IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-02-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.735 of 2019

Ramalingam .. Appellant/1st defendant

vs.

1.Bhuvaneswari Ramalingam .. Respondents 1/Plaintiff & 2nd & 3rd defendant

2.Jayalakshmi Pattabiraman .. Respondent No.2/D-2

3.Anuradha Thanigainayagam .. Respondent No.3/D-3

Appeal Suit is preferred under Section 96 of the Code of Civil Procedure read with Order XLI, Rule 1 of the Code of Civil Procedure, against the order and decree dated 23.04.2019 passed in I.A.No.293 of 2014 in O.S.No.288 of 2005 on the file of the learned Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu.

For Appellant : Mr.P.S.Venkatasubramanian

For Respondents-2&3 : Mr.N.Kumar Rajan

1st Respondent Mr.S.Srinivasan

JUDGMENT

The appeal suit on hand is directed against the order and decree dated 23.04.2019 passed by the learned Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu in I.A.No.293 of 2014 in O.S.No.288 of 2005.

2. The appellant in the appeal suit is the first defendant in the suit, the first respondent in the appeal suit is the plaintiff in the suit and the second and third respondents in the appeal suit are the defendants 2 and 3 in the suit.

3. For the sake of convenience, the ranking of the parties in the appeal suit would be referred to as per their ranks before the Trial Court.

4. The suit was instituted by the first respondent/plaintiff Smt.Bhuvaneswari Ramalingam for partition.

5. Preliminary decree was passed that the plaintiff is entitled to 1/4th share in the suit schedule property and accordingly, final decree proceedings were initiated. The Trial Court made an effort to find out the true and fair market value of the suit schedule property in order to finalise the final decree proceedings and in this regard, an Advocate Commissioner was appointed for the purpose of ascertaining the value of the suit property.

6. Admittedly, the suit property situates within the Chennai City limits and accordingly, the Advocate Commissioner had undertaken the process of ascertaining the value of the suit property. The Advocate Commissioner filed his report and based on the report submitted by the Advocate Commissioner, the Trial Court fixed the valuation of the suit property as Rs.6,50,00,000/-.

7. The appellant herein filed I.A.No.293 of 2014 in O.S.No.288 of 2005 to order evaluation of shares of the plaintiff, second and third defendants in the property described in the schedule, offer to sell the same to the appellant/first defendant at the price so ascertained and give all necessary and proper directions as the Trial Court may deem fit and proper.

8. The Trial Court, relying on the report of the Advocate Commissioner, received the objections from the appellant/first defendant and more specifically on the report of the Advocate Commissioner, which reads as under:-

> "1. The Advocate Commissioner had on the 31st October 2015 visited the suit property and the only work done on the said date was the taking of measurements of the land and the building. The Advocate Commissioner had not on the 31st October 2015

make any enquiry in the local area with the residents.

2. The Warrant directs the Advocate Commissioner to make a local investigation of the property with the help of Civil Engineer/Approved Valuer. However, the Advocate Commissioner, at variance from the terms of the Warrant, fixed Mr.T.Seeniraj, a businessman carrying on business as Engineering Consultants, Flat Promoters and Contractors to help him in ascertaining the value of the site and building.

3. The Advocate Commissioner had not after the 31st October 2015 fixed any date for enquiry. The Advocate Commissioner did not conduct any enquiry in regard to the market value of the property and failed to afford opportunity to the parties to take part in any enquiry relating to market value of the property.

4. The finding of the Advocate Commissioner that the site value in the open market is Rs.11,000/- per square feet is fanciful, absolutely baseless and not supported by any evidence.

5. The Advocate Commissioner erred in not considering the registered Deeds of Sale produced by the petitioner. The finding of the Advocate Commissioner "As per the recently obtained guideline value from the Alandhur Sub Registrar Office, the site value is Rs.6,000/- per square feet. Hence, all the Sale Deeds are overruled" is clearly illegal and beyond the scope of the Warrant.

6. The observation of the Advocate Commissioner that Counsel appearing for R-2 and R-3 furnished a memo stating the value as Rs.5.20 crores and 6 crores would appear to be factually incorrect.

7. The Advocate Commissioner failed to note that the Warrant does not authorise Engineer/Approved Valuer to fix the value. The Advocate Commissioner erred in directing the Engineer/Approved Valuer to submit the valuation report and in placing reliance upon the same. The Advocate Commissioner erred in receiving offers from third parties failing to note that such action was beyond the scope

of the Warrant.

8. The observation of the Advocate Commissioner that parties valuation, Engineer's valuation and his valuation may be taken up for consideration and a value may be fixed by the Hon'ble Court as upset price will clearly establish that the entire exercise was to fix the upset price and not the market value.

9. The Advocate Commissioner has not reported about the market value of the property and the Warrant has thus not been duly executed."

