

A

K.M. SRINIVASAN

v.

K.M. ARUMUGHAM

OCTOBER 25, 1996

B

[K. RAMASWAMY AND S.P. KURDUKAR, JJ.]

C

*Partition—Both the brothers to enjoy the property in equal shares—Matter remitted to trial court which would appoint an Advocate Commissioner to inspect the area and work out the partition in such a way where both the parties would enjoy the property in equal share—Trial Court to complete the exercise within six months.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14132 of 1996.

D

From the Judgment and Order dated 16.11.95 of the Madras High Court in S.A. No. 1234 of 1995.

Sivasubramaniam and V. Balachandran for the Appellant,

R.K. Agnihotri for the Respondent.

E

The following Order of the Court was delivered :

Leave granted.

We have learned counsel on both sides.

F

This appeal by special leave arises from the judgment of the single Judge of the Madras High Court made on November 16, 1996 in Second Appeal No. 1234/95.

G

Admittedly, the appellant and the respondent are brothers. They inherited the property consisting of three floors in Salainagar Koil Street, Madra. It would appear that as per the partition deed the ground floor was required to be enjoyed by both the parties. The partition deed dated August 27, 1953 does disclose that the appellant and the respondent have to enjoy the property in equal shares. Though the recitals of the partition deed were not happily worded, the fact remains that the respondent is in possession of first floor and the appellant is in possession of second floor.

H

It is not disputed that the ground floor was converted into shops and the appellant is in possession of one portion and the respondent *in two portions through tenants*. A

The question, therefore, is in what manner the property are required to be enjoyed in equal shares? The High Court relying upon the recitals in the partition deed had concluded that the ground floor was allotted to the appellant while the first and second floor were allotted to the respondent. B  
Consequently, it reversed the judgment and decree of the appellate Court and confirmed that of the trial Court. On perusal of the partition deed, it is clear that the view of the High Court is not correct. It is seen that the ground floor was allotted to both the appellant and the respondent for C  
common enjoyment and first floor was allotted to one party and second floor was allotted to another party. First floor is in the possession of respondent consisting of 532 sq. ft. with four rooms while admittedly the second floor consisted of one room with open terrace. Under these circumstances, the property is required to be enjoyed by the brothers in equal shares and re-partition is required to be done in accordance with the D  
available rooms and property situation. Under these circumstances, the judgments and decrees of the High Court, appellate Court and the trial Court stand set aside. The trial Court is directed to appoint an Advocate E  
Commissioner to inspect the area and work out the partition in such a way where both the parties would enjoy the property in equal share. The matter is remitted to the trial Court.

The appeal is accordingly allowed. The trial Court would do the exercise within a period of six months from the date of receipt of this Court's order. No costs.

G.N.

Appeal allowed. F