiamma ... Respondents/Petitioners/Plaintiffs

Prayer:- First Appeal is filed under Section 96 of Civil Procedure Code to set aside the Final Decree passed by the Order and Decreetal Order dated 22.09.2023 made in I.A.No.83 of 2014 in O.S.No. 43 of 2009 on the file of the learned Additional District Judge, Hosur.



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For Appellants : Mr.T.Sathiyamoorthy

For Respondents : Mr.R.Vijayaraghavan for R-1 & R-2
Mr.S.Chandrasekaran for R-3 & R-4

J U D G M E N T

This First Appeal has been filed to set aside the Decreetal Order dated 22.09.2023 made in I.A.No.83 of 2014 in O.S.No. 43 of 2009 on the file of the learned Additional District Judge, Hosur.

2. The learned Counsel for the Appellants submitted that the Appellants in the Appeal were the Defendants in O.S.No.43 of 2009. The Suit was filed by the sisters of the Defendants seeking partition of the Suit property. The learned Counsel for the Appellants invited the attention of this Court to the averments in the Plaint filed by the Plaintiffs in which the properties were shown as 'A' and 'B'. 'B' schedule property relates to Bank deposits. 'A' schedule property has Item Nos. 1 and 2. Item No. 1 is shop building, residential house and vacant site. The Defendants are father and sons. They had filed written statement in which they had disputed the nature of the property and given out the details regarding the acquisition of



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the property individually by the father and sons.

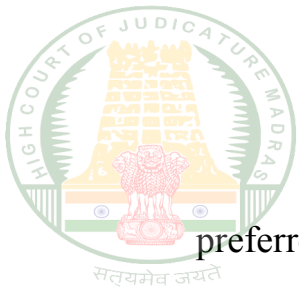
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3. As per the contents in the written statement, in the family partition between him and his brothers, he was allotted only 40 cents in S.No.653 and from his own cow business, he had acquired the property in the same Survey Number. It is a separate property. After full trial, the learned Additional District Judge, Hosur had granted preliminary decree by Judgment dated 30.01.2012 in O.S.No.43 of 2009 in the concluding paragraphs, he had observed as follows:

Issue No.7

In the result, the suit is partly decreed and the plaintiffs are entitled to a preliminary decree for partition of vacant site having an extent of 40 cents in S.No.653 in Item No.1 A of Plaintiff 'A' schedule properties. The relief of partition in respect of Item No.2 of 'A' schedule properties and 'B' schedule properties is dismissed. Plaintiffs are also entitled to a permanent injunction restraining D-1 to D-3 from alienating 40 cents of land including their share till delivery of possession. The relief in respect of future mesne profit is dismissed. The parties will bear their own costs.

4. It is the contention of the learned Counsel for the Appellants against the preliminary decree passed, the Defendants had not preferred any Appeal. In continuation of the preliminary decree, the Plaintiffs have



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preferred I.A.No.83 of 2014 in O.S.No.43 of 2009 seeking final decree.

WEB CONTENT

The Plaintiffs in O.S.No.43 of 2009 who are the decree holders ought to have filed final decree application in the light of the preliminary decree granted by the learned Additional District Judge, Hosur in O.S.No.43 of 2009. In the final decree, Advocate Commissioner was appointed, he had visited the suit properties and also he would submit in spite of specific finding by the learned Additional District Judge that only the Plaintiffs are entitled to relief of partition in S.No.653 an extent of 40 cents and they are entitled to 4/8 shares. They had filed final decree application for the same schedule of property as mentioned in the Plaint. After the Advocate Commissioner was appointed, he had visited the Suit property. Even though there was evidence that there was building constructed in S.No.653 prior to filing of the Suit, the Advocate Commissioner had ignored the finding of the learned Additional District Judge had partitioned the property in the place where the superstructure stood. Even though there was vacant site available.

5. It is the contention of the learned Counsel for the Appellants (Defendants in O.S.No.43 of 2009) that they had filed objection pointing out the defects in the final decree application itself which are carried over



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by the Advocate Commissioner's report in dividing the property

particularly ignoring the finding of the learned Additional District Judge.

Already, in the written statement, the father as D-1 had clearly stated that in S.No.653, he was allotted only 40 cents in the family partition that took place in the year 1949 through the registered partition deed. He had acquired certain other properties through his cow business. Also, in the same written statement, he had stated that D-2 and D-3 are also having independent income through cow business and they had independent sources of income. Through that income, they have acquired properties in S.No.653 and in the same S.No.653, they have put up construction of 25 shops, 7 rooms and residential house. The claim of the Plaintiff that out of compensation awarded from the land acquisition in S.No.653, the Defendants 1 to 3 have put up 25 shops is denied by the Defendants. In the family partition, land allotted to the first Defendant was an extent of 0.40 cents in S.No.653, 0.81 cents in S.No.391, 0.82 cents in S.No.392 and 0.71 ½ cents in S.No.628. The lands S.Nos.391 and 392 were sold in the year 1972. The land S.No.628 was sold as per the sale deed dated 30.01.1997. Therefore, only in S.No.653, there was about 0.68 cents. Out of 0.68 cents, 0.28 cents was acquired by the Highways Department in the years 1976-1977. Therefore, remaining land is only 0.40 cents. From the cow



