

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 08TH DAY OF MARCH 2022

THE HON'BLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

C.S.No. 327 of 2017

and

A.No. 1726 of 2020

1. Mr. Venkat Rao,
S/o. Late. N.V.V. Sathyanarayana,
16/2, Ranjith Road,
Kotturpuram,
Chennai - 600 085.
2. Ms. Satyavathi,
D/o. Late. N.V.V. Sathyanarayana,
No.8, Crescent Street,
"Anu Sai Villa", R.A.Puram,
Chennai - 600 028.

... Plaintiffs/Applicants
(C.S.No.327 of 2017 and
A.No.1726 of 2020)

-Vs-

Mr. N.V.S. Murthy,
S/o. Late. N.V.V. Sathyanarayana,
No.31, Giri Road, T.Nagar,
Chennai - 600 017.

... Defendant/Respondent
(C.S.No.327 of 2017 and
A.No.1726 of 2020)

C.S.No. 327 of 2017 :-

Civil Suit praying that this Hon'ble Court be pleased to pass a decree
and judgment against the Defendant :

a) for passing of a preliminary decree for partition and separate possession of the suit Schedule mentioned properties and allot 1/3rd share each, in all 2/3rd share to the Plaintiffs herein.

b) for appointing an Advocate Commissioner to divide the suit Schedule mentioned properties by metes and bounds and allot 1/3rd share each, in all 2/3rd share over the suit Schedule mentioned properties to the Plaintiffs 1 & 2 herein.

c) for grant of mesne profits and costs of this suit.

A.No. 1726 of 2020 :-

Application praying that this Hon'ble Court be pleased to pass a final decree and allot 1/3rd share each over Item I to IV of the Suit Schedule mentioned properties in favour of the Plaintiffs.

This Civil Suit along with this application coming on this day before this court for hearing, **The Court made the following order:-**

The suit was filed for partition and preliminary decree was passed on 26.05.2020 and on the strength of the preliminary decree passed by this Court, the present application in A.No.1726 of 2020 is filed for passing final decree.

2. For the purpose of ascertaining the physical features of the properties which are the subject matter of the suit, Mr.Sharath Chandran, learned Advocate Commissioner was appointed to visit the suit properties and to submit a report thereof. Accordingly, the learned Advocate Commissioner had visited the properties in the presence of the parties and filed a report dated 26.03.2021. The report of the Advocate Commissioner was also served on the plaintiffs, defendant as well as the respective Advocates.

(a) The net value of the estate works out to Rs.18,22,72,200. The value of the 1/3rd share of each of the parties works out to Rs.6,07,57,400.

(b) While making the suggestions for a division, the learned Advocate Commissioner have attempted to equalize the shares of all parties to the extent possible, keeping in mind the optional utilization of the assets and minimum inconvenience.

OPTION - 1

Property	Allottee	Value
Giri Road	Mrs. Sathyavathi	Rs.5,66,67,200/-
Crescent Street Puttaparthi Flat	Mr.N.V.S. Murthy	Rs.5,75,00,000/- Rs.5,50,000/-
V.G.P. Golden Beach	Mr.Venkat Rao	Rs.6,75,55,000/-

(i) Mrs.Satyavathi is already the absolute owner of 1/2 of the land and building in Giri Road. The building is about 50 years old, and is incapable of vertical division so as to allot exclusive 1/2 share to any other party. Having regard to the nature of the asset, and the fact that one co-sharer is already the owner of 1/2 share, the optimal utilization of this property is possible, if it is allotted to the share of the 2nd plaintiff.

(ii) To compensate the defendant, who currently resides in the ground floor of the house at Giri Road, another city property i.e., the flat in Crescent Street, R.A.Puram [which is approximately 2650 sqft] can be allotted to him. The Puttaparthi property can also be allotted to the defendant to narrow the disparity in the final value of the shares.

(iii) It is observed by the learned Advocate Commissioner that the first plaintiff already has a flat in the apartment complex at Crescent Street, R.A.Puram. Therefore, he can be allotted the land at V.G.P. Golden Beach. The learned Advocate Commissioner explored the possibility of allotting some portion of it to the defendant to equalise the shares, as the difference between the properties allotted to the 1st plaintiff and the defendant is about 94.5 lakhs (approx). However, keeping mind the dimensions of the

property, any such allotment would eventually result in an "L" shaped plot which would diminish the overall value of the property. Thus, the learned Advocate Commissioner prayed this Court that in the alternative, the 1st plaintiff may be directed to pay the defendant an owelty amount, if necessary, to equalise the shares.

