



CRP No.1029 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

Civil Revision Petition No.1029 of 2023

D.Aravindan

...Petitioner

Vs.

N.Gunashekar (Deceased)

1. G.Kanagavalli
2. Krishnakumari
3. Karunamoorthy
4. N.Damodharan
5. N.Somasundaram
6. C.Arunkumar
7. C.Duraiswamy
8. C.Nandhini
9. C.Narmadha Devi
- 10.C.Anitha Lakshmi
- 11.S.Kiruthika
- 12.D.Kasthuri
- 13.D.Rajkumar
14. S.Bhuvaneswari

...Respondents

Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 23.12.2022 made in I.A.No.7 of 2022 in I.A.No.15075 of 2010 in O.S.No.2962 of 2006 on the file of the XV Assistant City Civil Court, Chennai

For Petitioner : Mr.Sam Jayaraj Houston for
M/s Sarvabhauman Associates

For Respondents : M/s S.Viji for R1 to R3
M/s K.S.Beena
R4 to R14 given up
Vide Memo dated 28.04.2023



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ORDER

The present petition has been filed to set aside the fair and decretal order dated 23.12.2022 made in I.A.No.7 of 2022 in I.A.No.15075 of 2010 in O.S.No.2962 of 2006 on the file of the XV Assistant City Civil Court, Chennai

2. The brief facts of the case are as follows:-

The petitioner is the 12th defendant and one N.Gunashekaran, who is the wife and father of the respondents 1 to 3 respectively is the plaintiff in O.S.No.2962 of 2006, which was filed for partition by allotting 1/5 share to him. The said suit was decreed in favour of the said plaintiff by directing the plaintiff to file a petition for appointing advocate commissioner for partitioning A schedule property and in respect of B Schedule property, the suit was dismissed. In consequence, I.A.No.653 of 2017 was filed by the plaintiff, viz., Gunasekaran (deceased) to appoint an advocate commissioner with a direction to sell the property by public auction and other consequential reliefs and the same was allowed on 16.08.2017. Accordingly, the said Advocate Commissioner filed an interim report stating that a sum of Rs.2,00,00,000/- can be fixed as upset price. Since both sides have not made any objections, the court below has fixed the said price as upset price and directed the Advocate Commissioner to proceed further.

(ii) Subsequently, the petitioner/12th defendant filed I.A.No.7 of 2022



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to permit him to buy the 1/5th share of the respondents 1 to 3 / plaintiff's property, as per the valuation ascertained by the court below.

Subsequently, 5th respondent / 6th defendant has also filed I.A.No.8 of 2022 for the same relief as requested by the petitioner in I.A.No.7 of 2022. On 01.11.2022, a valuation report was filed by the respondents 1 to 3 before the court below by assessing the present fair market value of the property, wherein a total value was arrived at Rs.2,60,05,000/- . Since the petitioner has not filed any objections to the said report, the court below by an order dated 23.12.2022 allowed both the petitions by directing the petitioner to participate in the auction and the person, who offers to pay the highest price was directed to purchase the same, further, ordered to fix the upset price, as per the valuation report produced by the respondents 1 to 3 dated 01.11.2022. As against the said order passed in I.A.No.7 of 2022, the petitioner has come up with the present Revision.

3. The learned counsel for the petitioner would submit that the court below failed to comply in letter and spirit Section 3 of Partition Act, which mandates that the Court shall order for valuation of shares. However, passed an erroneous order by adopting the valuation report filed by the respondents 1 to 3. Further, the court below had overlooked the scope and ambit of Section 3 of Partition Act, which is to provide fair and independent valuation of the shares sought to be purchased by the co-sharer and



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therefore relying on any either parties valuation is fatal and especially relying on unmarked and documents whose validity has not been examined is untenable and impermissible in law.

4. The learned counsel for the petitioner also submit that the court below failed to understand that as per Section 3 of the Partition Act, only the court has to determine the value of the share sought to be purchased by the sharer and therefore, no material, valuation reports or any documents produced by either parties can be relied on and neither any objections for the same can be entertained to arrive at the value of the share.

5. That apart, the learned counsel for the petitioner submits that the court below failed to take note of the contrary stand taken by the respondents 1 to 3 wherein they had accepted the valuation report filed in I.A.No.653 of 2017, which had lesser value for the 100 year old and 20 year old buildings and other amenities, yet hyped the value of the same in their present valuation report filed in I.A.No.7 of 2022, thereby pleaded to set aside the same and allow the present Revision. Further, the learned counsel for the petitioner relies on the Judgment rendered by the **Hon'ble Supreme Court in Civil Appeal No.871 of 1971 [R.Ramamurthi Iyer Vs. Raja V.Rajeswara Rao]** and the order passed by this Court in CRP (PD)



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No.82 of 2004 dated 26.06.2009 to substantiate his contention.

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6. Per contra, a detailed counter was filed by the 3rd respondent, which was adopted by the respondents 1 and 2, wherein it is stated that the suit has been filed by one Gunasekaran, who is the husband of the 1st respondent and father of respondents 2 and 3. The suit schedule property was purchased by their paternal grand father and he died without executing any Will, hence the said Gunasekaran filed the suit for partition. Further, an application No.653 of 2017 was filed by the said Gunasekharan to appoint an advocate commissioner with a direction to sell the suit property by public auction, thereby one Mr.Sivakumar was appointed and on his inspection, he filed a detailed report stating that *'since the parties to the proceedings are not interested to divide the property by metes and bounds among them, the suit property may be auctioned by public auction'* and thereby a memo was duly signed and filed by all the defendants stating *that they have no objection to the entire property being sold'*. Accordingly, another advocate commissioner, Mr.Veeramani was appointed for sale of suit property by public auction and the said advocate commissioner along with a valuer ascertained the market value of the schedule property as Rs.2 Crores on 30.08.2018 and the said order was not challenged by either parties.

