



WEB COPY



C.R.P.No.3991 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.12.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3991 of 2022
and C.M.P.No.20765 of 2022

M.Ramalingam

...Petitioner

Versus

Bhuvaneswari Ramalingam (died)

1. Jayalakshmi Pattabiraman
2. Anuratha Thanigainayagam
3. R.Vijayan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to set aside the docket order dated 02.11.2022 passed in I.A.No.136 of 2014 in O.S.No.288 of 2005 on the file of the Mahila Court, Chengelpet.

For Petitioner : Mr.Govind Chandrasekhar

For Respondents : Mr.G.Prabhakar

O R D E R

The Civil Revision Petition is filed challenging the docket order passed by the Court below dated 2.11.2022 in I.A.No.136 of 2014 in O.S.No.288 of 2005 on the file of Mahila Court, Chengelpet, directing the Advocate Commissioner to initiate auction sale proceedings with due notice to both parties and file his



C.R.P.No.3991 of 2022

WEB COPY

2. The original suit was filed by one Bhuvaneshwani Ramalingam (deceased) seeking for the relief of partition of the suit properties. On 17.04.2008, the Court below had passed the preliminary decree holding that the plaintiff is entitled to 1/4 share in the suit properties. Thereafter, the final decree proceedings was initiated. In the final decree proceedings, an application in I.A.No.136 of 2014 was filed under Section 2 of Partition Act, praying to direct the Commissioner to conduct auction sale of the suit properties, after giving due publicity. Earlier, an order was passed by the Court below for appointment an Advocate Commissioner to conduct public auction, but, the same was passed without fixing the time schedule and without fixing proper sale consideration. Aggrieved by the same, the petitioner herein approached this Court by way of revision in C.R.P.No.1341 of 2022. In the said revision petition, the order impugned therein was set aside and the Court below was directed to comply with certain directions before ordering auction sale by the Commissioner. The directions issued by this Court in the earlier revision petition are as follows:

4. It is now evident that the order passed in I.A.No.136 of 2014 in O.S.No.288 of 2005 shall go. The Civil Revision Petition is accordingly allowed and the order passed in I.A.No.136 of 2014 in O.S.No.288 of 2005 is set aside and the



C.R.P.No.3991 of 2022

matter is remanded back to the Mahila Court, Chengelpet for the Court to instruct the Commissioner appropriately and along the legal lines to enable the Commissioner to conduct the auction of the property. In particular, the trial Court is directed:

- (a) To appoint an engineer to assist the Commissioner to fix the value of the property;*
- (b) To fix the base price for the property after hearing the parties to the litigation or their counsels;*
- (c) To direct the Commissioner to come up with a schedule for public auction;*
- (d) To decide on e-auction through popular private websites like 99acres.com, depending on the location and the marketability of the property.*

3. Thereafter, the matter was remanded back to the Court below to direct the Commissioner to conduct the auction of the property after giving notice to the parties. Pursuant to the said order, the Commissioner was appointed by the Court below and he issued a notice fixing the date as 03.12.2022 for conducting the auction sale. Aggrieved by the docket order passed by the Court below on 02.11.2022, directing the Advocate Commissioner to initiate the auction sale proceedings, the petitioner has come this Court by way of this revision.

4. The learned counsel for the revision petitioner assailed the order passed



C.R.P.No.3991 of 2022

by the Court below mainly on the ground that earlier directions issued by this Court in C.R.P.No.1341 of 2022 more particularly directions C and D referred above were not complied with. The learned counsel also stated that in the auction notice, the Advocate Commissioner has given a long rope to the purchasers by giving an option for payment of sale consideration in installments without approval of the Court.

5. The perusal of the impugned order would make it clear that the directions issued by this Court in C.R.P.No.1341 of 2022 with regard to C and D directions were not complied with. It is pertinent to note that the condition for making payment of sale in installments mentioned in the auction notice has not been approved by this Court. Under these circumstances, the order impugned in this revision petition is liable to be set aside.

6. Accordingly, the Civil Revision Petition is allowed by setting aside the impugned order dated 02.11.2022 and the Court below is directed to comply with the directions C and D issued by this Court vide order dated 28.04.2022 in C.R.P.No.1341 of 2022 and pass fresh order in accordance with law.

7. The learned counsel for the respondent also requested the Court to



C.R.P.No.3991 of 2022

direct the Court below to appoint a new Advocate Commissioner. The learned counsel for the petitioner has no objection for the same.

8. Therefore, the Court below is directed to appoint a new Advocate Commissioner and pass fresh orders in the light of the directions given in C.R.P.No.1341 of 2022 within a period of (4) four weeks from the date of receipt of a copy of this order. With the above direction, the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.12.2022

nti

Index: Yes/ No

Speaking Order / Non-Speaking Order

Note: Issue order copy on 05.12.2022



WEB COPY

To

The Mahila Court, Chengelpet.



C.R.P.No.3991 of 2022

S.SOUNTHAR, J.

nti

C.R.P.No.3991 of 2022

01.12.2022