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business, the first Defendant purchased an extent of 0.52 cents in S.No.653 as per sale deed dated 17.09.1964; and an extent of 0.18 cents in S.No.653/1 as per sale deed dated 23.02.1982; and an extent 0.5 cents in S.No.653 as per sale deed dated 03.02.1984 which are all self-acquired properties. He acquired land from the cow business and there was no income from the land in 0.40 cents in S.No.653. As per sale deed dated 19.02.1982, the first Defendant sold 0.36 ½ cents from 0.52 cents of land purchased by him and therefore there was remaining 0.38 ½ cents. Therefore, as on the date of filing of Suit, there was only 0.78 ½ cents of land in S.No.653, 0.40 cents was originally allotted to him. 0.38 ½ cents acquired by him from cow business. The Defendants 2 and 3 purchased an extent of 0.10 cents in S.No.653/1A-1, out of their own earnings through cow business as per the sale deed dated 31.03.2000 to which the Plaintiff cannot claim partition. 0.10 cents which was purchased by the Defendants 2 and 3 in S.No.653/1A-1, they had put up construction out of their own income, there are 25 shops, 7 rooms and residential house. The Plaintiffs cannot claim partition as those are self-acquired properties of Defendants 2 and 3. The claim of the Plaintiffs that out of 0.28 cents acquired by the Highways Department from S.No.653, the compensation amount was utilized by the Defendants 2 and 3 to put up construction was denied by



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Defendants 1 to 3.

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6. In the light of the evidence available before the learned Additional District Judge, Hosur, the learned Additional District Judge had granted preliminary decree only regarding Item No.1. The Advocate Commissioner had proposed to divide the properties as 0.5 cents in S.No.653 allotting 0.5 cents each to the four Plaintiffs in S.No.653 where there is building already prior to filing of the Suit which was clearly stated in the written statement by the Defendants 1 to 3. The building stands in the place where the land was acquired by the Defendants 2 and 3 from their own cow business and they have put up construction which the Plaintiffs cannot claim as ancestral properties seeking preliminary decree for partition. In the light of such clear averments in the written statement, the learned Additional District Judge granting preliminary decree for partition against Item No.1 alone. The Advocate Commissioner had ignored the decree of the learned Additional District Judge and had sought division of the property in which the building stood. There are ample vacant site available to the Advocate Commissioner to allot the necessary properties, after measuring the same in the vacant site . Instead, the Advocate Commissioner had allotted 0.5 cents each to the four Plaintiffs in S.No.653

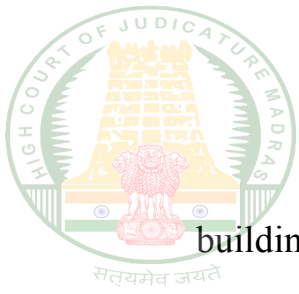


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in which the building stood which is violation of the decree granted by the learned Additional District Judge, Hosur. In spite of the objections filed by the learned Counsel for the Defendant/Judgment Debtor, the learned Additional District Judge ignoring the objections had granted final decree based on the Advocate Commissioner's report which is in violation of the preliminary decree granted by the very same Court in O.S.No.43 of 2009. Still, the learned Additional District Judge had passed final decree based on the report of the Advocate Commissioner. Therefore, the Defendants in the Suit had filed this Appeal seeking to set aside the final decree as it is perverse in the light of the specific finding given by the learned Additional District Judge while granting preliminary decree on 30.01.2009.

7. The learned Counsel for the Respondents by way of reply submitted that the submission of the learned Counsel for the Appellants is not correct. He relied on the status uploaded on the website of the Court stating that even though the Advocate Commissioner has filed report and sketch, ample time was granted by the learned Additional District Judge, Hosur, the Respondents had not filed objection. Also, he submitted that roughly an extent of one cent was acquired under land acquisition for widening the Highway. What was available in S.No.653/1 in which the

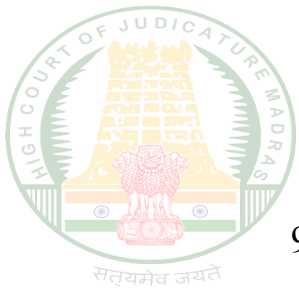


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building stood. Therefore, the Advocate Commissioner had rightly allotted the portions in favour of the Plaintiffs/Decree Holders granting 5 cents each. It is the further contention that the Suit was filed in the year 2009. Pending the Suit, the Defendants had put up construction. What was argued by the learned Counsel for the Appellants is not true. Therefore, he seeks to dismiss this Appeal as having no merits.

