

Order dated 01.11.2021 in
A.Nos.3968, 3969 and 3970 of 2021
in O.P.No.104 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.11.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application Nos.3968, 3969 and 3970 of 2021

in

O.P.No.104 of 2020

1. Mrs.Gayathiri.S., W/o Late Sudarsan

2. Ramamani, W/o Souri Rajan

.. Applicants in all the applications/Petitioners in O.P.No.104 of 2020

Judge's Summons issued under Order XIV Rule 8 of the Original Side Rules of this Court, read with Section 151 of the Code of Civil Procedure (CPC), and Applications are filed praying to:

Application No.3968 of 2021 in O.P.No.104 of 2020: To amend the valuation of Item 1 in the schedule to the O.P. to read as Rs.62,31,500/- instead of Rs.1,24,63,000/-.

Application No.3969 of 2021 in O.P.No.104 of 2020: To permit the applicants/petitioners to use the entire sale proceeds of Item No.1 of the Schedule to the O.P. to discharge the loan amount due to Union Bank of India, Thiruvannamiyur Branch, without insisting on deposit of minors' shares.

Application No.3970 of 2021 in O.P.No.104 of 2020: To declare the

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share of minor Kalyan Sudarsan and Dhanushree Sudarsan in Item 2 to the Schedule to the O.P., as 1/8th each instead of 1/4th each.

For applicants/petitioners : Mr.R.Parthasarathy

ORDER

Application No.3968 of 2021 in O.P.No.104 of 2020: is filed to amend the valuation of Item 1 in the schedule to the O.P. to read as Rs.62,31,500/- instead of Rs.1,24,63,000/-.

Application No.3969 of 2021 in O.P.No.104 of 2020: is filed to permit the applicants/petitioners to use the entire sale proceeds of Item No.1 of the Schedule to the O.P. to discharge the loan amount due to Union Bank of India, Thiruvananthapuram Branch, without insisting on deposit of minors' shares.

Application No.3970 of 2021 in O.P.No.104 of 2020: is filed to declare the share of minor Kalyan Sudarsan and Dhanushree Sudarsan in Item 2 to the Schedule to the O.P., as 1/8th each instead of 1/4th each.

2. The first applicant has sworn to the affidavits filed in support of these applications. She being the mother and natural guardian of the minors, has filed these applications to amend the order dated 08.01.2021 passed in O.P.No.104 of 2020, as there necessitated certain errors in the Original Petition (O.P) originally filed, resulting in the passing of the order dated 08.01.2021.

3. Earlier, Original Petition in O.P.No.104 of 2020 was filed on 07.02.2020, under Section 8(2)(a) of the Hindu Minority and Guardianship Act, 1956, read with Order XXI Rules 2 and 3 of the Original Side Rules of the Madras High Court, 1956, praying to allow the first applicant/first petitioner to sell the quarter shares each of the schedule properties on behalf of both the minors and deposit the money so realized from sale of the property(ies), after settling the dues and debts of the husband (since deceased) of the first petitioner, in an account in a Nationalised Bank for their benefit.

4. The schedule of property is as follows:

<i>Sl.No.</i>	<i>Description of Property</i>	<i>Approximate Value</i>	<i>Person in possession of the property</i>
1	First floor of building measuring 583 Sq.Ft. and undivided 1/2 (half) share of land out of total extent measuring 1339 Sq.Ft., with fixtures, fittings, TNEB Electrical Connection and other amenities at Plot No.9, 56th Street (30 feet Road), Thiruvalluvar Nagar, Thiruvannamiyur Extension, 'Journalists Colony', Survey No.221 Part and 222 part of Thiruvannamiyur Village, Mylapore-Triplicane Taluk, Chennai.	Rs.1,24,63,000/- (share of minor Kalyan Sudarsan - Rs.31,15,750/-; Share of Minor Dhanusree S. - Rs.31,15,750/-.	Mrs.Gayathiri.S.
2	Residential Flat No.D-405, Fourth Floor of Block D, AKS Radiance Phase-II, Perumbakkam, Chennai 600100 along with Reserved Cover Car Park Space in Stilt Floor (total undivided share 406 Sq.Ft. out of 61 cents)	Rs.49,01,250/- (Share of Minor - Kalyan Sudarsan - Rs.12,25,312.5 Share of Minor Dhanusree S. - Rs.12,25,312.5)	Mrs.Gayathiri.S

