

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 14th DAY OF SEPTEMBER 2018

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A. Nos.7149 & 7150 of 2017

in
C.S. No.418 of 2007

1. Sumathi Devi (deceased) (*)
 2. Suresh Kumar Sharma (*)
residing in the 4th Floor
of premises Old No.157,
New No.323, Mint Street,
Sowcarpet, Chennai 600 079.
 3. Inderchand Sharma (*)
residing in the 5th Floor
of premises bearing Old No.157,
New No.323, Mint Street,
Sowcarpet, Chennai 600 079. Applicants/Plaintiffs
(in both the applications)
- (*) 2nd & 3rd plaintiffs are also legal
representatives of the deceased 1st plaintiff

-Versus-

1. Basanthi Bai,
4th Floor, Old No.157,
New No.323, Mint Street,
Sowcarpet, Chennai 600 079.
2. Guneswarlal Sharma,
Door No.15/2, 8th Cross Street,
(Near Ration Shop),
Shenoy Nagar, Chennai 600 030.
3. Chandrapal Sharma
residing at Door No.15/2,
8th cross Street, (Near Ration shop),
Shenoy Nagar, Chennai-600 030.
4. Mahendra Kumar Sharma,
Son of late Bansilal Sharma,
Old No.157, New No.323,
Mint Street, Sowcarpet,
Chennai-600 079.

5. Nirmala Devi,
resides at No.598, 8th Cross,
I Floor, MKB Nagar,
Vysarpadi, Chennai-600 039.

6. Manju Devi,
Old No.157, New No.323,
Mint Street, Sowcarpet,
Chennai 600 079.

7. Santhosh Devi,
No.726, Old No.633/9,
Poonamallee High Road,
Aminjikarai,
Chennai-600 029.

8. Ratanlal Sharma (Deceased) (#)

9. Prakash Chand Sharma, (*)
Old No.157, New No.323,
Mint Street, Sowcarpet,
Chennai 600 079.

(*) 9th defendant also the legal
representative of the deceased 1st plaintiff.

10. Pushpa Devi(#) (deceased) (^)

11. Manoj Kumar Sharma(#) (^)

12. Sunita(#) (^)

13. Saroj(#) (^)
residing at No.13,
Jagannathapuram, 3rd Floor,
Chetpet, Chennai-600 031.

14. Sarala(#) (^)

15. Johny(#) (^)

10 to 12, 14 & 15 are residing
at No.157, Mint Street, 4th Floor,
Sowcarpet, Chennai-600 079. ... Respondents/Defendants
(in both the applications)

(#) Defendants 10 to 15 are brought on
record as legal heirs of the deceased
8th defendant as per order dated
20.10.2016 in A. No.5061 of 2016

(#) Defendants 11 to 15 are recorded as
legal heirs of the deceased 10th
defendant as per order dated 30.09.2016

on memo dated 22.08.2016 and order dated 20.10.2016

(*) Plaintiffs 2 & 3 and 9th defendant are recorded as the legal representatives of the deceased 1st plaintiff as per order dated 02.07.2010 in memo filed in C.S. No.418 of 2007 and further ordered on 26.07.2010 in A. No.3932 of 2010

A. No.7149 of 2017:-

Application praying that this Hon'ble Court be pleased to pass a direction of the sale of the suit property by public auction.

A. No.7150 of 2017:-

Application praying that this Hon'ble Court be pleased to permit the applicants/plaintiffs herein and the 9th respondent/defendant to jointly purchase the shares of the other respondents/defendants in the suit property, more particularly described in the schedules 'A' and 'B' hereunder, at the same rate as agreed upon by respondents/defendants 1, 3 to 7 and 11 to 15 and indicated in the final decree dated 02.08.2017.

These applications coming on this day before this Court for hearing the court made the following order:-

This Application prays for a direction ordering sale of the suit property by public auction. No counter has been filed in the application

2. It is necessary to trace the history of the matter

<https://hcservices.ecourts.gov.in/hcservices/>

briefly prior to deciding the application. A preliminary decree had been passed in this matter as early as on

22.06.2012, demarcating the shares of the parties in question and a final decree passed on 02.08.2017 recording the joint memo of compromise as between the parties.

