



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 29.09.2020

Pronounced on: 18.12.2020

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

C.R.P(MD) No. 976 of 2012

and

M.P(MD)Nos. 1 of 2012, 1 and 2 of 2014

WEB COPY

1. Meenakshi Ammal
2. Krishna Leela
3. Senthil Murugan
4. Mariappan
5. Latha
6. Sundari
7. Subbulakshmi

.. Petitioners/Respondents/Defendants

Vs.

Jeyabalan

.. Respondent/Petitioner/Plaintiff

PRAYER: The Civil Revision Petition is filed Under Section 115 of Civil Procedure Code against the fair and decreetal order dated 19.03.2012 passed in I.A.No.549 of 2011 in O.S.No.145 of 2011 on the file of the Subordinate Court, Thoothukudi.

For Petitioners	: Mr.M.Saravanan
For Respondent	: Mr.C.Dhanaseelan

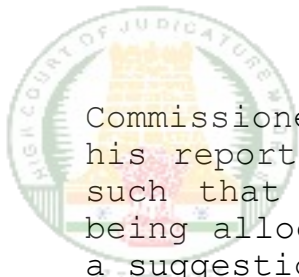
O R D E R

This Civil Revision Petition is preferred by the defendants in O.S.No.145 of 2011 and the respondents in I.A.No.549 of 2011. They challenge the order passed in I.A.No.549 of 2011 by the trial Court appointing a Commission for sale of the suit properties pursuant to a decree passed in a partition suit.

2. The suit was for partion of the estate of a certain Mookan Chettiyar. He was married twice, and the plaintiff is his son born to him through his first wife, and the suit was laid against Mookan Chettiar's second wife and the children born to them.

3. Heard both sides. In all there are five items of properties involved in the suit. The Court has passed a preliminary decree declaring the plaintiffs' 1/8th share in items Nos.1 to 3, and 1/4th share in Item Nos.4 and 5.

4. While so, the defendants have filed I.A.No.84 of 2007 for passing final decree. In this proceedings the Court has appointed a



Commissioner. The Commissioner had visited the property and filed his report indicating that the nature of each of the properties is such that none of the properties can be conveniently divided for being allocated to the share of the plaintiff. However he has made a suggestion based on the valuation of the properties. According to him, at the time he valued the properties, the valuation of the share of the plaintiff/respondent in all the items of the properties was Rs.3,12,500/-. And, in terms of his valuation Item No.3 would fetch Rs.3.0 lakhs, and therefore, he suggested that entire item 3 property can be allotted to the plaintiff, and as to the balance value he might be compensated by the other defendants paying Rs.12,500/-.

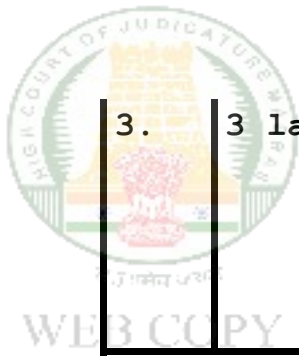
5. Subsequently, the plaintiff has filed I.A.No.549 of 2011 for the sale of the properties under Section 4 of the Partition Act. In his affidavit filed in support of the petition, he has averred that since the Commissioner has reported that the properties could not be conveniently divided for a metes and bounds partition of each of the items of properties to accommodate his shares in them, the properties should go for sale. This was allowed by the trial Court. Challenging the same, the defendants have approached this Court.

6. It is seen that on an earlier occasion this Court has attempted to bring about some kind of understanding between the parties, and has required the parties to provide current valuation of the properties. In response to that, the plaintiff/respondent herein has filed his valuation, dated 15.12.2019. The valuation given by him is as follows:

Item Nos.1, 2 and 3

The respondent's share is 1/8th

Item No	Plaint Value (in Rupees)	Government Rate at present (in Rupees)	Market Rate (in Rupees)	1/8 th Share of the Respondent
1.	5lakhs	152.809 sq.mt*5380 = 8,90,881 Building Value = 6,09,119 Total value =15,00,000	30 lakhs	3.75 lakhs
2.	5 lakhs	404.682sq.mt*6365 =25,75,803 Building value = Nil	50 lakhs	6.25 lakhs