5. The Valuation Certificate for item No.1 of the schedule of property in the Original Petition, obtained from M/s.Ace Consultants, Chennai, marked before this Court as Ex.P-13, discloses that the value of the entire

property is Rs.1,24,63,000/-, however, what belonged to the deceased husband-S.Sudarsan (father of the minors) of the first petitioner was only the first floor of the property, along with half undivided share of the land. The value of the property which belonged to S.Sudarsan ought to have been mentioned as only Rs.62,31,500/-, but while mentioning the approximate value of the first floor of the building along with the undivided 1/2 share in the land to the 1st item to the schedule property in the O.P., it has been stated inadvertently as Rs.1,24,63,000/- instead of Rs.62,31,500/-. Each of the minors will get 1/4 share in the 1st item to the schedule property in the O.P., pursuant to the death of S.Sudarsan, as he died intestate.

6. Further, insofar as item No.2 to the schedule in the Original Petition is concerned, the same was purchased jointly in the name of the first applicant/first petitioner and late S.Sudarsan, on 31.07.2015. Thus, the first applicant has 1/2 share in item No.2 to the schedule mentioned properties in the O.P., and the other 1/2 share belonged to S.Sudarsan.

7. Moreover, upon the death of S.Sudarsan, his 1/2 share in the Item No.2 of schedule property in the O.P., devolved equally upon his wife (first applicant herein), his mother (2nd applicant) and his two minor children -- Kalyan Sudarsan (now aged 15 years) and Dhanusree Sudarsan (now aged 12 years) respectively.

8. Thus, it clear that the two minor children will only be entitled to 1/8th share each in the item No.2 to schedule of properties in the O.P., but it is stated in the order dated 08.01.2021 passed in the said O.P. in paragraph 7 that each minor will be entitled to 1/4th share of the Schedule properties (i.e. the minors are entitled to 1/4th share only in item No.1 to schedule mentioned properties to the O.P), and this needs correction.

9. It is further stated by the applicants that, both item Nos.1 and 2 of the schedule mentioned properties to the O.P., are under mortgage with the Union Bank of India. Furthermore, the applicants/petitioners borrowed heavily from outside sources also to treat S.Sudarsan, as he was suffering

from Cancer, due to which, the O.P. itself was filed for sale of the properties to discharge the debts owed to the Bank as well as to the private sources.

10. The above said correction in the order dated 08.01.2021 in O.P.No.104 of 2020, is to be made in the said order dated 08.01.2021, but the same could not be rectified due to 'pandemic situation', though the said order, on being mentioned before Court was corrected on 25.02.2021, but however, there was delay in getting the certified copy, which was obtained only on 08.09.2021. Again there was mention before the Court and the corrections were carried out by the Registry, but ultimately, the corrected order was made available only on 22.10.2021.

11. In the meanwhile, the Union Bank of India initiated proceedings under the SARFAESI Act (The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002). Further, possession notices in respect of item No.1 of the schedule mentioned properties, was issued on 24.08.2021 and then again on 08.10.2021 and that

for item No.2, the possession notice was issued on 24.08.2021. The total amount as on the date of possession notice, due to the Bank for the loans borrowed on the security of both Item Nos.1 and 2 properties, is Rs.61,96,166/-.

12. The applicants/petitioners in O.P., have now identified buyers for Item No.1 of the properties, alone, and are not desirous of selling item No.2 of the properties as of now, as the offers for Item No.2 is very meagre on account of the prevailing situation in the real estate sector. The applicants and the minor children, need a place of residence, especially, their wish is to reside in Item No.2 of the schedule mentioned properties.

13. As the prospective buyers of Item No.1 of the properties, are insisting on amendment of the valuation of the item No.1 of the properties, before the purchase of the same, coupled with the fact that there was threat posed by the Bank to sell both item Nos.1 and 2 of the properties under the said SARFAESI proceedings, owing to non-settling of the dues quantified

at Rs.61,96,166/-.

14. The entire sale proceeds from Item No.1 of the properties, are to be used to discharge the loans due to the Union Bank of India, only after which the Bank will release the 'mortgage' over both item Nos.1 and 2 of the properties. According to the applicants/petitioners in the O.P., it is not possible to deposit 1/4th share of each of the minors upon sale of item No.1 of the properties as directed by this Court in the order passed in the said O.P. on 08.01.2021. Unless the valuation of Item No.1 of the properties and the share of the minors in Item No.2 of the properties, is properly reflected in the Court's proceedings, the applicants could not sell any property(ies) so as to protect the interest of the minors, resulting in filing of the present three applications.

