



S.A.No.90 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	13.10.2025
<i>Pronounced on</i>	18.12.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.90 of 2019
and C.M.P.No.19175 of 2021

S.Muruganandam

... Appellant

versus

S.Natarajan

... Respondent

Prayer: Second Appeal is filed under Section 100 C.P.C, praying to set aside the judgment and decree dated 27.06.2018 made in A.S.No.44 of 2016 on the file of Additional District and Sessions Judge, Ariyalur, confirming the judgment and decree dated 17.08.2009 made in I.A.No. 204 of 2006 in O.S.No.149 of 2005 on the file of the District Munsif Court, Ariyalur.

For Appellant : Mr.R.Venkatesulu

For Respondent : Ms.V.Srimathi

JUDGMENT



S.A.No.90 of 2019

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The above Second Appeal arises out of the judgment and decree dated 27.06.2018 made in A.S.No.44 of 2016 on the file of Additional District and Sessions Judge, Ariyalur, confirming the judgment and decree dated 17.08.2009 made in I.A.No.204 of 2006 in O.S.No.149 of 2005 on the file of the District Munsif Court, Ariyalur.

2.Facts are briefed herein under:

Respondent as plaintiff filed the suit for partition in O.S.No.149 of 2005 in which a preliminary decree was passed. Thereafter, the plaintiff filed a final decree petition in I.A.No.204 of 2006 for passing of final decree and an Advocate Commissioner was appointed, who inspected the suit property and divided the shares according to the preliminary decree and filed his report. The appellant/defendant filed his objections against the report of the Advocate Commissioner on 04.12.2006. The trial Court passed its final decree on 17.08.2009. Challenging the Order passed by the learned District Munsif, negating the objection raised to the Commissioner report prepared by the Advocate Commissioner in the final decree proceedings, the



S.A.No.90 of 2019

appellant/defendant preferred an appeal in A.S.No.44 of 2016 in which judgment was passed confirming the judgment and decree passed by the trial Court on 27.06.2018. Aggrieved by this, the present second appeal is preferred by the appellant/defendant.

2.1.The grievance of the appellant in this second appeal that the Advocate Commissioner filed a report without proper allotment of shares with respect to Well, Water Canal, and Common Pathway in the suit properties. His contention is that he had no grievance in the allotment of equal share to the respondent/plaintiff and his only grievance is that, without providing proper allotment of shares to the appellant/defendant in Well, Water Canal and Common Pathway, the suit properties were divided.

3.The learned counsel appearing for the appellant/defendant would submit that since the report of the Advocate Commissioner and the orders passed by the Courts below failed to address key aspects necessary for proper division between the parties in respect of the common Well, Water Canal and Common Pathway while dividing the suit properties in order to avoid future conflicts between the parties, prayed for remitting the matter for



S.A.No.90 of 2019

proper allotment of shares to the appellant/defendant.

4. On the other hand, the learned counsel appearing for the respondent / plaintiff would submit that based on the Advocate Commissioner's report and objections filed by the appellant / defendant the Courts below rightly passed the final decree which calls for any interference by this Court.

5. Heard on both sides, records perused.

6. Admittedly, the appellant / defendant has no grievance in the allotment of equal share to the respondent / plaintiff. His only grievance is that, without providing proper allotment of shares to the appellant / defendant in Well, Water Canal, and Common pathway, the suit properties were divided. Since Well is the major source of water supply to the entire agricultural lands and common pathway for ingress and egress to the respective parties. On perusal of the report of the Advocate Commissioner dated 25.09.2006 and the objections filed by the appellant/ defendant dated 04.12.2006 and the impugned judgments passed by the first Appellate Court as well as the trial Court, it is found to be insufficient.

7. Accordingly, the judgment and decree dated 27.06.2018 passed in



WEB COPY

S.A.No.90 of 2019

A.S.No.44 of 2016 is set aside and the matter is remanded to the First Appellate Court for appointment of Advocate Commissioner for fresh consideration in the final decree application by remitting the warrant to a fresh Advocate Commissioner, directing him to revisit the suit properties and see the feasibility whether the requisitions made by the appellant / defendant can be addressed, to avoid future conflicts between the parties. The appellant / defendant shall bear the remuneration for the Advocate Commissioner. The first Appellate Court shall do the above exercise and dispose the final decree petition within a period of four months from the date of receipt of this order.

8. Accordingly the second appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

18.12.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

1. The Additional District and Sessions Judge, Ariyalur
2. The District Munsif, Ariyalur

5



S.A.No.90 of 2019

3. The Section Officer, VR Section, High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI, J.

vsn



WEB COPY



S.A.No.90 of 2019

**Pre-delivery judgment made in
Second Appeal No.90 of 2019
C.M.P.No.19175 of 2021**

18.12.2025