9. The said objections were countered by the respondents by stating that the Advocate Commissioner elaborately considered all the documents placed before him and conducted an enquiry in the surrounding area in order to ascertain the market value and therefore, objection is to be rejected.

10. The main contention raised by the appellant before the Trial Court was that the Advocate Commissioner has not provided an opportunity to the appellant and no enquiry was conducted and the documents placed before the Advocate Commissioner was not appreciated properly and further, the Advocate Commissioner has fixed the value of the suit property on presumptions and assumptions and therefore, the Advocate Commissioner's Report is to be rejected.

11. The learned counsel appearing on behalf of the appellant reiterated by stating that the Advocate Commissioner has not conducted any enquiry and in the absence of any such enquiry, there is no reason whatsoever to arrive at a conclusion that the suit property will fetch not less than Rs.6,50,00,000/-. Such a conclusion is not based on any document or any evidence. Therefore, the Advocate Commissioner's Report is unsustainable. In respect of the said contention, the learned counsel for the appellant relied on the judgment of the Hon'ble Supreme Court of India in the case of Malati Ramchandra Raut (Mrs) vs. Mahadevo Vasudeo Joshi [1991 Supp (1) SCC 321], wherein in paragraph-9, held as under:-

"9. It is the duty of the court to order the valuation of the shares of the party asking for a sale of the property under Section 2 and to offer to sell the shares of such party to the shareholders applying for leave to buy them in terms of Section 3 at the price determined upon such valuation. As soon as a request for sale is made by a shareholder under Section 2, any other shareholder becomes immediately entitled to make an application under Section 3 for leave to buy the shares of the former. The right to buy having thus arisen and become crystallised, the date with reference to which valuation of the shares in question has to be made is the date on which the right arose."

12. This Court in the case of Special Tahsildar and Land Acquisition Officer, Nagercoil Vs. Daisy Morayin and 4 others [2003 (1) CTC 321], wherein in paragraphs 13, 14 and 15, observed as under:-

"13. When the Commissioner is called upon to value the property, he has to necessarily consider various sale transactions and give his opinion, which must be in consonance with the recognised method of valuation, by the various decisions of the Court. Along with the report he must also file certified copies of sale transactions and other documents relied on by him. In such an event, the parties filing objections to the report really may not arise. The parties can always point out the errors if any even at the time of final arguments. The Commissioner when he submits his report, he must also furnish the materials on the basis of which he formed his opinion. Both the parties can let in contra evidence and demonstrate before the Court that the opinion given by the Commissioner is wrong for one reason or the other with regard to the market value of the property. Really in such case, the necessity of Court examining the Commissioner may not arise always.

14. There may be yet another situation like the present one, where the Commissioner gives his opinion/report not on the basis of any document, but only on the basis of his examining some citizens of that area. Then it would be a case wherein he is giving his opinion merely on what he heard from them. Section 60 of the Indian Evidence Act is to the effect that the oral evidence

must be direct. Of course, the Land Acquisition Act, 1984 does not speak about the applicability or otherwise of the provisions of Indian Evidence Act. The Court has to proceed on the basis that the provisions of the Indian Evidence Act also would apply at least the basic principles, so long they are not inconsistent with the provisions of the Land Acquisition Act. The other aspect of the matter to be noticed is, the Commissioner has examined some citizens of that locality, who have not been subjected to any cross examination. When the Supreme Court has ruled in U.P. Jal Nigam vs. Kalra Properties (P) Ltd., 1996 (2) CTC 60: 1996 (3) SCC 124 that the valuation register maintained under Indian Stamps Act cannot be the basis for determining the market value of the land, a serious question would arise as to whether the market value can be decided on the basis of the report of the Commissioner, which in turn only refers and relies on some opinion expressed by citizens of an area. In our considered view, the answer is to be only in the negative. We reiterate that simply because parties (in this case the revenue) have not filed any objection to the Commissioner's report, the Court should not blindly accept the report. Relevant to point out that when the claim by the respondent itself is at the rate of Rs. 1,000, the Commissioner has opined that the value of the property will be minimum of Rs. 1,500 on the relevant date.

15. Coming to the present case, the Commissioner, while giving his report has examined one Kanagaraj, Panchayat President of Cherukole, Rev. Fr. Hillary, Parish Priest and four more persons. It is also to be pointed out that the Commissioner has not even recorded their statements and filed them before Court. For the foregoing reasons, the report of the Commissioner cannot be relied upon.”

13. Relying on the observations made in the judgments of the Hon'ble Supreme Court and this Court, cited supra, the learned counsel for the appellant said that it is a

fit case for remand and a fresh assessment is to be made regarding the market value of the suit property.