15. Upon hearing the learned counsel for the applicants/petitioners in O.P., and on a perusal of the records, it is clear that the order dated 08.01.2021 passed in the said O.P. needs correction.

16. Accordingly:

(a) The valuation of item No.1 of the schedule mentioned properties (quoted supra), shall be amended as Rs.62,31,500/- instead of Rs.1,24,63,000/-.

(b) The applicants/petitioners in O.P, are permitted to use the entire sale proceeds of Item No.1 of the schedule mentioned properties, to discharge the loan amount due to the Union Bank of India, Thiruvannamiyur Branch, Chennai, without insisting on the deposit of minors' shares.

(c) The share of minor Kalyan Sudarsan and Dhanushree Sudarsan in item No.2 to the schedule mentioned properties, is declared as 1/8th each instead of 1/4th each.

17. It is hereby observed that, as far as the sale proceeds out of item No.1 as mentioned above, after discharge of mortgage, as observed supra, the remaining amount, if any thereon, shall be deposited in any Nationalised Bank in any Fixed Deposit scheme, in the name of the above minors and the

interest thereon shall be utilised for the welfare, maintenance, education, etc., of the minors, till they attain majority.

18. Further, as far as item No.2 of the schedule mentioned properties, is concerned, the amount, if any lying after the sale, if any takes place, the same shall be deposited in any Nationalised Bank in any Fixed Deposit Scheme, in the name of the above minors, and the applicants/petitioners shall utilise the interest thereon, for the welfare, maintenance, educational expenses, etc., of minor children, until they attain majority.

19. With the above observations/directions, all these three applications are ordered as prayed for. It is made conspicuously clear that this order shall be read with part and parcel of the order dated 08.01.2021 passed in O.P.No.104 of 2020.

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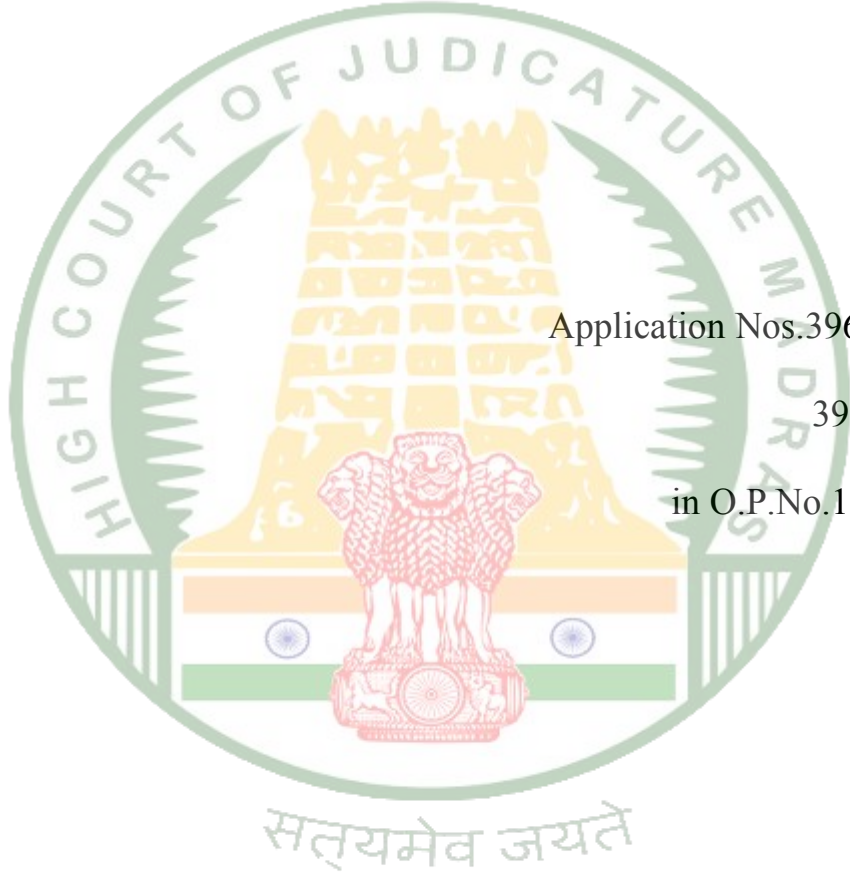
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Speaking Order: Yes
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V.PARTHIBAN, J

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