3.	3 lakhs	Plot No.13 & 14 163.896sq.mt*2345=3,84,336 3,84,336*2 =7,68,672	8 lakhs	1 lakh
Total			88 lakhs	11 lakhs

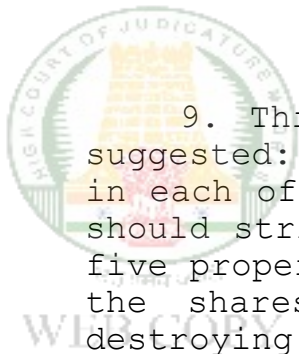
Item Nos.4 and 5

The respondent's share is 1/4th

Item No	Plaint Value (in Rupees)	Government Rate at present (in Rupees)	Market Rate (in Rupees)	1/8 th Share of the Respondent
4.	3 lakhs	28.112 cents vacant site 1137.642 sq.mt*1340=15,24,441	1 crore	25 lakhs
5.	3 lakhs	71.63 cents vacant site 1,898.739 sq.mt*1675=48,55,388/-	40 lakhs pathway has been fully encroached by 3 rd parties	10 lakhs
		Total	1,40,00,000	35 lakhs

7. Based on the valuation, this Court tried to arrive at a consensus between the parties, so that parties might take some items of the properties without disturbing the integrity of any of the properties, based on the valuation of each of the properties as per the valuation statement of the respondent extracted in paragraph no.6 above. The parties, however, could not arrive at consensus.

8. Therefore, this court now proceeds to deal with the correctness of the order of the trial court passed in I.A.No.549 of 2011 by which the trial Court has directed the sale of the suit properties. If the commissioner's report is considered, even though the Commissioner has stated that none of the properties can be conveniently divided to accomodate the shares of the parties in each of them, yet, he has given an alternate option by which the 3rd item can be allotted to the plaintiff/respondent herein as representing his entire share in all the items based on the valuation of the properties. Here lies the key to resolve the case.



9. This Court is in agreement with what the Commissioner has suggested: If the shares of all the co-sharers cannot be accommodated in each of the suit properties, then it is important that the court should strive to allot such of the property or properties among the five properties which may approximately represent the total value of the shares of the party or parties. In other words, without destroying the integrity of any of the items of the properties, if it is possible to allocate any property in its entirety to any of the party/parties proportionate to the value of his/their, the Court should endeavour it first. To rush for sale of the properties without attempting the same may be detrimental to the interest of other parties concerned.

10. Here, only the plaintiff seeks sale of all the properties, but not the others. And, he has only a minor share in all the items of the properties when compared to other sharers.

11. In conclusion, this Court does find a need to interfere with the order of the trial Court, for its approach to rush for sale without exploring other possibilities may not be the right approach.

12. Hence this Court sets aside the order in I.A.No.549 of 2011 in O.S.No.145 of 2011, dated 19.03.2012, passed in I.A.84 of 2019 on the file of the Subordinate Court, Thoothukudi. The trial court shall now endeavour to dispose of I.A.No.84 of 2019 in terms of the valuation of the property provided by the plaintiff. The Court may also take into account the valuation report filed by the plaintiff before this Court, which is extracted in paragraph 6 above. The defendants will now have an opportunity to file their valuation, and if they so file it, it may also be considered. Taking the best value which both sides may present before the Court, the Court may make an allotment of the properties in the manner outlines above. It is open to the court also to appoint a commission for ascertaining current valuation of the properties, if it needs one. The entire exercise may be completed within a period of six months.

13. In conclusion, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

CM



To

The Subordinate Judge, Thoothukudi.

Copy to: The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2)

+1cc to Mr.R.pon Karthikeyan, Advocate, SR.No.26776.

C.R.P (MD) No. 976 of 2012
and
M.P (MD) No. 1 of 2012, 1 and 2 of 2014
18.12.2020

SV2 (CO)
CS (05.01.2021) 5P 5C