IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 06.10.2021

Delivered on : 22.10.2021

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

A.Nos.2008 to 2010 of 2020
and A.Nos.6321 and 6322 of 2019
in C.S.No.240 of 2019

1.Mrs.C.S.Geethalakshmi
2.Mrs.Radhika Santhanakrishnan
3.Mrs.Vasanthi Udayasuryan
4.Ms.C.S.Sunitha .... Applicants in A.No.2009 of 2020 /Defendants

vs

Mrs.R.Selvi .... Respondent in A.No.2009 of 2020 / Plaintiff

Prayer in A.No.2009 of 2020 : Application filed for a direction for sale of the Schedule 'A' Property by public auction by appointing an Advocate Commissioner and direct the Advocate Commissioner to deposit the sale proceeds to the credit of the C.S.No.240 of 2019 after conclusion of the sale for passing appropriate orders with regard to distribution of the sale proceeds.

For Applicants : M/s.Shivakumar & Suresh

For Respondents : M/s.R.Rajesh Kumar

O R D E R

The applicants are the defendants in the Suit in C.S.No.240 of 2019. The respondent is the plaintiff in the Suit. In the above Suit, this Court has passed a preliminary decree for partition on 19.06.2019. The preliminary decree reads as follows:

> *"That 1.R.Selvi, 2.C.S.Geethalakshmi, 3.Radhika Santhanakrishnan alias S.Radhika and 4.Vasanthi Udayasuryan, the plaintiff and defendants 1 to 3 herein shall be entitled to 1/4th share of the suit properties more fully set out in the Schedule of the plaint".*

2. After granting of preliminary decree, this Court directed that the parties are at liberty to apply for final decree. Subsequently, the applicants herein had filed A.No.6322 of 2019 to pass final decree for partition of the Suit Schedule 'A' property by metes and bounds. Along with the said application, another application in A.No.6321 of 2019 was filed by the applicants for appointment of Advocate Commissioner to inspect the Suit Schedule 'A' Property and divide the same by metes and bounds into four shares and allot the shares to the applicants/defendants 1 to 3 and the plaintiff.

3. In response to the application filed by the applicants, this Court has appointed an Advocate Commissioner to inspect the Schedule 'A' property and file his report, vide order dated 06.11.2019. The Advocate Commissioner, after giving notice to the parties, inspected the property on 16.11.2019 and filed his report dated 20.11.2019 before this Court. The plaintiff, being not satisfied with the report of the Advocate Commissioner, has filed her objections dated 20.11.2019. The objection of the plaintiff was that the Advocate Commissioner's report sated that the Suit Property cannot be equally divided due to the nature of physical features and it was impossible to fairly divide the Suit Property into four equal shares, by equal value by metes and bounds. The Advocate Commissioner concluded that the sale of the property and distribution of the sale proceeds equally would be more beneficial for all the shareholders.

4. The learned counsel appearing for the respondent/plaintiff strongly objected to the conclusion reached by the Advocate Commissioner and therefore, requested this Court to review the entire matter afresh for the reason that the plaintiff / respondent strongly believes that the Schedule

Property can be divided equally. The plaintiff has sentimental value to the property, as she is residing in the property for several years and being an ancestral one. According to the learned counsel for the plaintiff / respondent, valuation was also not properly done by the Advocate Commissioner and therefore, the plaintiff was prevented from buying out the shares of the other co-sharers of the property.

5. Taking note of the above objections, this Court appointed an another Advocate Commissioner on 19.04.2021. The second Advocate Commissioner, after inspecting the property, has filed a detailed report dated 29.07.2021. As far as the second Advocate Commissioner's Report is concerned, it was concluded that the property can be divided as per the plan provided by the Valuer, but considering the market value after the division, the value of the land as a whole would be diminished by as much as 36%. The second Advocate Commissioner reasoned as *"inevitable conclusion is that the subject property is capable of divisibility but with losing its commercial real estate value"*. The value of the property was also assessed by the Advocate Commissioner as Rs.11,54,00,000/- as against the earlier valuation of the First Advocate Commissioner at Rs.8,81,000/-.