3. The Memorandum of Compromise filed on behalf of the plaintiffs and defendants dated 02.08.2017 provided that a sum of Rs.2,71,00,000/- would be remitted by defendants 1, 3 to 7 and 11 to 15 in two installments of Rs.1,35,50,000/- each, the first payable on or before 10.10.2017 and the second payable on or before 25.01.2018. The time frame for remittance of the entire sum was thus extended by this Court till 25.01.2018. However, the order has not been complied with.

4. The sequence of events that transpired thereafter is detailed below:

(i) Mr.A.S.Vijayaragvan, was appointed by this Court as Advocate Commissioner on 22.02.2018 with a direction to sell the suit property comprised in the northern and southern halves of house bearing Old Door No.157, New Door No.323 Mint Street, Sowcarpet, Chennai - 600 079 by public auction after following the procedure set out in this regard.

(ii) The Advocate Commissioner has filed a Report dated 29.06.2018 (First Report).

(iii) The report of the Commissioner makes it clear that neither the defendants nor their counsels were

available in the property on any of the occasions when the Commissioner had visited the same.

(iv) The upset price of the property had been fixed at a sum of Rs.8 Crores after having taken into consideration the guideline and market values of the property as well as its extent and location.

(v) The tender-cum-auction sale was fixed on 21.04.2018 at 10:30 a.m. at the hall owned by the Rajasthani Association of Tamil Nadu at 4th Floor Golden Complex NSC Bose Road, Chennai 600 079.

(vi) Notices were sent to all parties to the suit that have been returned as undelivered.

(vii) As per the first report of the Commissioner, publication of the sale by auction was effected in the Tamil daily, 'Dina Thanthi' dated 28.03.2018, Hindi daily 'Rajasthan Patrika' dated 29.03.2018 and English daily Trinity Mirror dated 29.03.2018.

(viii) Brochures containing the terms and conditions of the auction sale were printed and circulated using the assistance of newspaper supply boys.

(ix) The Commissioner states that though there were several enquiries regarding the property, one consistent clarification that was sought by the prospective purchasers

was whether the numerous tenants in the property would be evicted and vacant position given to the purchasers to

which the learned Commissioner had expressed his inability in so far as the direction for sale of the property was in 'as is where is' condition.

(x) An adjournment of the proceedings had been sought by the Commissioner by way of a Memo dated 22.03.2018 seeking extension of the period granted for publication and sale of the suit property.

(xi) The Commissioner records that the 11th defendant in suit had sent a text message to the Commissioner by whatsapp bringing to his notice that SLP.No.9828 of 2018 had been filed challenging order dated 22.02.2018 of this Court directing sale of the property and seeking a postponement of the auction sale.

(xii) Be that as it may, since there was no further information received in this regard and no Court order or copy of SLP produced, the Commissioner went ahead with the matter.

(xiii) There were no bidders despite the parties viz.,
 (i) Mr.Suresh Kumar Sharma (ii) Mr.Indar Kumar Sharma,
 (iii) Mr.Prakash Chand Sharma, (iv) Mr.Mahensh Kumar Sharma, (v) Mr.B.Balachandar, Advocate and (vi) Mr.Mohammed Nootu, Advocate waiting at the site till 1 P.M. on 09.06.2018. The auction and the sale were thus adjourned.

(xiv) While this is so, the matter was listed before the Court and it was suggested by the Commissioner that the

upset price of the property be reduced from Rs.8.00 crores to Rs.5.00 Crores.

5. Thus by order dated 11.07.2018 this Court reduced the upset price from Rs.8 crores to Rs.5 crores at the suggestion of the Advocate Commissioner and in the light of the fact that the first auction with an upset of price of Rs.8 crores had been unsuccessful. This order has attained finality

6. Pursuant thereto a second Report has been filed by the Advocate Commissioner dated 21.08.2018 (Second Report)

(i) The report details the justification for the reduction in upset price sought from Rs.8 to Rs.5 crores on account of the fact the there had been no bidders in the first auciton despite the locational advantages of the property. The prime concern of prospective bidders was the presence of multiple commercial as well as residential tenants in several floors of the property. The location of the property was in an extremely congested area with very little possibility for development in the future and the building in question was more than 60 years old, comprising ground plus five floors without a lift.

