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Court : Chennai

Decided On : Aug-28-1928

Reported in : AIR1929Mad492

Appellant : Krishna Reddiar and ors.

Respondent : Ramanuja Reddiar and anr.

Judgement :

1. This appeal No. 172 of 1924 is against the final decree passed in partition suit. The points urged by Mr. Seshagiri Sastri for the appellants are that the Commissioner was not justified under the warrant of commission to award to the plaintiff a sum of Rs. 1,400 against defendants 1 and 2, and that he was not justified, in dividing the trees in such a way as to inconvenience defendants 1 to 3.

2. After the passing of the preliminary decree a Commissioner was appointed to divide the properties between plaintiffs 1 and 2 and defendants 1 to 3. The Commissioner divided the properties, and with regard to houses which are items 1 and 2 in Schedule C (1) he said:

As the defendants' houses are good ones, as the plaintiff's house has to be built anew, defendant 2 shall pay Rs. 1,000 and defendant 1 Rs. 400 to plaintiff 2.

3. This observation of the Commissioner, Mr. Seshagiri Sastri contends, amounts to an award which he was not authorised So make under Order 26, Rule 14, Civil P.C. The first para. 14 (1) is:

The Commissioner...if authorised thereto by the said order, award sums to be paid for the purpose of equalising the value of the shares.

4. We do not think that the Commissioner in this case made an award between the parties but only made a recommendation to the Court that that would be the proper way in which the values could be equalised. It is urged that the Commissioner took no evidence, did not examine witnesses as to the value of the houses and overlooked the valuation given in the plaint. There is no evidence as to what the Commissioner did. It is not likely that the Commissioner would not have made enquiries as to the value of the houses and we may take it that he made a fair estimate of the value of the houses before making the recommendation. Defendants 1 and 2 did not choose to file objections to the Commissioner's reports before the Subordinate Judge but contented themselves by not appearing at all before the Court. The Subordinate Judge on the materials before him was justified in passing a decree as recommended by the Commissioner. We hold that the Commissioner did not assume any jurisdiction which was not given him by the warrant. He only made a recommendation which in the circumstances of the case, the Subordinate Judge found to be a satisfactory solution of the position. When a party does not object to the Commissioner's report in the lower Court, he is not entitled to come up to this Court and object to the recommendations made by the Commissioner. No doubt this Court is not precluded from considering whether the Commissioner acted within his jurisdiction or not. But that would not justify a party who does not choose to be present before the Commissioner and urge his objections before him and who does not file objections to the report of the Commissioner before the lower Court, to come up here and say that he was negligent and careless in the lower Court, and should be allowed to urge his objections which if he had done before the lower Courts the points in dispute could have been adjusted and settled in a satisfactory way by the lower Court. We think it is unnecessary to consider in this view the cases in *Kankatala Chellamaiya v. P. Papayya* 6 M.H.C.R. 36, and *Ahmed v. Khasaji* 6 M.H.C.R. 149. As we have said, we think this Court has power to go into the question whether the Commissioner's report was outside the scope of his warrant or within the scope of the warrant. But we find that what he said was only a recommendation and that was within the scope of his warrant.

5. As regards the question of trees, he did what the decree directed him to do. In the decree there is a direction that the trees should be divided equally. That is what he has done and if the defendants had any other suggestion to make, they should have made them in the lower Court. This Court is not in a position to do anything better than what the Commissioner has done. There is no other point in the appeal which fails and is dismissed with costs.

6. As regards C.M.A. Nos. 168 and 169 of 1924, the defendants have not shown any ground for setting aside the ex parte order. The order of the Subordinate Judge is correct and is dismissed with costs in one case.

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