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A.Nos.4936 and 4937 of 2021 in
C.S.No.912 of 2004

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V.BHAVANI SUBBAROYAN,J.,

The Applications, viz., A.Nos.4936 and 4937 of 2021, are filed by the applicant / plaintiff to direct the Advocate Commissioner with the assistance of a surveyor to inspect the plaint schedule property and divide the same by metes and bounds into 3 equal shares and allot the portion falling to the share of each of the party within a time frame to be fixed by this Court and to direct the 1st respondent to furnish the books of accounts, bank statements, income tax returns and profit and loss account and thus render true and proper accounts in terms of the decree within a time frame to be fixed by this Court.

2. The learned counsel for the applicant / plaintiff submits that the applicant and the respondents / defendants are brothers and sisters born to one Late Dr.B.Rama Rau and Late Smt. Sumathi Rama Rau. The suit was instituted for partition of the suit schedule mentioned property by metes and bounds and to allot 4/9th share therein and also to direct the 1st respondent herein to render true and proper accounts and for settlement of accounts. The property bearing Door No.829 Poonamallee High Road,



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which is described in the plaint schedule was originally purchased by Dr.P.Rama Rau, under a Deed of Sale dated 16.12.1937, registered as Document No.2837 of 1937 in the office of the Sub Registrar, West Madras. The said Dr.P.Rama Rau was married to Seetha Rama Rau and from the wedlock had three children, namely (i) Dr.B.Rama Rau (ii) Dr.Madhava Rau and (iii) Mrs.P.Malathi Sripathy Rau Dr.P.Rama Rau was in possession and enjoyment of the said property until his demise on 11.05.1956, intestate. On his demise, his estate was succeeded by his wife and 3 children and under a Deed of Partition dated 25.01.1961 registered as Doc.No.998 of 1961 in the office of the Registrar of Madras Chengalpet, Malathi Sripathy Rau severed her interests from the family after obtaining her $\frac{1}{4}$ share amounting to 9 grounds, 1659 sq.ft., leaving behind the others to continue as members of the joint family.

3. The learned counsel for the applicant contends that by a deed of partition & Family Arrangement dated 16.05.1962 registered as Document no.2677 of 1962 in the office of the Registrar of Madras, Chengalpet, the property measuring 20 grounds 961 sq.ft., situated in the afore mentioned address was allotted to Dr.B.Rama Rau, on condition that he pays a sum of Rs.1 Lakh each to his mother & brother and the same



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was duly discharged. On 10.04.1972, Dr.B.Rama Rau constituted a partnership admitting the 1st respondent and the applicant, as partners along with Dr.Rama Rau. Dr.Rama Rau effected a partition on 31.03.1972 dividing the capital of the nursing home business into 3 equal shares and the said deed of partnership underwent modifications on 01.04.1992 & 01.07.2001 to enable the 1st respondent to draw additional amounts. In the meanwhile, by a deed of partial partition dated 23.01.1980, Schedule I property measuring 11 grounds 563 sq.ft., was retained for carrying on the partnership business as the asset of the partnership.

4. It is represented on behalf of the learned counsel for the applicant that after demise of Dr.B.Rama Rau, at the instance of the 1st respondent, the partnership was reconstituted under a Deed of partnership dated 06.01.2003. Thereafter, the applicant by letter dated 12.06.2004 terminated the partnership with immediate effect. The 1st respondent through reply dated 14.06.2004 has admitted that the applicant and the 1st respondent are entitled to 2/3 share, however, failed to partition and allot the shares. This Court by Judgment and Decree dated 26.08.2020 decreed the suit allotting 1/3 share each to the defendants and the plaintiff for the reasons recorded therein.

5. The learned counsel for the applicant submits that the 1st



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respondent, as against the Judgment and Decree dated 26.08.2020, preferred O.S.A.No.253 of 2021, which is pending. Further, in the said appeal, the Hon'ble Division Bench has directed that passing of final decree alone would be stayed and directed all the other proceedings to continue. That apart, in terms of the decree and the undertaking given by the 1st respondent, the 1st respondent has failed to produce the statement of accounts, of the partnership business, hence the applicant has come forward with this Petition seeking to appoint Advocate Commissioner to give a closure to this long pending litigation and to furnish the books of accounts, bank statements, proper, profit and loss account.