6. The plaintiff / respondent herein has once again come out with her objections to the second Advocate Commissioner's report also both on the valuation arrived at and also on the conclusion that if the property is divided, it will lose its real estate value to the extent of 36%, as indicated above. The objection regarding the valuation of the property stated in paras 3 and 4 are extracted hereunder:

> *"3. I respectfully submit that the Valuation of other Mada Streets are comparably similar in valuation. In sale deed dated 22/11/2018 registered as Document No.3668 of 2018 at SRO Mylapore UDS of 113 Sq Ft. along with 249.55 Sq ft constructed portion was sold for a sum of Rs.13,03,600/- at No.11, Kapaleshwarar South Mada Street, Mylapore, Chennai and thus the value of the said property is Rs.11538/- per Sq ft even without excluding the value of construction. Whereas the valuer and the advocate commissioner has fixed Rs.20,000/- per Sq ft for the schedule property, which abnormally very high.*
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> *4. I respectfully submit that earlier Advocate Commissioner had fixed Rs.8,81,00,000/- (Rupees Eight Crore Eighty One Lakhs Only) whereas the 2nd Advocate Commissioner has fixed Rs.11,54,00,000/- which is 31% higher in valuation as compared earlier valuation. Within a span of 2 years the schedule property has not seen any developments, in*

fact as admitted by the Valuer the valuation has come down due to Covid-19 and lack of money in the market."

7. The learned counsel appearing for the respondent/plaintiff reiterated his objections once again and stated that the basis on which the valuation arrived at was erroneous and therefore, requested this Court that the valuation may be determined by letting in evidence, oral and documentary by the parties to the Suit. He also requested the Court to reject the Advocate Commissioner's report as such.

8. The learned counsel appearing for the applicants/defendants would submit that the second Advocate Commissioner's Report clearly pointed out the fact that divisibility is certainly not beneficial to all the parties, including the plaintiff. Although the earlier Advocate Commissioner's Report had concluded that it was not possible of divisibility, the second Advocate Commissioner's Report held that though divisibility was possible, the property will lose more than 1/3rd of its real estate value. The learned counsel for the applicants/defendants therefore submitted that on one hand the plaintiff is not willing to buy out the share of the other co-sharers, not

expressed any inclination towards that and on the other hand coming up with repeated objections to every Advocate Commissioner's Report resulting in the property being entangled in the prolonged litigation, depriving all the shareholders from enjoying the fruits of the joint family property. If the property is sold at higher valuation as assessed by the second Advocate Commissioner, the same would enure the benefit to all the shareholders including the plaintiff herself, as she would be getting more money in the bargain.

9. The plaintiff on the one hand keep questioning the valuation and on the other, refusing to come to any settlement towards passing of final decree equitable to all the shareholders concerned. The learned counsel for the applicants/defendants requested that the present application may be allowed and an Advocate Commissioner may be appointed to conduct public auction for sale of the Schedule 'A' property and deposit the sale proceeds to the credit of C.S.No.240 of 2019.

10. This Court has considered the submissions of the learned counsels and perused the reports of the both Advocate Commissioners.

11. The second Advocate Commissioner's Report dated 29.07.2021 appears to be well founded, as it has covered all the aspects that are relevant to the purpose for which he was appointed. The objections placed on behalf of the plaintiff to the report are devoid of merits and substance, but intended to frustrate the other co-sharers' interest in the property. In order to expose how hollow the objections of the plaintiff, it is useful to extract the entire report of the second Advocate Commissioner :

"APPOINTMENT OF VALUER

2. As per the order of this Hon'ble Court, the Advocate Commissioner has engaged the services of a registered and competent surveyor/ valuer to seek his report from his point of view. The Advocate Commissioner engaged the services of one Mr.R.S.Baabu of M/s. Hitech Valuers, who is a registered valuer under the Companies Act, 2013 with Registration No. IBBI/RV/08/ 2018/10297, on 10.07.2021 to maintain objectivity and impartiality. The prior concurrence of all the parties and their respective advocates was sought for the appointment of the above named valuer and accordingly all the parties and their respective counsel accepted for the engagement of his services for the above said purposes.

INSPECTION

3. Notice dated 10.07.2021 was issued to all the parties *and their respective advocates by registered post for the inspection to be held on the mutually agreed date of 17.07.2021. The notices were sent by E-Mail dated 12.07.2021 also. The inspection of the subject property was carried out on 17.07.2021 from 11:10 a.m. by the Advocate Commissioner assisted by Ms. L.K. Rita, Advocate and Mr. R.S.Baabu, the Valuer, assisted by Mr. Mohan, in the presence of Mr. R.Rajesh Kumar, counsel for the plaintiff, Mrs. Selvi, the plaintiff, her son Dr.Prashant and her husband S.Rajendran. The defendants were represented by their Advocates Mr. K. Balamurali and Mr. Kandeeban, Mrs.Vasanthi, the 3rd defendant and Mr.Udayasuryan, husband of Mrs.Vasanthi who claimed to represent the 1st and* ***2nd*** *defendants. The inspection of the entire property was done thoroughly. Measurements were taken of the entire subject property. The existing physical structure was inspected. Photographs and video recordings were taken in the presence of all the above named. The inspection was concluded at about 12:15 p.m. on 17.07.2021 at the subject property.*

