



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated: 20.04.2018
CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.58 of 2015
and
M.P. (MD) No.1 of 2015

1.Ayyadurai
2.Gunaraj

.. Petitioners

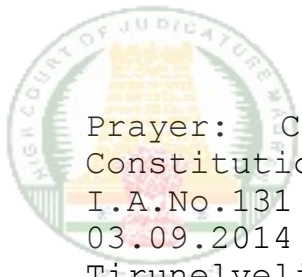
vs

Devaki Santha (Died)

Esther Rani Vasantha (Died)

1.Anthony
2.Mathew Francis
3.Joseph
4.Johnson
5.Nelson
6.Rathna Thai
7.Athisayam
8.Yohava
9.Esthar
10.Samuel
11.Carat
12.mathew
13.E.Selvi
14.V.Anthony raj
15.Samraj
16.V.Vilci Rani

.. Respondents



Prayer: Civil Revision is filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.131 of 2014 in I.A.No.575 of 2006 in O.S.No.478 of 1998 dated 03.09.2014 on the file of the 1st Additional District Munsif Court, Tirunelveli.

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For Petitioners : Mr.M.Thirunavukkarasu
For Mr.H.Arumugam
For Respondents : Mr.M.P.Senthil (for R2 & R3)
No Appearance (for R1, R4 & R5)
For R6 to R16 - Dispense with

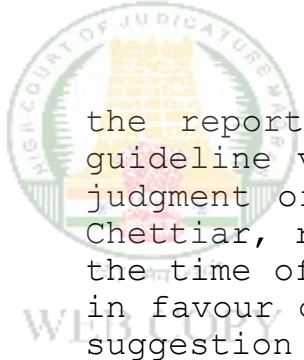
ORDER

The Petitioners are defendants 11 and 12 in the suit in O.S.No.478 of 1998 dated 03.09.2014 on the file of the learned 1st Additional District Munsif Court, Tirunelveli filed by the respondents 1 to 5 herein for partition and separate possession of their share 1/3rd share in the suit property. The Suit was decreed preliminary decree was passed, pursuant to the same an application I.A.No.575 of 2006 was filed by the respondents 1 to 5 for passing the final decree and an advocate commissioner was appointed. The Commissioner after giving notice to the parties inspected the property and filed his report and suggestion for allocation of share of plaintiffs. The Petitioners have filed their objection to the Commissioner's report and subsequently they filed a petition I.A.No.340 of 2013 for passing supplementary preliminary decree of their 1/3rd share and the same was allowed and additional preliminary decree also passed.

2. Thereafter, they filed the petition in I.A.No.131 of 2014 to scrap the report of Advocate Commissioner and re-issue the warrant stating that the report has been filed on the basis of guideline value and there was no suggestion for allotment of their share. The same was opposed by the respondents and the Trial Court dismissed the petition with a finding that the report of Advocate Commissioner is in detail and the same has been prepared on the basis of guideline value and thus allotment can be made with that report itself, thus there is no necessity to scrap the report and re-issue the warrant. The said order is challenged in this revision.

3. I heard Mr.M.Thirunavukkarasu, learned counsel for the counsel for petitioners and Mr.M.P.Senthil, learned counsel for the respondents 2 and 3 and perused the entire materials available on records. No representation on behalf of the respondents 1, 4 and 5.

4. The learned counsel for the petitioners also stated that the guideline value cannot be a basis for allocation of property in the partition suit but the market value alone shall be considered, since



the report filed by the Advocate Commissioner is based upon the guideline value, the same is not valid in law and he relied upon a judgment of this Court in the case of G.Loganathan -vs- S.Chenniys Chettiar, reported in 1995 (2) CTC 492. He further submitted that at the time of inspection of property, no preliminary decree was passed in favour of the petitioners, as such there was no occasion to make suggestion for allotment of their share, however they have filed objection to the Commissioner's report and also obtained the supplementary preliminary decree and thus the final decree has to be passed for both the petitioners and as well as the contesting respondents and thus the report filed by the Commissioner has to be scrapped and the warrant has to be re-issued for working out the suggestion for division of property on the basis of preliminary decree and he relied upon the Division Bench judgment of this Hon'ble Court in the case of K.Vijayalakshmi and others -vs- K.Sashikanth, reported in 2015 (1) MWN (Civil) 214 and therefore prayed to allow the revision. He also relied upon a judgment of the Hon'ble Supreme Court in the case of Ganduri Koteshwaramma and another -vs- Chakiriyandi and another, reported in 2011 (9) SCC 788 for the proposition that more than one preliminary decree can be passed in the suit for partition and argued that the petitioners are entitled to make the application for re-issue in view of the additional preliminary decree passed in their favour and prayed to allow the revision.

