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SA No. 359 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22~04~2025
CORAM
THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA NO. 359 of 2023
and CMP.No.10895 of 2023

1.Ekambaram
2.Balasubramanian

...Appellants

Vs

1.Thirunavukarasu
2. Natarajan
3.Meenakshi
4.Maheswari

... Respondents

Prayer: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed in A.S.No.44 of 2021 and order in I.A.No.353 of 2022 dated 29.11.2022 on the file of the Court of II Additional District and Sessions Judge, Chidambaram, in confirming the judgement and decree passed in I.A.No.275 of 2017 in O.S.No.2 of 2013, dated 23.09.2019, on the file of the Court of Subordinate Judge, Chidambaram.

For Appellant(s)	: Mr.A.Muthukumar
For R1	: Mr.N.Anbalagan
For R2	: Ex~parte
For R3 & R4	: Mr.A.E.Ravichandran

JUDGMENT

The appellant has filed this appeal to set aside the Judgment and decree passed in A.S.No.44 of 2021 and order in I.A.No.353 of 2022 dated 29.11.2022 on the file of the Court of II Additional District and Sessions Judge, Chidambaram, in confirming the judgement and decree passed in I.A.No.275 of 2017 in O.S.No.2 of 2013, dated 23.09.2019, on the file of the Court of Subordinate Judge, Chidambaram.

2. For a sake of convenience, the parties herein are referred to as they were ranked in the suit.



3. Challenging the concurrent findings of the Courts below, passed in final decree proceedings, defendants 1 & 2 /respondents 1 & 2 have preferred this appeal.

4. Before the Trial Court, the 1st respondent/plaintiff filed O.S. No. 2 of 2013 against five defendants, who are all legal heirs of his deceased brother, Kannaiyaram. He prayed for a declaration of his 5/10th share in the suit property along with a preliminary decree, and also sought the appointment of an Advocate Commissioner to divide the property through final decree proceedings. The said suit was decreed.

5. Thereafter, the 1st respondent/plaintiff, in order to obtain a final decree, filed I.A. No. 275 of 2017 praying for the appointment of an Advocate Commissioner. The same was contested by the first and second defendants. Subsequently, an Advocate Commissioner was appointed, and based on the Commissioner's report, the Trial Court passed the final decree along with a plan to divide the property. Aggrieved by the final decree, D~1 and D~2 preferred an appeal before the II Additional District and Sessions Judge, Chidambaram, in A.S. No. 44 of 2021. The said appeal was contested by the 1st respondent/plaintiff.

6. On hearing both sides, the learned First Appellate Judge independently analyzed the shares and the division of the property suggested by the Commissioner, as well as the final decree passed by the Trial Court, and held that both the Commissioner and the learned Trial Judge had rightly allotted the shares based on the value of the property. Finding no infirmity in the final decree proceedings, the appellate court confirmed the decree and dismissed the appeal. Aggrieved thereby, defendants 1 and 2 have now preferred the present appeal.

7. The learned counsel for the appellants argued that the First Appellate Court failed to note that sufficient opportunity had not been given to the appellants to file their objections to the Commissioner's report. He further contended that the rear side of the suit property, which is more valuable, was entirely allotted to the share of the plaintiff, which is erroneous and liable to be set aside. He also submitted that there was no equity in the allocation of the property and that the reason assigned for allotting the front portion of the suit property to the plaintiff is illegal and liable to be set aside.



8. This Appeal has been admitted on the following substantial questions of law.

“(A) Whether the Courts below erred in law in allocating the front portion / northern portion of the suit property to the plaintiff merely on the ground that he is a major sharer by way of earmarking a common path way for the entire stretch of the suit property which is absolutely a waste?

(B) Whether the judgement and decree of the Courts below are perverse for non consideration of allocating the rear portion / Southern portion to the plaintiff for saving 375 Sq.Ft. from common path way?”

9. The learned counsel for the 1st respondent/plaintiff submitted that the 1st respondent/plaintiff, now aged about 90 years, has all along been residing in the front portion of the suit property and has maintained the entire premises during his lifetime. He initiated the proceedings for division of the property. During the Trial Court proceedings, some of the defendants remained absent, and even during the final decree proceedings, the contesting defendants did not file their objections. As they did not cooperate in the proceedings, the final decree was passed after considering the Commissioner's report, the value, and the location of the property. The same was also confirmed by the learned First Appellate Judge, holding that there was no inequality in the allotment of shares. Therefore, the appeal is not maintainable and is liable to be dismissed, as no substantial question of law arises.