7. The counter proceeds to state that since the erstwhile advocate



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commissioner returned his warrant due to his personal reasons, the next advocate commissioner was appointed and referred the matter to the Lok Adalat and mediation, however, the same were failed. Further, during the lock down period, the plaintiff and another son of the plaintiff also died, thereby 5 years have elapsed to clear all the applications. In the meantime, the petitioner and the 5th respondent filed I.A.No.7 and 8 of 2022 showing their willingness to buy the 1/5th share of the respondents 1 to 3 / plaintiff. Since five years have been elapsed and to ascertain the appreciation in the rate of the schedule mentioned property, the surveyor report has been filed to fix the current rate, thereby in total, Rs.2,60,05,000/- was arrived at. Since there was no counter filed objecting the surveyors report, order was passed on 23.12.2022 and the upset price was fixed as Rs.2,60,05,000/-.

8. The learned counsel for the respondents 1 to 3 submits that almost 18 years have lapsed since the suit has been filed and the schedule property is located within the heart of the city and close proximity to Metro railway station and hospitals and the respondents 1 to 3 are willing to sell their share of the property to the petitioner or to any other respondent, as per the upset price fixed the court in order to the smooth ending of the suit, therefore pleaded to dismiss the present Revision.



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9. The learned counsel for the petitioner has filed a memo dated 28.04.2023 stating that the respondents 1 to 3 alone are the contesting respondents and therefore, notice to the respondents 4 to 14 are given up.

10. Heard the learned counsel for the petitioner and the respondents 1 to 3 and perused the documents placed on record.

11. It is relevant to point out that the petitioner, who is the 12th defendant has filed the present Revision, challenging the order passed in I.A.No.7 of 2022 in I.A.No.15075 of 2010 dated 23.12.2022. Initially, a suit was filed in the year 2006 by the deceased plaintiff to partition A and B schedule property and to allot 1/5th share to the respondents 1 to 3 /plaintiffs. The said suit was decreed on 26.06.2009 by directing the deceased plaintiff / respondents 1 to 3 to file a petition for appointing advocate commissioner for partitioning A schedule property and in respect of B Schedule property, the suit was dismissed. In consequence, I.A.No.653 of 2017 was filed by the plaintiff, viz., Gunasekaran (deceased) to appoint an advocate commissioner with a direction to sell the property by public auction and other consequential reliefs. Accordingly, the Advocate commissioner was appointed and filed an interim report stating that a sum of Rs.2,00,00,000/- can be fixed as upset price. Since both sides have not made any objections, the court below has fixed the said price and directed



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the Advocate Commissioner to proceed further.

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12. It is to be noted that the petitioner/12th defendant filed I.A.No.7 of 2022 to permit him to buy the 1/5th share of the respondents 1 to 3 / plaintiff. Pending said application, valuation report was filed by the respondents 1 to 3 on 01.11.2022 ascertaining the present market value as Rs.2,60,05,000/-. Since the petitioner as well as others have not objected to the said valuation report, the court below by an order dated 23.12.2022 directed the petitioner to participate in the auction and the person, who offers to pay the highest price was directed to purchase the same, further, ordered to fix the upset price, as per the valuation report.

13. The above circumstances would reveal that the valuation report has been filed by the respondents 1 to 3 / plaintiffs on 01.11.2022 from S.V.N.Associates, Government Registered valuer, fixing Rs.2,60,05,000/- by ascertaining the present market value. However, there was no contra submission made by the petitioner in regard to the fixation of the estimated land and building value given by the respondents 1 to 3 / plaintiffs's side Engineer / Surveyor.

14. It is the contention of the learned counsel for the petitioner that



the court below has not followed the procedures adumbrated as per

Section 3 of Partition Act, it is useful to extract the said provision:-

“Section 3 : Procedure when sharer undertakes to buy-

(1)) If, in any case in which the court is requested under

the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the court shall order a valuation of the share or shares in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs or incident to the application or applications”

15. Since the petitioner / 12th defendant as well as the 6th defendant, viz., N.Somasundaram are willing to purchase the respondents 1 to 3 / plaintiff's 1/5 share, in view of the above said provision, the court below permitted the petitioner to participate in the auction sale of petition property and directed that the person, who offers to pay the highest price shall purchase the same. When the valuation report was filed on 01.11.2022 by



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the respondents 1 to 3 prevailing the market rate as on date and the same not being objected by the petitioner and others, the court below ordered to fix the upset price as per engineer / surveyor's report, which is appropriate according to the Rules.

16. At this juncture, it is pertinent to point out that when the respondents 1 to 3 have filed I.A.No.653 of 2017 with a prayer to appoint an advocate commissioner to sell the suit property by public auction, the petitioner has not objected to the same and accordingly, the petition was allowed. That apart, since the earlier valuation report was filed on 15.12.2017 and by the year 2022 since 5 years have lapsed and the petitioner and other defendant have expressed their willingness to purchase the share of the respondents 1 to 3, in order to ascertain the present market value, the respondents have filed the valuation report on 01.11.2022 by ascertaining the present market value and when the same remain unchallenged, the prayer of the petitioner cannot be accepted. The Court below has rightly taken note of the fact and the Rules and passed a reasoned order, which does not require any interference by this Court.

In the result, the present Revision is dismissed. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order



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The XV Assistant City Civil Court,
Chennai

V.BHAVANI SUBBAROYAN J.



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ssd

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