14. The learned counsel appearing on behalf of the respondents disputed the contentions raised by the appellant by holding that Advocate Commissioner's Report is categorical with reference to the documents relied upon as well as the enquiry conducted. It is not necessary that the appellant should be called for such an enquiry, more specifically, to ascertain the market value of the property. In fact, the Advocate Commissioner conducted an enquiry with many persons in that locality and submitted his report. Thus there is no infirmity or otherwise in respect of the market value ascertained by the Advocate Commissioner.

15. Relying on the Report of the Advocate Commissioner, the learned counsel appearing on behalf of the respondents reiterated that the Trial Court not only has relied upon the Advocate Commissioner's Report, but further ordered for an enquiry through the Senior Bailiff and the Senior Bailiff one Mr.Selvaraj, Alandhur District Munsif Court, had ascertained the true value of the suit property with the help of the Village Administrative Officer and he has also filed a Report stating that the value of the land and building is at Rs.5,50,00,000/-.

16. Relying on the said Report of the Senior Bailiff as well as the Advocate Commissioner's Report, the respondents are of the opinion that the value fixed by the Trial Court is just and proper and no interference is called for.

17. This Court is of the considered opinion that it is admitted by the parties that the preliminary decree was passed in the partition suit. An application is filed by the appellant under Section 3 of the Partition Act. It is an admitted fact that the appellant is having a preemptive right to purchase the shares allotted to the respondents. The preemptive right granted in favour of the appellant is not disputed. Therefore, the appellant is entitled to purchase the shares from the other respondents. This being the admitted fact, the question arises is whether the fixation of market value made by the Trial Court is just and proper or not.

18. Let us now examine the Report of the Advocate Commissioner, which reads as under:-

> "The site value is Rs.6,000/- per sq. ft., as per guideline value. But in the open market value is Rs.11,000/- per sq. ft.

The site and the building situated in a prime place. The site is a corner plot. In the building wooden materials were used.

I requested the parties to furnish their valuation with regard to the site and building. The counsel appearing for the petitioner furnished a memo on 27.01.2016 along with 4 certified copies of Sale Deed obtained from Sub Registrar Office, Alandhur. As per the Sale Deed bearing No.3452/2010, the site valuation was Rs.3,000/- per sq. ft. As per the Sale Deed bearing No.175/2012, the site valuation was Rs.2,700/- per sq. ft. As per the Sale Deed bearing No.631/2012, the site valuation was Rs.3,000/- per sq. ft. As per the Sale Deed bearing No.1066/2013, the site valuation was Rs.5,000/- per sq. ft. He has mentioned the building age as 40 years which is not correct. The Engineer estimation with regard to age of the building is 20 to 25 years only. Though all the doors are not teak wood, it is wooden doors. The petitioner has not furnished any total valuation in his memo. As per the recently obtained guideline value from the Alandhur Sub Registrar Office, the site value is Rs.6,000/- per sq. ft. Hence all the Sale Deeds are overruled. The memo and the Sale Deeds were enclosed herewith. Counsel appearing for R-2 and R-3 furnished a memo stating the value as 5.20 crores and 6 crores. Mr.Anbazagan counsel for first respondent furnished a memo stating the value as 6 crores. The Engineer approved valuer fixed value as 6 crores and 14 lakhs. The work sheet is herewith enclosed.

But I personally enquired in the local area with the residents. As per my view the site and building will fetch not less than 6 crores and 50 lakhs in the open market. Since as per the guideline and the records available in the Sub Registrar Office, this plot is classified as commercial plot. The parties' valuation, Engineer valuation and my valuation may be taken up for consideration and a value may be fixed by this Hon'ble Court as upset price."

19. A perusal of the Report reveals that the Advocate Commissioner relied on certain Sale Deeds and obtained the guideline value from the Alandhur Sub Registrar Office and mentioned that the suit value is Rs.6,000/- per sq. ft. When the market value as per the Government guideline is Rs.6,000/- per sq. ft., the Advocate Commissioner arrived a conclusion that the Sale Deeds, which were registered for a lesser price need not be taken into account. Accordingly, not considered the Sale Deeds produced before him, wherein the sale deed was executed for a lesser price than that of the guideline value ascertained from the Sub Registrar's Office. Thereafter, the Advocate Commissioner conducted an enquiry in the local area with the residents and he made an assessment that the site and the building will fetch not less than Rs.6,50,00,000/- in the open market. It is classified as commercial plot. Therefore, the Sale Deeds submitted before the Advocate Commissioner was not rightly relied upon. In respect of commercial plots beyond the guideline value, the fair market price is to be assessed, so as to ensure that no prejudice or loss is caused to either of the parties.

20. As far as the market value of the immovable properties, more specifically, in Chennai City limits are concerned, it varies from street to street and area to area. The commercial establishments may fetch for more price and the residential plots may be of lesser price than that of the commercial plots. All these factors are to be considered for fixation of a fair market price.

