

A.Nos.3783 and 3784 of 2009
3350 to 3352 of 2016, 8110 of 2018, 1978 of 2019
and 2887 to 2889 of 2019 in C.S.No.306 of 2002
and Cont.P.No.80 of 2014

PUSHPA SATHYANARAYANA, J.

Better late than never that the members of the family must sink their disputes and differences, settle and resolve their conflicting claims once and for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. In a suit for partition and separate possession, these applications are filed by the parties, who are brothers and sisters, after passing of the preliminary compromise decree on 24.04.2008, which was clarified on 03.11.2008.

2. The plaintiff filed A.No.3783 of 2009 seeking for a final decree in terms of the preliminary decree passed in the suit on 24.04.2008.

2.1. He had also filed A.No.3784 of 2009 praying for appointment of an Advocate Commissioner for effecting division of the suit schedule mentioned properties if the properties are divisible by metes and bounds, and if the properties are indivisible, then effect sale of the properties to a co-sharer of a stranger for a value to be fixed by the Commissioner and distribute sale proceeds among all the sharers in accordance with their respective right and entitlement to the suit

schedule mentioned properties.

2.2. Alleging that the first defendant and two other persons violated and disobeyed the orders of this Court dated 11.04.2016 in A.No.2525 of 2015, wherein and whereby, this Court restrained the parties from altering the physical features of the property including demolition or reconstruction, without the leave of the Court, the plaintiff filed A.No.3350 of 2016. In A.No.3351 of 2016, he sought for a direction to those alleged contemnors to deposit a sum of Rs.5 crores, being the loss on account of the damages caused to the property on account of demolition. He also sought for a direction to the contemnor/ first defendant to deposit a sum of Rs.75,000/- every month on account of the loss occasioned by way of rental payable by the tenants, who have been evicted for demolition of the building in A.No.3352 of 2016.

2.3. The fourth defendant in the suit filed A.No.8110 of 2018 seeking a direction to the first defendant to remove his occupants and deliver vacant possession of land measuring 25,490 square feet along with the passage from the main GNT Road in respect of the land situated in Padianallur Village bearing Survey No.136/2, which was morefully described in full as item No.(v)(a) of Schedule II of the suit properties.

2.4. The first defendant in C.S.No.306 of 2002 instituted A.No.1978 of 2019 with a prayer to pass final decree for four items of properties, which were auctioned by the Advocate Commissioner in favour of the bidders as per the report of the Advocate Commissioner, which were recorded by this Court in the order dated 18.09.2018.

2.5. The plaintiff filed A.Nos.2887 to 2889 of 2019 seeking the following respective reliefs :

"..... to direct the Advocate Commissioner appointed by this Court in the final decree proceedings to deliver physical possession of the portions of the suit schedule mentioned properties allotted to the respective shares, as per the Advocate Commissioner's sketch, after physical verification of the measurements in accordance with the Revenue records and in accordance with the final decree in A.No.3781 of 2009 dated 13.03.2018 belonging to the estate of Late E.Ramadoss ..."

".... to direct the respondent No.6/Advocate Commissioner to handover one set of complete documents of title of properties belong to the Estate of Late E.Ramadoss Chetty allotted to the respective sharers in accordance with the final decree passed in A.No.3783 of 2009"

".... to direct the Registry to communicate the allocation of the properties allotted to the plaintiff and the defendants as per the final decree dated 13.03.2018 passed in A.No.3783 of 2009 to the respective Sub

Registrars offices.”

3. After passing of the preliminary decree, the second defendant, who is the mother, died on 07.12.2008.

4. This Court vide order dated 27.08.2009 made in A.No.3784 of 2009 appointed Mr.S.Venkatesan, Advocate, as the Commissioner for effecting division of the suit schedule mentioned properties.