6. Per contra, the learned counsel for the 1st respondent, by way of a detailed counter opposed to allow the application. He would submit that the appointment of a commissioner and a surveyor would be against the interest of justice and that when some improvements are being carried out, definitely, hospital would stand to suffer greatly owing to the negative propaganda, which would impact the very purpose of serving the Society through the medical profession. The applicant and the 2nd respondent are hand in glove and are interested in monetizing the assets, since they have no interest in Chennai, the applicant being citizen of US and dwelling in



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Florida, while the 2nd respondent is residing at Bangalore. Moreover, the 2nd respondent after the demise of the father, came to the suit premises with lorries and removed all the teak and rose wood furnitures in two lorry loads and also took away father's car.

7. The learned counsel for the 1st respondent also contends that the plaintiff and the 2nd respondent are already aware of the measurement of the property and hence there is no need to appoint a Surveyor or Commissioner. The Advocate Commissioner will be exceeding in the duty in the event the property described in the suit schedule-1 is categorised as the firm's society. In any event, the value of the property has increased manifold and no prejudice or hardship will be caused to the applicant and the 2nd respondent in event the issue of final decree proceedings are taken up after adjudication of the original side appeal.

8. Lastly, the learned counsel for the 1st respondent submits that the application taken out by the applicant are misconceived and premature and is not maintainable on the present facts and circumstances of the case. Also, the plaintiff is aware that the entire records are available with the chartered accountant and the same may be retrieved only after some



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9. Heard the learned counsel for the applicant and the learned counsel for the respondents and perused the documents placed on record.

10. From the perusal of the documents placed on record, it is seen that the suit has been laid for partition of the schedule property by metes and bounds and the applicant as well as the respondents are brothers and sisters. This Court, upon perusing and analysing the exhibits as well as the contentions put forth on either side, partly decreed the suit in favour of the applicant / plaintiff and thereby preliminary decree was passed on 26.08.2020.

11. It is pertinent to point out that aggrieved over the said Judgment and Decree, the 1st respondent has preferred O.S.A.No.253 of 2020. The Hon'ble Division Bench of this Court admitted the said Appeal and directed not to pass final decree, however, observed that the steps for final decree shall be taken. As far as the present applications are concerned, (i) seeking a direction for the Advocate Commissioner (ii) to



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Direct the 1st respondent to render accounts, are all steps for the final decree.

12. Taking into consideration of the fact that the preliminary decree has been passed and as against the same, the Hon'ble Division Bench of this Court in O.S.A.No.253 of 2020 on 01.12.2020, has directed that steps for final decree may be taken, this Court, in the interest of Justice, considering a fact that it is only a step towards the final decree, is inclined to appoint M/s.S.Viji, 210, Law Chambers, High Court, Madras, Mobile No.94444 96289, as Advocate Commissioner, to inspect the plaint schedule property with the assistance of the surveyor and divide the same by metes and bounds into three equal shares and allot the portion falling to the share of each of the party measure the suit, which is just and necessary to decide the issue. The learned Advocate Commissioner shall issue notice to the jurisdictional surveyor, prior in advance and the said surveyor is directed to co-operate with the Advocate commissioner to enable her to proceed with the measurement of the plaint schedule property. The initial remuneration of the advocate commissioner is fixed at Rs.1,00,000/- [Rupees One Lakh only]. The said amount shall be shared between applicant and the 2nd respondent and each of them shall pay Rs.50,000/- directly to the learned Advocate Commissioner.



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13. As far as the other prayer, viz., to direct the 1st respondent to furnish the books of accounts, bank statements, income tax returns and profit and loss account and true and proper accounts in terms of the decree are concerned, already this Court, on 26.08.2020, while granting decree, directed the 1st defendant to render the accounts relating to the affairs of the firm, viz., 'Rama Rau Poly Clinic', however, these factual aspects are to be decided only after further deliberations and hence the said application, viz., A.No.4937 of 2021 is kept pending and no orders are issued.

In view of the above, only the Application No.4936 of 2021 is allowed. Learned Advocate Commissioner is directed to file the report on 25.06.2022.

27.04.2022

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