(ii) The second sale was fixed for 11.08.2018 at the same venue as the first sale. Advertisements were released in the Hindi daily Dakshin Bharti Rastramath and pamphlets were circulated locally in Sowcarpet, Parry's Mannadi and

neighbouring areas as well as in Mylapore, Mandaveli and Adyar.

(iii) The payment scheme was set out as follows:

Apart from those who had submitted sealed tenders, other persons interested in purchasing the property can also participate in the public auction provided they submit a demand draft for Rs. 25,00,000/- (Rupees twenty five lakhs only) drawn in the name of the Registrar General, High Court, Madras towards earnest money deposit before 10.30 a.m. On 11.08.2018. It is made clear that those who are not submitting their DD and other particulars and credential documents as stated above before 10.30 a.m. On 11.08.2018 shall not be allowed to take part in the public auction sale. However, the decision of the Advocate Commissioner shall be final in this regard.

The name and amount quoted by the highest tenderer and second highest tenderer will be read out and announced then and there. The amounts quoted by other tenderers will also be read out.

If public auction is to be held as stated above, the name and amount quoted by the highest bidder as well as the second highest bidder will be announced on completion of the bidding process.

The Advocate Commissioner shall return the Demand Drafts of those sealed tenders or other bidders participating in the public auction sale, except that of the highest tenderer or the highest bidder and that of the second highest tenderer or the second highest bidder immediately after the public auction sale is over.

The highest tenderer or the highest bidder as the case may be shall deposit with the Advocate Commissioner another demand draft for Rs.1,25,00,000/- (Rs. One crore twenty five lakhs only) to see that such highest tenderer or the highest bidder does not walk away without completing the other formalities of sale as may be stipulated and required.

It is made clear that letter of confirmation in writing will be given by the Advocate Commissioner, only after the High Court confirms the auction sale which may be done as soon as possible by bringing the case before the concerned Judge.

(iv) Notices were sent under cover of ordinary post to all parties on 01.08.2018 enclosing the fresh terms and conditions of the public sale.

(v) Again, as in the earlier instance, though enquiries were received by the Advocate Commissioner, the callers expressed apprehension about the tenants in the property, inquiring whether vacant possession of the property could be obtained.

(vi) The Advocate Commissioner notes that Ms. Sheela Manju, Advocate had called him on his handphone at 4:00 p.m. on 10.08.2018 stating that an application had been filed by D1 seeking postponement of the auction. However, since there was neither a copy of the Application nor a court order received, the Commissioner proceeded with the auction as scheduled.

(vii) A bid was received from Mr. Rajkumar son of Valchand and his relative C. Suresh Kumar Singh son of Champalalji Jain for a sum of Rs. 5,11,00,000/- (Rupees five crores and eleven lakhs only). A demand draft for an amount

<https://hcservices.ecourt.gov.in/hcservices> bearing No. 300886 dated 10.08.2018 was enclosed along with the second report. There were no other

bidders and as such the proceedings were closed.

(viii) The purchasers requested some time to produce the DD for Rs.1,25,00,000/- on account of 11.08.2017 being a non-working Saturday.

(ix) The Commissioner, at his discretion, extended time till 20.08.2018 and a Demand Draft for a sum of Rs.1.25 Crores bearing No.652476 dated 16.08.2018 drawn on YES Bank, Parrys Branch in favour of Registrar General, High Court, Madras was received from the purchasers on 16.08.2018.

(x) The two demand drafts as aforesaid, in original, have been placed before the Court along with the second report.

7. The matter has come up before me thereafter on multiple occasions. On all dates, stiff existence has been put up by the defendants to the proceedings of auction conducted by the Advocate Commissioner. However, though general allegations and objections have been raised orally, nothing specific has been placed before me indicating how the auction was vitiated. The Commissioner as well as the auction purchasers, represented by Mr.M.Nandakumar, learned counsel requested confirmation of the auction sale, since the terms of the sale had been complied with and a sum of Rs1,50,00,000/- deposited as required. Sufficient

defendants not to confirm the sale immediately stating that they were in a position to obtain better offers and were also making efforts to purchase the property themselves.

