

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 14TH DAY OF MARCH 2019

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

A. No.661 of 2018
in
C.S.No.505 of 2012

Mrs.M.Shanthi
W/o. M.K.Kumar
A.P.642, 49th Street, 9th Sector
K.K.Nagar, Chennai 600 078. ...Plaintiff

-Versus-

1. M.Umashankar
S/o. N.Manickam
901, 66th Street - 12th Sector
K.K.Nagar, Chennai 600 078.

2. M.Thanigaivelu
S/o. N.Manickam
W/G-A, 6th Street, North Main Road,
Anna Nagar, (West Extension)
Chennai 600 101.

3. M.Duraibabu
S/o. N.Manickam
No.115, Angel Street
Thirumalai Nagar,
Ramapuram, Chennai 600 089.

4. Mrs.R.Thenmozhi
W/o. M.S.Rathnasabapathy
Old No.66A, New No.40A,
Nattu Subbaraya Mudali Street,
Mylapore, Chennai 600 004.

5. M.Banumathy
W/o. M.S.Natarajan
Old No.66, New No.40
Nattu Subbaraya Mudali Street,
Mylapore, Chennai 600 004.

6. Merit Book House
Rep.by its Authorised Signatory
A.P.642, 49th Street,
9th Sector, K.K.Nagar,
Chennai 600 078.

.. Defendants

A.No.661 of 2018:

M.Banumathy
 W/o. M.S.Natarajan
 Old No.66, New No.40
 Nattu Subbaraya Mudali Street,
 Mylapore, Chennai 600 004. :Applicant/5th Defendant

-Vs.-

1. Mrs.M.Shanthi
 W/o. M.K.Kumar
 A.P.642, 49th Street, 9th Sector
 K.K.Nagar, Chennai 600 078.

...1st Respondent/Plaintiff

2. M.Umashankar
 S/o. Late N.Manickam
 901, 66th Street - 12th Sector
 K.K.Nagar, Chennai 600 078.

3. M.Thanigaivelu
 S/o. late N.Manickam
 W/G-A, 6th Street, North Main Road,
 Anna Nagar, (West Extension)
 Chennai 600 101.

4. M.Duraibabu
 S/o. late N.Manickam
 No.115, Angel Street
 Thirumalai Nagar,
 Ramapuram, Chennai 600 089.

5. Mrs.R.Thenmozhi
 W/o. M.S.Rathnasabapathy
 Old No.66A, New No.40A,
 Nattu Subbaraya Mudali Street,
 Mylapore, Chennai 600 004.

6. Merit Book House
 Rep.by its Authorised Signatory
 A.P.642, 49th Street,
 9th Sector, K.K.Nagar,
 Chennai 600 078.

.. Respondents 2 to

6 / Defendants 1 to 4 & 6

Application praying that this Hon'ble Court be pleased to appoint an Advocate Receiver to take possession of the property forming the subject matter of the suit in schedule as items A to E and the properties more fully

described in the written statement filed by the 5th defendant, as counter claim schedule as items 1 to 3 and to administer the same, subject to the directions of this Honourable court being issued from time to time, pending disposal of the above suit.

This Application coming on this day before this court for hearing, the court made the following order:-

Pursuant to the order dated 13.02.2019, the learned Advocate Commissioner has visited the schedule mentioned properties of Schedule 'C', 'D', and 'E' and after taking earnest efforts to fix the market value of each of the property for the purpose of sale, the learned Advocate Commissioner has filed a very detailed report.

2. A copy of the said report has been received by each of the parties except D4, who is not represented by any counsel, as the erstwhile counsel has already given change of vakalat, no new counsel had been entered now. On receipt of the Advocate Commissioner's report, the learned counsel appearing for the parties, both the plaintiff and the defendants in one voice have stated that, absolutely there is no objection with reference to the report filed by the Advocate Commissioner and according to the market value fixed by the learned Advocate Commissioner, the sale can be proceeded.

3. I have gone through the report of the learned Advocate Commissioner and also verified the method adopted by the learned Advocate Commissioner to arrive at the market price of each of the property to be sold.

4. Having satisfied with the said report, this Court is inclined to pass the following order:

(i) That the Advocate Commissioner shall proceed to sell the properties morefully described in schedule 'C', 'D' and 'E' with the upset price as has been quoted by him in his report dated 06.03.2019. Towards the sale, the learned Advocate Commissioner shall issue paper advertisement in one 'English daily' and in one 'Tamil daily' having vide circulation in the area of Chennai City, Kancheepuram and Tiruvallur District.

(ii) In the said advertisement, the Advocate Commissioner shall clearly mention the location and address of the properties with the extent and the upset price for each of the properties.

(iii) The last date for receipt of bids shall also be indicated therein. The bidder shall deposit 10% of the value of the property as EMD (Earnest Money Deposit).

After receipt of the bids from the prospective bidders, the learned Advocate Commissioner shall verify and based on the

highest bid, the public auction can be conducted for which a recognised auctioneer's services can be availed by the learned Advocate Commissioner. Once the auction is successfully completed the successful bidder shall deposit the remaining sale consideration for each of the property, within a period of 30 days from the date of such auction.

(iv) If the parties to the suit are willing to participate in the auction they can also do so.

(v) The EMD as well as the sale proceeds shall be made to the learned Advocate Commissioner only by way of instrument taken in the name of the Registrar General, High Court, Madras and accordingly, the sale proceeds for each of the property shall be deposited before this Court, by the learned Advocate Commissioner after completion of the sale.

(vi) The expenses to be incurred by the learned Advocate Commissioner in all these respects i.e., the Advertisement to be given in the paper, fixing the place of auction and other miscellaneous expenses shall be paid by the parties to the suit in advance to the Advocate Commissioner after the Advocate Commissioner gives an estimate to that effect.

(vii) Along with the Advocate Commissioner's report, the Advocate Commissioner has filed a memo where, he has mentioned the efforts taken by him and also he has mentioned about the expenses already he has incurred including the fee paid to the engineer. According to the learned Advocate Commissioner, he has already spent a sum of Rs.15,000/- (Rupees Fifteen Thousand Only) towards the engineer fee and Rs.25,000/- (Rupees Twenty Five Thousand Only) approximately, for miscellaneous expenses. Hence, the said sum of Rs.40,000/- (Rupees Forty Thousand Only) shall immediately be paid by the parties, to the Advocate Commissioner.

(viii) Apart from the above said payments, each of the parties shall pay a sum of Rs.20,000 (Rupees Twenty Thousand only) as additional remuneration to the Advocate Commissioner and that shall also be paid along with expenses already incurred, i.e, Rs.25,000/- + Rs.15,000/- to the Advocate Commissioner. The aforesaid payments shall be paid by the parties to the learned Advocate Commissioner, within a period of one week from the date of receipt of a copy of this order or from the date of receipt of estimation for future expenses also to be incurred by the Advocate Commissioner.

within a period of two weeks, from the date of receipt of copy of this order where, the schedule of auction with clear dates shall be mentioned by the learned Advocate Commissioner and after the publication in the newspaper, auction shall be fixed within two weeks thereafter.

Post the matter on 25.04.2019.

Sd/-R.S.K.J

14/03/2019

//Certified to be true copy//

Dated at Madras this the day of 2019.
JJ 19/03/2019

COURT OFFICER(O.S.)

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