

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

O.S.A.Nos.182 and 183 of 2018
and C.M.P.No.9567 of 2018

Dr.Prasanna Venkatachalam

.. Appellant
in both OSAs'

Vs.

1.Mrs.Akkamma
2.Mr.K.K.Ashok
3.Mrs.Padma

... Respondents
in both OSAs'

Appeal filed under Order XXXVI Rule 1 of CPC r/w Clause 15 of the Letters Patent praying to set aside the order of this Court dated 26.04.2018 passed in application Nos.3620 of 2018 and 3932/18 in Tr.C.S.No.481/1998 dismissing the application and allow the above OSA.

For Appellant : Mr.M.Kalyanasundaram,
(In both O.S.As') Senior Counsel for
Mr.R.Vasudevan

For Respondents : Ms.Dakshayani Reddy for R1
(In both OSAs') Mr.S.Vasudevan for R2 & R3

COMMON JUDGMENT

[Judgment of the Court was made by M.M.SUNDRESH, J.]

The dispute between the members of the family in the year 1977 is yet to reach finality, though there was a preliminary decree passed as early as on 02.08.1999.

2. In pursuant to the preliminary decree, an order was passed in A.No.1244 of 2001, on 22.12.2014 by which, the "F" schedule property, which we are concerned with, was sought to be auctioned, after having found it to be indivisible. The following are the relevant portions:

" ...(v) The Advocate Commissioner is permitted to appoint consultants/share brokers, if it is required for the completion of the above work. The

Advocate Commissioner is also permitted to request the parties to reimburse the expenses incurred for the said purpose. So far as the property mentioned in Schedule F to the plaint, the following order is passed.

(i) The Advocate Commissioner is permitted to appoint a valuer to assess the upset price of the said land and building. For the said purpose, the Advocate Commissioner is also permitted to obtain necessary documents and furnish the same to the valuer.

(ii) The Advocate Commissioner is permitted to auction the property among the shareholders or in public auction, after the valuation of the property.

(iii) In case of public auction, the Advocate Commissioner is permitted to advertise the same in appropriate newspapers which have proper circulation.

(iv) The Advocate Commissioner is permitted to request the 1st plaintiff and the defendants 2 and 3 to reimburse the expenses for the valuer and for other purposes in the ratio of the share that they are entitled in the property".

3. In A.No.3932 of 2013, an order was passed on 16.02.2016 directing the learned Advocate Commissioner to bring the "F" schedule property for public auction, by fixing the upset price at Rs.21,64,65,000/- (Rupees Twenty one Cores Sixty Four lakhs and Sixty Five Thousand only). Thereafter, at the instance of the appellant, one more order was passed on 26.03.2016, by which another attempt was made to divide the property. The learned Advocate Commissioner, once again reiterated the earlier stand, which was taken note of in the order dated 22.12.2014 by stating that the "F" scheduled property can never be divided.

4. Taking note of the order dated 16.02.2016, another order was passed by reducing the upset price from Rs.21,64,65,000/- (Rupees Twenty one Cores Sixty Four lakhs and Sixty Five Thousand only) to Rs.15 Crores. In the aforesaid order dated 04.04.2018, the learned Single Judge has also recorded the offer made by the appellant to give proper advertisement through various medias. Accordingly, the upset price was reduced by taking note of the statement made by the learned Advocate Commissioner to the effect that the guideline value of the property was only Rs.7 crores and the market value was around Rs.14 crores. Therefore, based upon the aforesaid statement of the learned Advocate Commissioner, who is an Officer of the Court, upset price was duly reduced. This was also done in view of the earlier attempt having ended in failure.

5. The appellant filed another application in A.No.3620 of 2018, once again seeking a direction to the learned Advocate Commissioner to divide the "F" schedule property. The aforesaid application was also dismissed by the learned Single Judge by the order dated 26.04.2018. Challenging the order dated 04.04.2018 in A.No.3932 of 2013 and the subsequent order dated 26.04.2018 in A.No.3620 of 2018, the present appeals have been filed.

6. The learned Senior Counsel appearing for the appellant would submit that an interim order cannot be termed as a binding decision inter se parties. The learned Single Judge did not take into consideration of the order passed in Tr.C.S.No.481 of 1998, dated 23.11.2016, as there is no basis for reducing the upset price. Hence, the appeals will have to be allowed.

7. The learned counsel appearing for the respondents would submit that though the Suit was filed in the year 1997, the parties are yet to enjoy the fruits. The learned counsel appearing for the respondent/mother would submit that she is 90 years old and she is suffering without sufficient money even to take of her maintenance apart from medical expenses. It is further submitted that the application filed by the appellant is nothing but an attempt to re-adjudicate the matter, which attained finality way back in the year 2014.

8. We do not find any merit in the appeals. As rightly submitted by the learned counsel appearing for the respondents, a finality has arrived as early as on 22.12.2014. Secondly the order dated 22.12.2014 was once again reiterated by the subsequent order dated 16.02.2016. The learned Advocate Commissioner reiterated the earlier stand. The aforesaid two orders have become final. The appellant has not challenged these two orders. On the contrary, the appellant has offered proper advertisement by himself through various medias. Therefore, the principle of res judicata as well as estoppel would certainly arise. Even in an inter se stage, the principle of res judicata would certainly apply. It is settled law that the aforesaid principle would apply in different stages in the same suit, as held by the Honourable Supreme Court in AIR 1960 Supreme Court 941 [Sathyadhyam Ghosal and others Vs. Deorajin Debi (Smt) and another] and AIR 1964 Supreme Court 993 [Arjun Singh Vs. Mohindra Kumar and others].

9. On the plea regarding the upset price is concerned, the learned Single Judge rightly took into consideration of the statement made by the learned Advocate Commissioner, who is an Officer of the Court. There is no contra material to come to a different conclusion. Admittedly, the earlier attempt to sell the property did not fructify. By fixing the upset price, more

bidders would be attracted. Ultimately it is for the Court to confirm the auction. Thus, we do not find any error in the order reducing the upset price from Rs.21,64,65,000/- (Rupees Twenty one Cores Sixty Four lakhs and Sixty Five Thousand only) to Rs.15 Crores. However, considering the plea of the learned Senior Counsel appearing for the appellant, we deem it fit to fix the upset price at Rs.16 crores, as the earlier one was Rs.21,64,65,000/- (Rupees Twenty one Cores Sixty Four lakhs and Sixty Five Thousand only).

10. The learned Advocate Commissioner is directed to proceed further and take appropriate steps to give publication for public auction. It is needless to state that publication will have to be made in leading newspapers, one in English and one in Tamil having wide circulation. The learned Advocate Commissioner is directed to make the advertisement by 02.07.2018.

These appeals are dismissed with the aforesaid modification. No costs. Consequently, connected miscellaneous appeal is dismissed.

Sd/-

Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

vsm

TO

1. The sub Assistant Registrar,
Original side, high court,
Madras.

2. Mr. G. Ashokapathy,
Advocate Commissioner,
No. 340, Thambu Chetty Street,
Chennai - 600 001.

+2cc to Mr. Dakshayani Reddy, Advocate SR.No.38155, 38156
+2cc to Mr. R. Vasudevan, Advocate SR.No.38393

O.S.A.Nos.182 and 183 of 2018

KGK (CO)
GN (20/06/2018)