5. Though there are so many claims and counter claims between the parties and application one after another was filed making allegations against each other, to put a quietus to all the pending issues, the fourth defendant filed a Memo dated 03.10.2019 agreeable to the all the parties to the suit. As per the said Memo, the following allotments were made to the parties in respect of the suit schedule mentioned properties :

“(A) Item No.1(a) to (i) of Schedule II :

- (1)The portion marked 'red' measuring 8.93 acres is allotted to the plaintiff.
- (2)The portion marked 'green' measuring 6.28 acres is allotted to the first defendant.
- (3)The portion marked 'indigo' measuring 0.73 acres is allotted to the first defendant.

- (4)The portion marked 'purple' measuring 1.07 acres is allotted to the second defendant.
- (5)The portion marked 'blue' measuring 1.07 acres is allotted to the third defendant.
- (6)The portion marked 'grey stripes' measuring 1.07 acres is allotted to the fourth defendant.
- (7)The portion marked 'yellow' measuring 1.07 acres is allotted to the fifth defendant.

(B) Item No.ii of Schedule II is allotted to the first defendant.

(C) Item No.iii of Schedule II is allotted to the plaintiff.

(D) Item Nos.iv and v(a) and (b) of Schedule II :

- (1)The portion marked 'F' measuring 32798 square feet is allotted to the plaintiff.
- (2)The portion marked 'C' measuring 16755 square feet is allotted to the first defendant.
- (3)The portion marked 'D' measuring 23524 square feet is allotted to the second defendant.
- (4)The portion marked 'B' measuring 9288 square feet is allotted to the third defendant.
- (5)The portion marked 'E' measuring 25490 square feet is allotted to the fourth defendant.
- (6)The portion marked 'A' measuring 9288 square feet is allotted to the fifth defendant.
- (7)A provision for common passage measuring 10 meter wide marked as 'yellow' measuring 13530 square feet is made.

(E) Item No.VI of schedule II is allotted to the plaintiff, third and fourth defendants.

6. It is to be stated, at this juncture, that this Court passed a final decree on 13.03.2018 after drawing lots in respect of the suit schedule mentioned properties, excepting the property situate at Kannigaipari Village, and allotted the same to the parties. This Court in the said order observed that though there are violations of the orders of injunction granted by this Court owing to alienations of some of the properties, the same would not bind the other parties to the suit and none of the purchasers pending suit would be entitled to claim any equity from the other defendants.

7. It is also to be stated that there are alienations made by the parties in respect of the shares of the family property and consequent to the directions of this Court, some amounts have been deposited before this Court, out of which, some adjustments were also made.

8. It is stated that the order dated 13.03.2018 granting final decree attained finality before a Division Bench of this Court in

O.S.A.No.31 of 2019 on 11.02.2019. It is claimed that in the order dated 11.02.2019 while dismissing the OSA, the Division Bench gave liberty to the first defendant to file a review to redress his grievance over the final decree order dated 13.03.2018.

9. However, subsequent to the judgment of the Division Bench of this Court, the parties filed the aforesaid memo dated 03.10.2019, which was filed before this Court by the fourth defendant, for which, the plaintiff and all other defendants are agreeable, there shall be a final decree in supersession of the order dated 13.03.2018 in terms of the memo dated 03.10.2019. The other directions issued in the said order dated 13.03.2018 shall continue.

10. In respect of the shares of the second and fifth defendants out of the amounts deposited before this Court, the order dated 17.09.2019, wherein and whereby, it was directed by this Court that (i) the share of the second defendant, viz., mother can be moved to an interest bearing account to the credit of the suit for a period three years till the legal proceedings qua the Will left by her attains finality ; and (ii) the share of the fifth respondent shall also be moved to a fixed deposit for a period of three years and as and when she approaches the Court, the same would be released by following necessary procedures including

the payment of Court fees, shall remain unaltered.

11. Though there are allegations of violations of the orders of this Court and thereby the parties are guilty of contempt of Court, in order to give a quietus to the suit, which is pending on the file of this Court from 2002, this Court is constrained to close the contempt applications without punishing the contemnors.