8. The learned Counsel for the Appellants by way of reply to the submission of the learned Counsel for the Respondents submits that the certified copy obtained by him regarding the proceedings pending before the learned Additional District Judge, Hosur. In the final decree application wherein he had noted that he had filed objection on 15.03.2023 but while granting final decree, the learned Judge ignored the facts that already the Respondents in the final decree had preferred the written objection on 15.03.2023 which was not considered by the learned Judge.

8. Considering the fact that there is a dispute with regard to the filing of objection, as per the status uploaded on the website of the Court and the certified copy obtained by the learned Counsel for the Appellants.



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WEB CCM

9. Learned Counsel for the Appellant submits that he has filed C.M.P.No.26297 of 2024 seeking permission of this Court to receive additional document. It is his submission that after passing of the preliminary decree, he wanted to settle the matter amicably between the parties. Except Respondent-3, all others had executed registered Release Deed in favour of the Appellants. Learned Counsel for the Appellant had furnished the registered certified copy of the Release Deed executed by each of the parties to the proceedings, except Respondent-3. Therefore he seeks permission of this Court to mark such document during the pendency of the Appeal.

10. Learned Counsel appearing for the Respondents present in Court. He has no objection. Hence, the Petition is allowed.

11. Since the Appeal is in continuation of the trial, evidence has to be recorded. Therefore the learned Counsel for the Appellant is directed to furnish the proof Affidavit of the Appellant in continuation of the same, so that the documents can be marked in Appeal in continuation of trial.

12. The Appellant filed Petition in CMP.No.26297 of 2024 seeking



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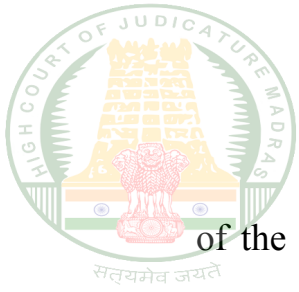
the permission of the Court to mark additional documents.

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13. In continuation of the preliminary decree passed in O.S.No.43 of 2009 on the file of the learned Additional District Judge, Krishnagiri at Hosur. After passing of final decree in I.A.No.83 of 2014 in O.S.No.43 of 2009, the Appellant before this Court.

14. The second Appellant had filed CMP.No.26297 of 2024 to mark additional documents in A.S.No.258 of 2024.

15. Pending Appeal, the additional documents were filed against the passing of final decree in I.A.No.83 of 2014 in O.S.No.43 of 2009. The second Appellant had entered into compromise with the Plaintiffs in O.S.No.43 of 2009 viz., Jayalakshmiamma, Venakatalakshamma and Saraswathiamma, who are all the Respondents in A.S.No.258 of 2024 except Prabavathiamma/third Respondent in Appeal. The second Appellant had purchased the share of the Respondents 1,2 and 4/Plaintiffs 1,2 and 4. The third Respondent in the Appeal was not willing to release her share of the property to the Appellant herein. Therefore, the learned Counsel for the Appellant sought time to amicably settle the subject matter



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of the dispute. Accordingly, time was granted. The learned Counsel for the Respondents was also present in Court and CMP.No. 26297 of 2024 was allowed.

16. Accordingly, the Appellants were directed to file documents. They filed documents. Mr.Subramani/second Appellant's evidence was recorded in open Court wherein the documents were marked Ex.B-12 and Ex.B-13. The Plaintiffs 1, 2 and 4 had executed release deeds regarding their 1/8th share in the Suit property through registered release deeds marked as Ex.B-12 and Ex.B-13.

17. The learned Counsel for the Respondent also conceded to the same. The learned Counsel for the third Respondent submitted that the third Respondent is not willing to release her 1/8th share in favour of the Appellants herein. Therefore, in the light of the above, the 1/8th share of Plaintiffs 1,2 and 4 had been released in favour of the Appellants viz., Srinivasan and Subramani s/o. Sampangi Ramaih.

In the light of the above, *the Appeal is disposed off* granting partition of 1/8th share to the third Plaintiff in the Suit in O.S.No.43 of 2009 in continuation of the final decree passed in I.A.No.83 of 2014.



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WEB COPY In the light of the above, the final decree in I.A.No.83 of 2014 is modified. The final decree is to be granted only regarding 1/8th share of the third Plaintiff/Prabhavathiammal. The learned Additional District Judge, Krishnagiri at Hosur is directed to deliver the property to the third Plaintiff Prabavathiammal and the Defendants/Respondents in I.A.No.83 of 2014 in O.S.No.43 of 2009 in the light of the amicable settlement arrived between the parties in A.S.No.258 of 2024.

On consideration of the submission of the learned Counsel regarding objection to the Advocate Commissioner's report by the Respondents in the final decree application, the final decree is passed leaving out the constructed portion and to divide the vacant site alone.

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dh

Index : Yes/No

Speaking/Non-speaking order

To

1. The Additional District Judge,
Hosur.



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

SATHI KUMAR SUKUMARA KURUP, J.,

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