

(2011) 10 MAD CK 0074

Madras High Court (Madurai Bench)

Case No: A.S. No. 753 of 1993

Maria Louis and Maria
Arokiam

APPELLANT

Vs

Innasimuthu and
Others

RESPONDENT

Date of Decision: Oct. 19, 2011

Hon'ble Judges: G. Rajasuria, J

Bench: Single Bench

Advocate: R. Nandakumar, for the Appellant; P. Velmurugan for R.1, R2, R5, R7 to R13 -
Given up, R3 - Died and No representation for R4, R6, R14 and R15, for the Respondent

Final Decision: Allowed

Judgement

Honourable Mr. Justice G. Rajasuria

1. This appeal is focussed by the defendants 8 and 10 animadverting upon the judgment and decree dated 03.11.1992 passed in O.S. No. 16 of 1986 by the learned Additional Sub Judge, Dindigul.
2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court.
3. Shorn of unnecessary details which are not germane for the disposal of this appeal, the relevant facts would pithily and precisely run thus:

The plaintiff -Innasimuthu filed the suit for partition arraying as many as thirteen defendants, of whom the appellants herein were the defendants 8 and 10, who purchased certain portions of the suit property from the fifth defendant who admittedly happened to be one of the co-sharers. The defendants 8 and 10 contended that the portions which were purchased from the fifth defendant who is one of the co-sharers, might be allotted to them in lieu of allotting all those portions in favour of the fifth defendant towards her

share. However, the trial Court in paragraph 7 of its judgment, rejected such a prayer of the defendants 8 and 10.

4. Being aggrieved by and dissatisfied with the same, this appeal has been filed.

5. The Learned Counsel for the plaintiff would appropriately and appositely, convincingly and correctly highlight and spotlight that the purchasers of undivided shares from a co-sharer can only work out their remedy during the final decree proceedings and even that liberty was negated by the trial Court.

6. The Learned Counsel for the defendants 8 and 10 would agree to the said proposition referred to supra.

7. The short point for consideration is as to whether the trial Court was justified in simply rejecting the claim of the defendants 8 and 10 for allotment of the portions which they purchased from the fifth defendant who is one of the co-sharers of the said property.

8. Trite, the proposition of law is, that the purchaser of an undivided share from one of the co-sharers can only work out his or her remedy during the final decree proceedings, unless there is some consensus between the rival parties, the question of allotting specific shares by metes and bounds in the preliminary decree would not arise.

9. Here, the Learned Counsel for the plaintiff would implore and entreat that the defendants 8 and 10 after purchasing certain portions of the suit property from the fifth defendant who is one of the co-sharers, raised constructions also and that equity is in their favour.

10. Be that as it may, this will be considered only at the time of final decree proceedings. As of now, this Court could give liberty to the defendants 8 and 10 to raise the same pleas at the time of final decree proceedings and it is for the trial Court while passing final decree to consider all the aspects of the matter. There is no embargo in law that the third party purchasers should not be given with the facility of allotting the property which they purchased from one of the co-sharers, however, it could be subject to certain conditions and terms depending upon the circumstances of each and every case. Accordingly, the point is answered.

11. Hence, that much portion of the judgment of the trial Court denying the liberty of the appellants to seek for their reliefs during the final decree proceedings, is set aside and the following direction is issued:

The defendants 8 and 10 are at liberty to revive their prayers for allotment of their respective portions in their possession at the time of final decree proceedings and it is for the Court below to consider it as per law, equity, justice and good conscience.

12. In the result, the appeal is partly allowed to the extent indicated above. No costs.