5.Per contra, the learned counsel for the respondents 2 and 3 submitted that when the petitioners were not given any suggestion for allotment of shares during the time of inspection they are not entitled to seek the present relief and the petition was filed only to drag on the proceedings and the trial Court has rightly found that the report itself clear and detail and therefore the allocation can be made for the petitioners also and thus the order impugned does not warrant any interference.

6.This Court has perused the records. Admittedly the report of Advocate Commissioner has been prepared on the basis of the guideline value. It is settled law that the guideline value is not an absolute one and the same is meant for collecting stamp duty while registering the document. In other words, guideline value is the prima facie material for the registering authority to collect the stamp duty and the same cannot be a value of the property. The real value of the property is the offer of purchaser and it depends upon the lie, location, and need of the same for the purchaser. This judgement cited by the petitioners in the case of G.Loganathan -vs- S.Chenniys Chettiar, reported in 1995 (2) CTC 492, has also held in Para 5 as follows:-

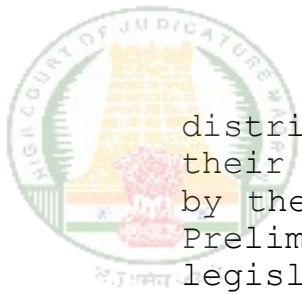
"5.The Supreme Court and other Courts, including our High Court, have held that the guideline value is not the market value and it would be dangerous to value the property according to the guideline value because there is no guarantee or truth in the correctness of the data given in the guideline value. In Naganatham v. Revenue Divisional Officer, Adilabad (AIR 1983 A.P. 155), the Andhra Pradesh High Court has held that the



fixation of market value cannot be made on the basis of the value noted in the market value register maintained by the Government and the Court has to take into account the price which a selling purchaser is prepared to pay to a willing vendor. This view has been confirmed by the Supreme Court in the same case which was later taken before the Supreme Court in *Jawajee Naganatham v. Revenue Divisional Officer* (1994 (4) S.C.C.595). In a recent case, *Land Acquisition Officer v. Jasti Rohini* (1995 (1) S.C.C.717), the Supreme Court has observed that valuation register on the basis of the notification under section 47-A of the Stamp Act is for collection of Revenue and it cannot be the basis for determination of the market value of the land. In this case also, the Supreme Court has observed that the price which the willing seller expects from the willing purchaser is the market price. This Court also in *Collector, Nilgiris v. M/s. Mahavir Plantations Pte. Ltd.* (AIR 1982 Madras 138) has held that to adopt figures prepared in the valuation guideline would be dangerous because they offer no guarantee of the truth or correctness of data. The Delhi High Court in *Inder Prasad v. Union of India* (AIR 1985 Delhi 304) also has repeated the same expression that the price which a willing seller might reasonably expect to obtain from a willing purchaser is the test to determine the market value and it cannot be based on the opinion or information given by the Government. Therefore, from these chain of decisions, it is made clear, that the guideline value cannot be the market value of the property as the guideline value is intended for the collection of the Revenue. As the market value alone is the criteria to value the suit and in this case there is no contra evidence on the defendant's side to show that the property covered under Ex.A.1 is more than the value given in the sale deed, as held in *Varadarajulu v. Venkatakrishnan* (1959) (1) M.L.J. (Notes of cases 9), the valuation given in the sale deed has to be accepted. As a matter of fact, the Supreme Court in *Lakshmi Ammal v. Madhavakrishnan* (AIR 1978 S.C. 1607) would point out that the question of Court fee is a peripheral issue and when there is reasonable doubt, benefit must be given to the party, who pleads for the lesser Court fee."

