



A.S.No.707 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 02.04.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.707 of 2024

Rajeswari (deceased)
(Amended as per order in I.A.No.5368 of 2015
dated 30.04.2015)

Rani (deceased)
(Amended as per order in I.A.No.1 of 2022
dated 22.08.2022)

1. Mrs.M.Kasthuri
2. Mrs.M.Shanthi
3. Mrs.Lakshmi
4. Miss.Banumathi
5. Mr.R.Srinivasan

... Appellants/Plaintiffs

-vs-

Mr.R.Venkatesan

... Respondent/Defendant

Prayer: Appeal Suit is filed under Section 96 r/w Order XLI Rule 1 of CPC to allow the appeal by setting aside the judgment and decree made in I.A.No.15784 of 2018 in O.S.No.1249 of 2011 dated 19.02.2024 passed by the learned VII Additional City Civil Judge, Chennai and to decree the suit as prayed for.

For Appellants : M/s.K.Jenitha

For Respondent : No Appearance



A.S.No.707 of 2024

J U D G M E N T

WEB COPY

Challenging the decree and judgment of the Trial Court dismissing the application filed under Order XX Rule 18 of CPC to pass a final decree in accordance with the preliminary decree dated 19.03.2018, the present appeal has been filed.

2. The private notice served on the respondent has been returned with an endorsement 'unclaimed'. It is seen that even during passing of preliminary decree, the respondent remained exparte and also in the final decree proceedings, the respondent has not chosen to appear before the Trial Court.

3. The plaintiffs have taken out an application for passing a final decree in terms of the preliminary decree dated 19.03.2018 and the said application was dismissed by the Trial Court on the ground that there is some discrepancy in the schedule of property. In the judgment, the Trial Court held that in the schedule of property annexed with the plaint, the extent of the schedule of property has been mentioned as 3696 sq.ft.,



A.S.No.707 of 2024

WEB COPY

whereas in the Engineer's report, it has been mentioned that the extent of the land available as per site is 3600 sq.ft. only. Further, the Trial Court dismissed the application, observing that there is no application filed to amend the correct description of property with exact measurement for dividing the schedule of property into shares.

4. Heard the learned counsel for the appellants and perused the material documents available on record.

5. The very approach of the Trial Court in non suiting the final decree proceedings in a casual manner is highly deprecated. The Engineer's report available on record clearly indicates that as per the plan, only 3540 sq.ft. is available and as per site, 3600 sq.ft. in ground is available and in the document, it is mentioned as to the availability of extent of land as 3696 sq.ft.

6. Be that as it may, the issue as to whether division is possible or not to allot shares has not been gone into by the Trial Court. When the property is not capable of division for allotment of shares, the only mode is

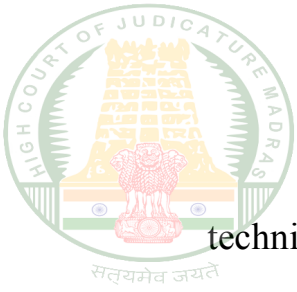


A.S.No.707 of 2024

WEB COPY

to auction the property and distribute the proceeds equally. The Trial Court ought to have adopted the procedures contemplated under Section 2 of the Partition Act, 1893. The Trial Court has dismissed the final decree proceedings mainly on the ground that no document has been filed to prove that there is no Class-I legal heir to the 3rd petitioner/plaintiff, who was reported dead. It is relevant to note that when other legal heirs clearly spelt out that the 3rd petitioner/plaintiff is not left with any Class-I legal heir, the Trial Court ought to have proceeded without insisting any further document in this regard.

7. Further, the Trial Court also non suited the petition for not amending the petition in respect of allotment of correct shares. The Trial Court should have granted at least some more time to the appellants to carry out amendment and proceeded further. Instead of doing so, shutting the rights of the appellants clearly indicates that the Trial Court in fact abdicated its responsibility and casually dealt with the matter. In fact, the preliminary decree was passed as early as 05.03.2013 and almost 11 years have gone by. The act of the Trial Court in non suiting the parties on



A.S.No.707 of 2024

technical ground will prevent them to realize the decree fully. The casual approach clearly shows that the Trial Court has not passed the order judiciously and therefore, the order of the Trial Court is liable to be set aside.

8. Accordingly, the instant appeal is allowed. The decree and judgment made in I.A.No.15784 of 2018 in O.S.No.1249 of 2011 dated 19.02.2024 by the VII Additional City Civil Judge, Chennai is hereby set aside and the matter is remanded to the Trial Court, with a direction to pass the final decree by following the procedures contemplated under the Partition Act, 1893. Mere discrepancy in the extent of land will not have any impact and the division has to be effected on the basis of the available extent. If the division is not possible, the procedures as stipulated under Section 2 of the Partition Act, 1893 needs to be followed scrupulously. No costs.

02.04.2025

Index: Yes / No
Internet: Yes / No
ar



WEB COPY



A.S.No.707 of 2024

N.SATHISH KUMAR,J.,
ar

To:

1. The VII Additional City Civil Judge,
Chennai
2. The Section Officer,
V.R.Section,
High Court,
Madras.

A.S.No.707 of 2024

02.04.2025