OPTION-2

Property	Allottee	Value (Rs)
Giri Road Puttaparthi Flat	Mrs.Satyavathi	Rs.5,66,67,200/- Rs.5,50,000/-
Crescent Street	Mr.Venkat Rao	Rs.5,75,00,000/-
V.G.P. Golden Beach	Mrs.N.V.S.Murthy	Rs.6,75,55,000/-

(iv) The reasons for allotting the Giri Road flat to Mrs.Satyavathi have been set out in sub-para (i). In addition, the Puttaparthi flat may also be allotted to her to equalize the share.

(v) As Mr.Venkat Rao already has a flat in Crescent Street and the flat in the first floor forming the subject matter of this suit, which is also currently in his possession, can also be allotted to him. The defendant can be allotted the property at V.G.P. Golden Beach. Though the property value allotted to the share of Mr.Murthy is higher than that of the other two sharers, the learned Advocate Commissioner opined that this would

adequately compensate him for the allotment of two city properties to the other co-sharers.

OPTION - 3

Property	Allottee	Value (Rs)
Giri Road Puttaparthi Flat	Mr.N.V.S.Murthy (Defendant)	5,66,67,200 5,50,000
Crescent Street R.A. Puram	Mr.Venkat Rao (1st Plaintiff)	5,75,00,000
V.G.P. Golden Beach	Mrs. Sathyavathi (2nd Plaintiff)	6,75,55,000

(vi) This option would maintain the *status quo* with respect to the Giri Road property. Mrs. Sathyavathi, being the absolute owner of 1/2 share in the land and building, also has a separate access from Giri Road for the first floor portion of the building, which is currently in her possession. A vertical division of this house is not structurally possible. While this option is attractive, as it does not disturb the possession of the defendant and the 2nd plaintiff, the difficulty lies in the fact that the land cannot be divided equally. As the share of the parties over the land cannot be determined for the present, this may result in some ambiguity in future when the building is demolished.

(vii) The Puttaparthi property may also be allotted to the defendant to equalise the share.

(viii) Mr.Venkat Rao is already the owner of a flat in Crescent Street, R.A.Puram. The suit Item No.2 may, therefore, be allotted to him, as he is already in possession of the same.

(ix) The land at V.G.P. Golden Beach may be allotted to the 2nd plaintiff Mrs.Sathyavathi. The learned Advocate Commissioner observed that this Court may consider the possibility of asking her to pay some owelty amount to the other co-sharers, if it is deemed necessary, so as to minimise the disparity in values, and effectuate an equitable allotment amongst co-sharers.

OPTION - 4

Property	Allottee	Value
Giri Road Puttaparthi Flat	Mr.N.V.S. Murthy	Rs.5,66,67,200/- Rs.5,50,000/-
Crescent Street	Mrs.Satyavathi	Rs.5,75,00,000/-
V.G.P. Golden Beach	Mr.Venkat Rao	Rs.6,75,55,000/-

(x) If the plaintiffs are agreeable, the Crescent Street property and the V.G.P. property can be swapped and allotted to the 2nd and 1st plaintiffs as indicated above. However, insofar as the T.Nagar property is concerned,

the view of the learned Advocate Commissioner is that his view in para (vi) would equally apply here as well.

3. Today, when the matter is taken up for hearing, it is four options were suggested by the learned Advocate Commissioner in his report. Option No.3 would be workable and therefore, the learned counsel for the parties prayed for passing final decree, as suggested by the learned Advocate Commissioner in his report dated 26.03.2021.

4. Having regard to the submissions of the learned counsel for both sides, there will be a final decree in terms of the preliminary decree passed by this Court, as mentioned below:-

Property	Allottee	Value (Rs)
Giri Road Puttaparthi Flat	Mr.N.V.S.Murthy (Defendant)	5,66,67,200 5,50,000
Crescent Street R.A. Puram	Mr.Venkat Rao (1st Plaintiff)	5,75,00,000
V.G.P. Golden Beach	Mrs. Sathyavathi (2nd Plaintiff)	6,75,55,000

5. The 2nd plaintiff shall to pay owelty amount to the other co-sharers so as to minimise the disparity in values, and effectuate an equitable allotment amongst co-sharers.

6. This application filed by the plaintiffs is ordered and a final decree is passed in the Civil Suit in the above terms. There shall be no order as to costs.

Sd./- V.B.S.J.,
08.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.