8. The matter was listed for hearing on several dates, being 26.04.2018, 24.08.2018, 31.08.2018, 07.09.2018 and 11.09.2018. On 07.09.2018, this Court granted a final opportunity to the defendants to, at the minimum, meet the offer made by the auction purchaser and directed both the defendants as well as the auction purchasers to produce the demand drafts for the sale consideration/balance of the sale consideration to prove their bonafides and enable the Court to finalise the sale. At this juncture, the auction purchaser enhanced the sale consideration to a sum of Rs.Six (6) crores from Rs.5,11,00,000/-.

9. For the sake of clarity, it may be stated that the balance of the sale consideration in the hands of the auction purchaser was an amount of Rs.4,50,00,000 (Rupees Four Crores and fifty lakhs only) and the balance payable by the defendants jointly was a sum of Rs.2,00,00,000/- being one third of the consideration for the sale of the property in terms of the final decree passed on 02.08.2017, each share having been fixed at one third.

10. On 11.09.2018 the defendants sought a passover of the matter to enable them to produce the demand draft to meet the offer of the auction purchasers. The matter was

called in the afternoon when the learned counsel appearing for the defendants expressed their inability to meet the offer of the auction purchasers.

11. This Court is of the view that sufficient time and indulgence has been afforded to the defendants to come up with the purchase consideration. They are clearly unable to do so.

12. A memo dated 11.09.2018 has been filed by the auction purchaser in conjunction with a 3rd party to the effect that 3rd party assistance was taken to remit the enhanced consideration of Rs.6,00,00,000/-.

13. I also record the submission of learned counsel appearing for defendants 3 and 4 to conduct a re-auction of the property on the ground that there was only a single bidder at the time when the auction is conducted. I am unable to accede to this submission seeing as not one, but two auctions have been conducted and the present purchaser is the only buyer who has tendered a bid for purchase of the property.

14. As stated by me elsewhere in this order, I have granted sufficient time and opportunity to the defendants to purchase the property themselves or to produce a purchaser with a higher bid, to no avail. In fact, the opportunities granted have been in recognition of the position that the property is one jointly owned by the

members of the family who should have priority while considering the question of ownership of the same. It is for this reason that this Court had stated that the sale of the property to the defendants would be viewed positively even if they were, at least, able to match the offer of the auction purchasers, and not necessarily improve upon it. Even this opportunity has not been availed of.

15. The matter has been hanging fire since 2017 with several of the parties being senior citizens and I believe it is time it was put to rest.

16. The Advocate Commissioner has filed a third Report dated 11.09.2018 (Third Report) enclosing seven (7) demand drafts bearing Nos. 010260, 010261, 010259, 010258, 010257, 300976 & 234480 all dated 10.09.2018, in all for a sum of Rs. 4,50,00,000/- and seeking a confirmation of the sale of the property in question in favour of the auction purchaser for a sum of Rs.6,00,00,000/-.

17. In the light of the above discussion, A.7149 of 2017 is allowed and the prayer of the Commissioner to confirm the sale of the property at northern half and southern half of house bearing Old Door No.157, New Door No.323 Mint Street, Sowcarpet, Chennai - 600 079 in favour of Mr.V.Rajkumar, Mr.C.Suresh Kumar and Mr.Sanjay K.Jain is confirmed. The nine (9) demand drafts as detailed above, in

Registrar General for encashment and for further action, all to be completed within a period of one month from the date of receipt of a copy of this order.

18. The Advocate Commissioner shall also be paid a further sum of Rs.50,000/- (Rupees fifty thousand only) and the expenses incurred by him be reimbursed to him. The total remuneration and expenses shall be borne in equal shares by all parties.

19. Learned counsel for the applicant in A.No.7150 of 2017 has made an endorsement as early as on 22.02.2018 to the effect that the applicant is not pressing the application.

20. In the light of the said endorsement and there being no order in the said application till date, A.No.7150 of 2017 is dismissed as not pressed.

Sd/-A.S.M.J
14.09.2018

//Certified to be a true copy//

Dated this the day of 2018
JJ 11/10/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.