10. Considering the suit property, as described in the plaint schedule, situated in Town Survey No. 779, Door No.62/32, Sengazhuneer Pillaiyar koil street, Chidambaram, Cuddalore District, with the four boundaries as set out therein, the property is to be divided among the plaintiff and the defendants. Admittedly, the final decree was passed in accordance with the report submitted by the Advocate Commissioner along with the plan.

11. Considering the fact that the 1st respondent/plaintiff is entitled to a major share of 5/10th in the suit property, and has been permanently residing in the front portion of the property in Chidambaram, the Commissioner suggested allotting the front portion to him and the back portion to the defendants, along with a common pathway right.

12. According to the appellants, since the defendants are five in number, if the front portion were allotted to them, they could divide it more conveniently. They also contended that allotting a portion of the land for a



common pathway would amount to a waste of land, and therefore prayed for modification of the final decree passed by the Courts below.

13. It is an undisputed fact that the plaintiff/first respondent is now aged about 90 years. He was born and brought up in the front portion of the suit property. He is entitled to 5/10th share, while the defendants are his deceased brother Kannaiyaram's legal heirs. Since the plaintiff holds a major share, for the sake of convenience in enjoyment, the front portion was rightly allotted to him. The back portion was divided into five equal parts and allotted to defendants 1 to 5, with a common pathway right.

14. With regard to the allotment of the common pathway, 6 feet in width was allotted from the front portion up to the end of the plaintiff's share, and from the defendants' portion, a 4-feet-wide common pathway was provided, as per the sketch submitted by the both counsels dated 22.04.2025.

15. When the matter was taken up before this Court, the plaintiff and the other defendants appeared and agreed to the division of the property. Accordingly, the final decree was passed as per the sketch annexed with this order, along with the modified final decree, duly signed by both parties and their counsels dated 22.04.2025

16. The sketch, as well as the modified final degree annexed thereto, shall form part of this order. In respect of the common pathway, both parties shall have the right of use.

17. In view of the above, the Second appeal is disposed of. There shall be no order as to costs.

22.04.2025

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

rri

To

1. The II Additional District and Sessions Judge, Chidambaram.
2. The Subordinate Judge, Chidambaram.
3. The Section Officer, VR Section, High Court of Madras.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-12-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 359 of 2023

1. EKAMBARAM

S/O.Kannayiram, Door No.9-B, Plot
No.25, Sivalingampillai Layout,
S.V.Mills Post, Udumalaipet, Tiruppur
Dt.

2. BALASUBRAMANIAN

S/O.Kannayiram, 6-36, Sathappadi St,
Now at 105-B, S.P.Koil St,
Chidambaram.

Appellant(s)

Vs

1. THIRUNAVUKARASU

2.Natarajan

3.Meenakshi

4.MAHESWARI

Respondent(s)

PRAYER:

Second Appeal filed under Section 100 of CPC, praying to set aside the Judgment and Decree passed in A.S.No.44 of 2021 and order in I.A.No.353 of 2022 dated 29-11-2022 on the file of the Court of II Addl. District and Sessions Judge, Chidambaram, in confirming the judgment and Decree passed in I.A.No.275 of 2017 in O.S.No.2 of 2013 dated 23-09-2019 on the file of the



Court of Subordinate Judge, Chidambaram.

For Appellant(s): Mr.A.Muthukumar

For Respondent(s): Mr.A.E. Ravichandran
For R3 And R4

Mr.N.Anbazhagan For R1

R2 - Exparte

JUDGMENT

This Second Appeal is listed at the instance of the learned counsel for both sides to modify the final decree terms passed by this court in the order dated 22.04.2025, as the parties sought to divide the properties in respect of the Modified Final Decree terms agreed upon them.

2. Today, when the matter was taken up, Modified Final Decree along with Sketch in respect of division of properties, filed by both the parties is produced before this court.

3. Heard and perused the Modified Final Decree and Sketch/Plan filed by both the parties.

4. It is submitted by the learned counsel appearing for the parties that house hold articles are kept in the front portion of the 1st respondent. It is submitted that the 1st respondent's daughter is in family way and he needs some



more time to remove those articles and sought three months time.

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5. With regard to other findings of the final decree, this court finds no interference.

6. The terms of the modified final decree is signed by all the parties. The 2nd appellant has signed the modified final decree on behalf of the 1st appellant also.

7. The modified final decree filed by both the parties along with Plan/Sketch filed by the counsels shall form part of the decree.

8. The order passed on 22.04.2025 is modified to the extent indicated above. Time is granted till 31.03.2026 to remove the house hold articles from the front portion of the 1st respondent.

9. Registry is directed to issue fresh order copy to the parties concerned.

15-12-2025

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T.V.THAMILSELVI J.

nvsri

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