12. The Advocate Commissioner claimed that he has been dealing with the suit schedule properties from 27.08.2009 and he filed a memo seeking additional remuneration of Rs.7,50,000/-. Learned counsel for the parties submitted that they have no objection for the same. Accordingly, Mr.S.Venkatesan, Advocate Commissioner shall be paid a sum of Rs.7,50,000/- (Rupees seven lakhs and fifty thousand only) as additional remuneration, which shall be borne by the parties equally and the same shall be paid within a period of four weeks from the date of receipt of a copy of the decree.

13. In view of the abovestated factual position, it is to be stated that excepting the second and fifth defendants, all the other parties shall be entitled to have their share to be delivered vacant by the other

parties in terms of the memo dated 03.10.2019. The Advocate Commissioner appointed by this Court shall endeavour to handover the respective shares of the parties by metes and bounds in terms of the final decree passed today based on the memo dated 03.10.2019. The Advocate Commissioner, consequently, shall handover one set of complete documents of title of suit scheduled properties to the respective parties. Once all the formalities are completed by the Advocate Commissioner, the Registry shall follow the mandate of Rule 89 of Civil Rules of Practice, subject to fulfillment of the usual terms and conditions.

14. To sum up,

(i) A.Nos.3783 of 2009 is decreed in terms of the memo dated 03.10.2019.

(ii) A.No.3784 of 2009 is closed, subject to the Advocate Commissioner executing the warrant, as indicated above.

(iii) A.Nos.8110 of 2018 and 2887 to 2889 of 2019 are ordered to the extent indicate above.

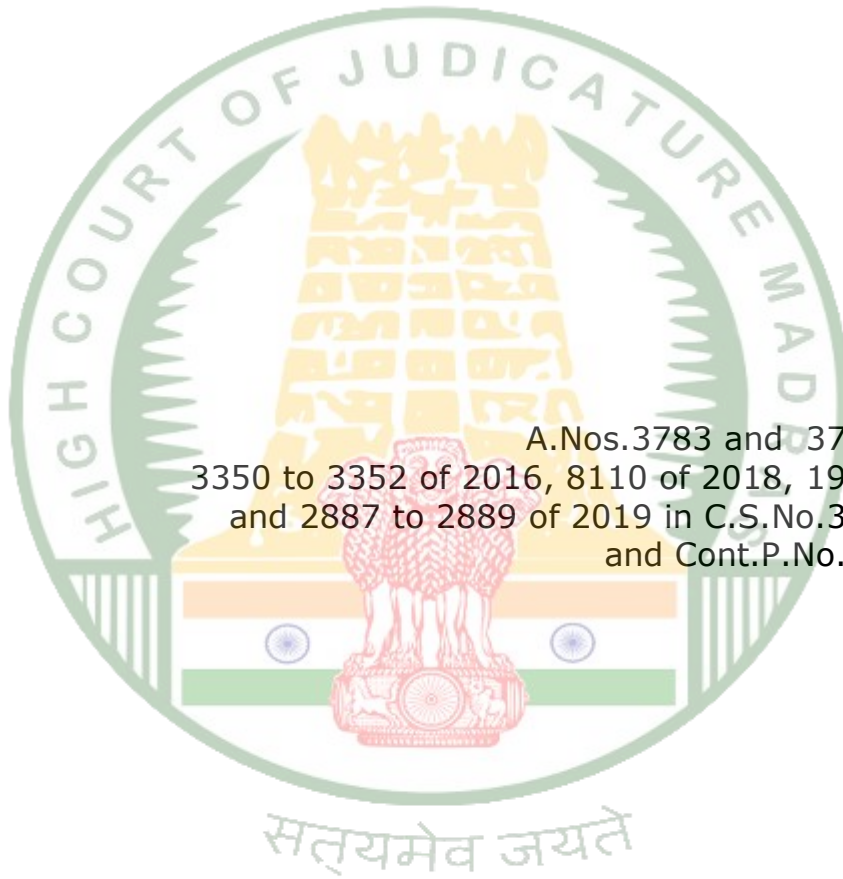
(iv) To give a quietus to the unrest, A.Nos.3350 to 3352 of 2016 and 1978 of 2019 are closed.

05.12.2019

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PUSHPA SATHYANARAYANA, J.

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