

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 11th DAY OF SEPTEMBER 2018

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A. No.6604 of 2018

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 A.No.6604 of 2018)
- (*) 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 A.No.6604 of 2018)

(#) 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.6604 of 2018:-

Basanthi Bai,
 4th Floor, Old No.157,
 New No.323, Mint Street,
 Sowcarpet, Chennai 600 079.

..Applicant/1st Defendant

VS

1. Suresh Kumar Sharma
 residing in the 4th Floor
 of premises Old No.157,
 New No.323, Mint Street,
 Sowcarpet, Chennai 600 079.

2. Inderchand Sharma
 residing in the 5th Floor
 of premises bearing Old No.157,
 New No.323, Mint Street,
 Sowcarpet, Chennai 600 079.

Plaintiff 2 & 3 are the LR's of
 the deceased 1st plaintiff

....Plaintiffs & 3/Respondents

3. Guneswarlal Sharma,
 S/o. Late. Bansilal Sharma
 Old No.15/2, New No.35
 8th Cross Street,
 Shenoy Nagar, Chennai 600 030.

4. Chandrapal Sharma
 residing at Door No.15/2,
 8th cross Street, (Near Ration shop),
 Shenoy Nagar, Chennai-600 030.

5. Mahendra Kumar Sharma,
 Son of late Bansilal Sharma,
 Old No.157, New No.323,
 Mint Street, Sowcarpet,
 Chennai-600 079.

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

RT- Street, Cross Chickpet,
Bangalore-53.

8. Santhosh Devi,
D/o. Late. bansilal Sharma
No.5, Nehru Street, Razack Garden,
Arumbakkam, Chennai 106.

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
Old no.157, New No.323,
Mint Stteet, Sowcarpet, Chennai 79.

11. Sunitha,
D/o. Ratanlal Sharma
Old No.157, New No.323,
Minit Street, Sowcarpet, Chennai 79.

12. Saroj,
D/o. Ratanlal Sharma
No.13, Jaganathapuram, Chatpet,
Chennai -.31

13. Sarala
D/o. Ratanlal Sharma
Old no.157, New No.323,
Mint Street, Sowcarpet, Chennai 79.

14. Johny
D/o. Ratanlal Sharma
Old no.157, New No.323,
Mint Street, Sowcarpet, Chennai 79

...Respondents/defendants

Application praying that this Hon'ble Court be pleased
to fix the upset price as stated earlier i.e.
Rs.7,35,00,000/- and direct the Advocate Commissioner to
wait until the purchasers comes to purchases the property
for Rs.7,35,000/-

This Application coming on this day before this court

<https://hcservices.eco.fis.gov.in/hcservices/>, the court made the following order:

This Application has been filed by D1 on 10.08.2018 and

prays for fixation of upset price for the auction of the property situated at Northern and Southern half of the house, ground and premises bearing Old door No.157, New No.323, Mint Street, Sowcarpet, Chennai - 600 079 at a figure of Rs.7,35,00,000/- and a direction to the Advocate commissioner to wait until purchasers come to purchase the property for Rs.7,35,00,000/-.

2. A counter has been filed to the aforesaid application by the first respondent in the application. The upset price was initially fixed at the sum of Rs.8,00,00,000/- and was reduced to a sum of Rs.5,00,00,000/- by order of this Court dated 11.07.2018.

3. The rationale for reduction of the upset price is that there were no bidders for the property at the auction conducted on 21.04.2018. This was for the reason that the property is occupied by several residential as well as commercial tenants and apprehensions were expressed by prospective buyers as to whether the tenants could be evicted or not. In fact, the Advocate Commissioner in his report dated 21.08.2018 refers to such apprehensions expressed by the prospective buyers. However, since the sale had been directed to be conducted on 'as is where is basis' it was conveyed to the prospective bidders that no action would be taken by the vendors with respect to the tenants in the property. Moreover the property, though centrally located, was in a very cramped locality and comprises of ground + five floors without a lift. The building itself is more than 60 years old. It is for these reasons that the Commissioner has sought a reduction of the upset price, which was fixed for Rs.5.00 crores. This order has become final.

4. On the auction conducted on 11.08.2018 a purchaser has also been identified.

5. The parties in this case had entered into a joint memorandum of compromise, in terms of which, all defendants were to jointly remit a sum of Rs.2.71 crores in two

instalments, which has not been complied with. Most of the parties before me are senior citizens.

6. I have extended several opportunities to the defendants to produce the purchasers for the property or at least to remit their portion of the sale consideration in respect of the property. However, the defendants have not been in a position to avail of the opportunity. I am thus of the view that there is no justification for the re-fixation of the upset price to a figure of Rs.7,35,00,000/- . In fact, no rationale has been set out by the first defendant to justify the aforesaid price. The request for re-fixation is liable to be rejected. Moreover, the direction sought to the Advocate Commissioner 'to wait till purchasers come' is obviously to be rejected. One cannot wait forever, particularly when the interests of so many parties, including senior citizens is involved.

7. In the light of the aforesaid, I am of the considered view that there is absolutely no justification in the prayer sought in this application and I reject the same in limine.

Sd/.A.S.M.J

11.09.2018

//Certified to be a true copy//

Dated this the th day of 2018.

KY/27.09.2018

COURT OFFICER

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