VALUATION

4. The report of the Valuer dated 28.07.2021 is enclosed herewith. With respect to the assessment made by the Valuer of the approximate and realistic market value of the property as on date, it is submitted that the extent of land is 5771 square feet *as per the documents and it is 5992.72 square feet as per the actual measurements. The valuer has taken into consideration several aspects like the characteristics of the site, location, planning and zoning parameters, the market position and has adopted the international valuation standards and valuation approach to arrive at an approximate conclusion. He has also considered the positive and negative factors and comparable sale instances of two properties which reflected the actual transaction that took place between the parties and also the sale transactions that took place in all the streets surrounding the Kapaleeswarar temple. The relative advantages and disadvantages of the subject property was also considered to arrive at the value. The valuer has concluded that as on date it is safe to assess the market value of the subject property as being Rs. 4,80,00,000/-(Rupees Four Crores Eighty Lakhs) per ground. Accordingly the value of the land comes to about Rs. 11,54,00,000/- (Rupees Eleven Crores Fifty Four Lakhs).*

5. I verified the sale transactions that took place in all the surrounding streets of the Kapaleeswarar temple in the past several years, at least from 2009 to 2021, through the Government Registration Department web-site and it was found that the sale transactions generally reflected the values of the land as given in the guideline value and there was no deviation from the guideline value as such for the purposes of registration. The present guideline value for the suit property is

Rs.7035/- per sq.ft. Considering all the above aspects the conclusion arrived at by the Valuer of the market value of the land being Rs. 11,54,00,000/- (Rupees Eleven Crores Fifty Four Lakhs) seems to be a fair conclusion. It is to be noted that any high value transaction of land involves other statutory payments like capital gains tax, registration fee, stamp duty etc. Personal interactions was also had by the Valuer with high value real estate dealers and their inputs were also taken into account. Hence the conclusion with regard to the market value can be taken as a fair assessment for the subject property as on date.

6. With regard to the divisibility of the property it can be said that the property can be divided as per the plan provided by the Valuer. The property has been divided in such a manner that due weightage has ben given to the front portion, the second portion and the remaining two portions. It is also important to note that since the property is situated in a continuous zone, wall to wall construction is permitted. If the property is divided for residential purpose then a minimum of 3.3. ft passage is sufficient as per the present rules. However if it is intended to have 8 dwelling units or construction upto 600 square meters of commercial building and if the length of the passage does not exceed 80 meters then the passage should be about 3.6 m wide that is about 12 feet wide as per the Tamil Nadu Combined Development and Building Rules, 2019. In *view of this requirement the passage of 12 feed width is considered and the property is divide into four shares accordingly to maximize its value. But when considering the market value after the division, the value of the land as a whole is diminished by as much as 36%. Hence the inevitable conclusion is that the subject property is capable of divisibility but with losing its commercial real estate value.*

7. The final conclusion in Para 11 of the Valuer's report that the divisibility of the property is not possible without losing its commercial real estate value holds good as of today. However the Government of Tamilnadu has declared that it has made ready a master plan to develop the area in and around the Kapaleeswarar Temple. This announcement is reported in the Hindu newspaper dated 27.07.2021. This development which the Government has proposed to initiate on a grand scale will certainly have an impact on the subject property also as the development contemplated is within the zone where the subject property is situated and hence there is a possibility of the market value increasing substantially on completion of the development works.

8. Further the Advocate Commissioner is of the opinion that, considering the location and extent of the property, it cannot be merely valued by its market value alone and there is an issue regarding the intrinsic value while possessing and *enjoying the property without equating it as a commodity in the real estate market. In the words of the Greek economist Mr. Yanis Varoufakis, as expressed in his famous book "Talking to my daughter about the Economy", the value of a commodity is always not its exchange value. The common interpretation of the people is that higher the exchange value higher the experience value. It is not so and it is not true. It is a concept developed by the market economy. Experiential value is different and the exchange value is different. The value of experiencing the land as compared to the exchange value cannot be always valued by an exchange value.*

9. The report and the enclosures, which may be read as part and parcel of the report, are placed for consideration before this Hon'ble Court.

10. The warrant stands duly executed as per the orders of this Hon'ble Court dated 19.04.2021 and the original warrant is returned herewith along with this report."

12. From the above, it could be seen that though the Advocate Commissioner has concluded that it was possible to divide the property, but fairly added that the property would lose its market value to the extent of 36%. In the face of such high percentage of loss of value of the land, this

Court finds it is inequitable to still divide the property, detrimental to the monetary interest of the majority sharers. In the teeth of the above report, dividing the property would inevitably result in all the four shareholders losing substantial amounts that are realisable from the sale of the property.