7.Regarding, the roll of Advocate Commissioner in the suit for partition for making the suggestion for allocation of property the Division Bench of this Hon'ble Court in the case *K.Vijayalakshmi and others -vs- K.Sashikanth*, reported in 2015 (1) MWN (Civil) 214 has held as follows:

"19. After passing the Final Decree, it is open to any one of the parties to initiate proceedings for passing a Final Decree. The Court after taking cognizance of the Final Decree Application is obliged to proceed in accordance with Order 26, Rule 13 of the Code of Civil Procedure. The Court would appoint an Advocate Commissioner to partition the property by metes and bounds. The Commissioner appointed for such purpose acts as the Authorised Officer of the Court and as such he is duty bound to



distribute the property among the parties taking into account their respective shares and in the light of the direction given by the Court in the warrant of appointment on the basis of the Preliminary Decree. Rule 14 of Order 26, contained a legislative mandate that the Commissioner would allot such share to the parties, meaning thereby joint property should be divided in specie and each one of the sharers should be given a specific item. Sub-rule (2) of Rule 14 of Order 36 mandates that the Commissioner shall prepare and sign the Report apportioning the share of each parties by metes and bounds. This makes the position very clear that the Commissioner is obliged to effect physical division of property into two or more shares. Since a co-owner is entitled, as a matter of right, to partition the co-ownership property, he is also entitled to claim allotment of a specified extent of property to him. The possible difficulty to the other sharers in case the property is divided into two or more shares, cannot be a ground to deny physical division of property and separate allotment to the co-owners in accordance with the share position."

8.The Commissioner has not made any suggestion for allocation of property on the basis of metes and bounds, which is made on the basis of guideline value, which cannot be considered as suggestion made by metes and bounds. There is no doubt that the guideline value cannot be considered for determination of allocation of share in the final decree proceedings. Thus the trial Court has committed error in accepting the report of commissioner prepared on the basis of guideline value for allocation of property and the same is liable to scrap.

9.Further, admittedly an additional preliminary decree was passed in favour of the petitioner, which is permissible as held by the Hon'ble Supreme Court in the case of Ganduri Koteswaramma and another -vs- Chakiriyandi and another, reported in 2011 (9) SCC 788. It is useful to refer the portions, which reads as follows:

"14.A preliminary decree determines the rights and interests of the parties. The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the Court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation.

21. It is true that final decree is always required to be in conformity with the preliminary decree but that does not



mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the trial Court in the event of changed or supervening circumstances even if no appeal has been preferred from such preliminary decree. The view of the High Court is against law and the decisions of this Court in Phoolchand and S. Sai Reddy.

22. We accordingly allow this appeal, set aside the impugned judgment of the High Court and restore the order of the trial Court dated 15-6-2009. The trial Court shall now proceed for the preparation of the final decree in terms of its order dated 15-6-2009. No costs.

10. In the present case the Court has already passed the supplementary preliminary decree and thus imperative for the Court to give an opportunity to the petitioners to make their suggestion for allocation of property, as they had no option to make their suggestion at the time of inspection without any preliminary decree in their favour. If the report of advocate commissioner is on the basis of the guideline value of the property and when the parties to the suit are not disputing the value, the Court can consider the report for allotment of properties. But the present case is not so, admittedly the commissioner has prepared the report with suggestion for allocation on the basis of guideline value, which is not proper and in accordance with the law laid down by the Courts. Thus the order of Court below is liable to be set aside and accordingly it is set-aside with the following terms.

11. In the result:

(a) the Civil Revision Petition is allowed and the order passed in I.A.No.131 of 2014 in I.A.No.575 of 2006 in O.S.No.478 of 1998 dated 03.09.2014 on the file of the learned 1st Additional District Munsif Court, Tirunelveli is set-aside;

(b) the trial Court is directed to re-issue the warrant to the Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order, with the clear direction to inspect the property and make suggestion on the basis of the market value of the property; and

(c) the Trial Court is directed to pass the final decree within a period of three months, after affording opportunities to all the parties to file their objection, if any, for the report and as well as allocation of share. Connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/



To

The 1st Additional District Munsif Court,
Tirunelveli.

+1cc to M/S.H.Arumugam, Advocate SR.No. 63138

+1cc to M/S.M.P.Senthil, Advocate SR.No. 62846

C.R.P. (MD) (PD) No.58 of 2015

and

M.P. (MD) No.1 of 2015

20.04.2018

VSV

JM/SKN RSK/SAR 3/25.06.2018/7P/4C