21. This apart, merely relying upon the Sale Deed is insufficient in view of the fact that on account of high value of the immovable properties in the City, the purchasers are not quoting the real price value in the documents. In other words, the rate fixed may be one and the rate quoted in the Sale Deed may be different. This is the common factor prevailing in the City properties. The people are having the practice of receiving cash regarding the balance sale consideration. These aspects though cannot be discussed with reference to the transactions, the Advocate Commissioner and the Senior Bailiff conducted enquiry with residents of the local area.

22. As far as the present issues are concerned, the Court cannot brush aside the fact that the fair and true market price is to be fixed, so as to ensure that all sharers in the partition suit get a fair amount in respect of

their shares. Thus, the Advocate Commissioner has not relied upon the Sale Deeds produced and he had gone further and conducted an enquiry with the local residents and further arrived a conclusion that it is a commercial plot and on local enquiry, he has stated in the Report that the plot will fetch not less than Rs.6,50,00,000/-.

23. Undoubtedly, the appellant raised an objection with reference to the Advocate Commissioner Report. The main objection is that the Advocate Commissioner has not conducted an enquiry properly and without conducting enquiry, he arrived a conclusion. However, the Trial Court considered such an objection and further appointed the Senior Bailiff, Alandhur District Munsif Court and passed an order to ascertain the market value of the suit property. Therefore, the Trial Court has not only relied upon the Advocate Commissioner's Report, but further conducted an enquiry through the Senior Bailiff of the Alandhur District Munsif Court, who in turn conducted an enquiry and ascertained the value of the property with the help of the Village Administrative Officer. The Senior Bailiff submitted his Report stating that the value of the land and building is at Rs.5,50,00,000/-.

24. This being the exercise done by the Trial Court, this Court do not find that the Trial Court has committed an error in arriving a conclusion. The Trial Court considered the Report of the Advocate Commissioner as well as the Report submitted by the Senior Bailiff and arrived a conclusion that the market value of the suit property is at Rs.6,50,00,000/- and if the same is to be divided into four equal shares, the single value of the share is at Rs.1,62,50,000/-.

25. The right of preemption is to be exercised in a fair manner. The right of preemption cannot be extended, so as to take any undue advantage regarding the immovable properties. Admittedly, the appellant is granted with the right of preemption. However, if the market value is ascertained and fixed by the Court, then he is at liberty to purchase the property from other sharers and deposit their shares in the Court. Contrarily, he cannot go on raise objection with regard to the market value of the suit property in order to prolong and protract the issues and thereby depriving the rights of others from getting their rightful shares. In the event of unwillingness on the part of the appellant, then the Court can go for an open auction and thereafter, divide the shares in accordance with the preliminary decree passed. When the Advocate Commissioner as well as the Senior Bailiff were appointed by the

Court, submitted their Report and based on their Reports, the Trial Court fixed the market value of the property as Rs.6,50,00,000/-, then there is no reason for this Court to interfere with such fixation and if the appellant is interested in purchasing the property, he is at liberty to deposit the amount as stipulated in the judgment and decree of the Trial Court, failing which the property should be sold out under Section 2 of the Partition Act in the public auction by appointing an Advocate Commissioner without any undue delay.

26. The learned counsel appearing on behalf of the appellant made a submission that the appellant has already deposited a sum of Rs.2,50,00,000/- in the credit of O.S.No.288 of 2005. Thus, the appellant is at liberty to deposit the balance amount as stipulated in the judgment and decree of the Trial Court in I.A.No.293 of 2014 in O.S.No.288 of 2005 dated 23.04.2019, on or before 30.04.2020, failing which the suit property shall be sold out under Section 2 of the Partition Act, 1893 in a public auction by appointing an Advocate Commissioner and no further time is to be granted for the appellant in this regard.

27. Accordingly, this Court is of the considered opinion that there is no infirmity or perversity in respect of the conclusion arrived by the Trial Court and the judgment and decree dated 23.04.2019 passed by the learned Sessions Judge, Mahila Court, Kancheepuram District at Chengalpattu in I.A.No.293 of 2014 in O.S.No.288 of 2005 is confirmed and consequently, the present appeal suit, namely, A.S.No.735 of 2019 stands dismissed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/
Sub Asst. Registrar

Svn
To
The Sessions Judge,
Mahila Court,
Kancheepuram District at Chengalpattu.

copy to

The Section Officer
VR Section
High Court
Madras

+1 cc to Mr.N.Kumar Rajan Advocate sr12457
+4 ccs to Mr.P.S.Venkata Subramanian Advocate sr12476
+1 cc to Mr.S.Srinivasan Advocate sr12458

A.S.No.735 of 2019

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