13. As rightly contended by the learned counsel for the applicants/defendants in the Suit, the plaintiff cannot be allowed to question the Advocate Commissioners Report unless solution is offered, which is acceptable to all the parties concerned. Merely placing objections and questioning the valuation and conclusion reached by the Advocate Commissioners not once, but twice, the plaintiff is only acting against the interest of all other three shareholders. In fact, in the process she is acting against her own interest. This Court is unable to countenance the so called objections raised against the second Advocate Commissioner's Report in the face of a detailed scientific valuation which has been undertaken by the second Advocate Commissioner and also his conclusion appears to be well founded.

14. This Court, under Section 2 of the Partition Act, 1893, is empowered to direct sale of the property and resultant distribution of proceeds to all the shareholders. Section 2 of the Partition Act, 1893 reads as follows:

> ***"2.Power to court to order sale instead of division in partition suits**.—Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds."*

15. This Court, in terms of the above quoted provision, is fully convinced and persuaded to hold that the division of Schedule Property does not secure the interests of the shareholders including the plaintiff and the sale of the property, disbursement of the sale proceeds would alone be beneficial to all the shareholders.

16. Having concluded as above, this Court has no hesitation in holding the objections filed by the plaintiff to the Advocate Commissioner's report, are completely bereft of any merit and substance. When the preliminary decree has been passed as early as on 19.06.2019, passing of final decree cannot be unduly delayed at the instance of one shareholder, who appear to be bent on stalling the process of final decree to be granted by this Court. The obdurate propensity exhibited by the plaintiff against the interest of other three shareholders cannot be allowed to prevail, as it is detrimental to the interest of other co-sharers towards their rightful realisation of the fruits of the sale proceeds from the subject property.

17. For all the aforesaid reasons, this Court has no hesitation in allowing the application in A.No.2009 of 2020 filed by the applicants/defendants. This Court hereby appoints Mr.K.Elangoo (Phone No.9940641919), as the Advocate Commissioner to conduct public action for sale of Schedule 'A' property on the following conditions:

(i) The parties are directed to handover the copies of the relevant documents relating to the property to enable the Advocate Commissioner to conduct public auction for sale of the property.

(ii) The learned Advocate Commissioner shall call for wide publication for the sale of the property, in any one of the leading Tamil and English dailies, giving 15 days time.

(iii) The upset price for the suit property shall be fixed by the Advocate Commissioner by taking note of the valuation arrived at by the second Advocate Commissioner appointed by this Court.

(iv) The Advocate Commissioner in the process shall ensure that the property gets maximum price possible in the market.

(v) It is open to the Advocate Commissioner to call for the request from various bidders.

(vi) The offers should be kept in a sealed cover along with the report of the Advocate Commissioner.

(vii) The intending purchasers are permitted to see the copies of the documents relating to the property available with the Advocate Commissioner.

(viii) The Advocate Commissioner is directed to open the sealed covers of the bidders of the date and time fixed in the advertisement to be effected in the presence of all the bidders.

(ix) The Advocate Commissioner is also at liberty to take any professional assistance in execution of his assignment towards sale of the property and if any professional assistance being engaged by the Advocate Commissioner, the professional charges shall also be borne by the parties equally.

(x) Subject to the conditions imposed, the Advocate Commissioner may file his report before this Court for confirmation of the sale in favour of the highest bidders.

(xi) The initial remuneration for the Advocate Commissioner is fixed at Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand Only). The Advocate Commissioner shall commence the process as expeditiously as possible and complete the same within a period of four months from the date of commencement of his assignment.

(xii)Initial remuneration payable to the Advocate Commissioner is to be borne equally by all the four parties and the same is payable when the parties receive initial notice from the Advocate Commissioner on commencing of his assignment under the Warrant.

(xiii) The Advocate Commissioner is also entitled to be paid all expenses that he may incur towards calling for public auction, completion of the sale and the expenses is to be borne by the parties equally.

(xiv) The parties are directed to cooperate with the Advocate Commissioner for conclusion of the sale and make available original title deeds of the property where necessary and after conclusion of the sale, the sale proceeds shall be deposited before this Court to the credit of C.S.No.240 of 2019 and thereupon, the parties are at liberty to approach this Court for apportionment of the sale proceeds into equal shares among themselves.

(xv) Should the Advocate Commissioner require any clarification in the discharge of assignment bestowed upon him, he may approach this Court for the same.

18. Consequently, connected applications in A.Nos.2008 and 2010 of 2020 and A.Nos.6321 and 6322 of 2019 are closed.

22.10.2021

Jvm

Internet : Yes

V.PARTHIBAN, J.

Jvm

Order in

A.No.2009 of 2020

in C.S.No.240 of 2019

22.10.2021