A.No.2987 of 2022
in C.S.No.1176 of 2008

G. CHANDRASEKHARAN, J.

A.No.2987 of 2022 is filed to direct the respondent to disburse the sum that shall be paid to the applicant as one of the legal heirs of Mrs.G.Seethama from the sale consideration deposited by the purchasers on 22.04.2019 as per the order of this Court on 18.11.2010.

2.The plaintiffs in C.S.No.1176 of 2008 filed the suit seeking the relief of directing the first defendant to sell the schedule mentioned properties, divide the sale consideration into two equal moieties and allot one moiety to the first defendant and one moiety for the benefit of the legal heirs of the deceased Seethamma to be shared by them, namely the plaintiffs and the defendants 7 to 17. During the pendency of this suit, there was a compromise between the parties and the memorandum of compromise was filed and decree was passed in terms of the compromise memo. As per the terms of the compromise decree, Administrator General and Official Trustee, High Court of Madras, was directed to sell the properties in public auction either by inviting tenders or by conducting public auction, after making due publication in newspapers. Administrator General and Official Trustee was further directed to deduct the expenses met out by him for conducting the public sale. D1 was directed to assist the A.G & O.T to complete the sale transaction. The sale consideration was ordered to be divided among the parties on certain ratio. Now this application is filed based on the compromise decree after the sale of the properties by the Administrator General and Official Trustee.

3.The learned counsel appearing for Administrator General and Official Trustee submitted that as per Section 41 of the Administrator General Act and Rule 10 (1) of the AG & OT Rules, AG & OT is entitled to 7% fee.

4.This claim of the learned counsel for the Advocate General and Official Trustee is disputed by the learned counsel for the applicant on the ground that applicant filed application only for appointment of an Advocate Commissioner for selling the property. However, the Court on its wisdom inclined to appoint Advocate General and Official Trustee for the purpose of sale. The property is not vested with the Administrator General and Official Trustee. Therefore the claim made by the learned counsel for the Administrator General and Official Trustee as per Section 41 of the Administrator General Act and Rule 10 (1) of the AG & OT Rules is not correct.

5.Section 10 (1) of the Administrator General Act, 1993, Rules as follows:-

10.Power of Administrator-General to collect and hold assets where immediate action is required:-

1)Whenever any person has died leaving assets within any Stage exceeding Rupees Two lakhs in value and the High Court for that State is satisfied that there is imminent danger of misappropriation deterioration or waste of such assets requiring immediate action, the High Court may upon the application of the Administrator-General or of any person interested in such assets or in the due administration thereof forthwith direct the Administrator-General.

a)To collect and take possession of such assets, and

b)To hold deposit, realize, sell or invest the same according to the directions of the High Court, and in default of any such directions, according to the provisions of this Act so far as the same are applicable to such assets.

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6.The power under this Act can be exercised by Administrator General, whenever any person has died leaving assets within this State exceeding

Rs.10,00,000/- in value and only when the High Court satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets requiring immediate action. In these circumstances, the High Court upon application by the Administrator General or any person interested in such assets or in the due administration thereof, give direction to the Administrator General to hold, deposit, realise sell or invest the same according to the directions of this Court.

7.None of these conditions is present in this case. In the case before hand, the suit filed in C.S.No.1176 of 2008 for the reliefs aforesaid. The parties have entered into a compromise and in view of the compromise, a compromise decree was passed. A.No.246 of 2009 was filed only for the appointment of Advocate Commissioner for the purpose of sale of the properties in terms of the compromise. However, the Court appointed Administrator General and Official Trustee with the limited mandate of selling the property. In the considered view of this Court, Section 10 (1) of Administrator General Act, 1993 is not applicable to the facts and circumstances of this case and that be the case, the claim made by the learned counsel appearing for Advocate General and Official Trustee claiming fees under Rule 10 (1) of AG & OT Rules cannot be allowed. As per the order of this Court, the Administrator General and Official Trustee is entitled only for the expenses incurred and that comes to Rs.2,72,800/-. After apportioning the expenses, whatever the amount available at the hands of the Administrator General and Official Trustee is to be paid to the parties concerned.

8.In this view of the matter, this application is allowed.

04.11.2022

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