IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.06.2023

PRONOUNCED ON : 25.07.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application Nos.2479 to 2482 of 2023
in C.S.No.1176 of 2008

Hemavathy	...	Applicant / 7th Defendant [A.No.2479 / 2023]
P.Parvathy	...	Applicant / 13th Defendant [A.No.2480 / 2023]
C.H.Ramalakshmi	...	Applicant / 15th Defendant [A.No.2481 / 2023]
V.Chaya Lakshmi	...	Applicant / 16th Defendant [A.No.2482 / 2023]

versus

The Administrator General and The Official Trustee of Tamil Nadu, High Court Buildings, Chennai - 600 104.	...	Respondent / 3rd party [in all applications]

COMMON PRAYER : Applications filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of Code of Civil Procedure, praying to direct the respondent to disburse the sum that shall be paid to the applicants herein, being one of the legal heirs of G.Seethamma, from the sale consideration deposited by the purchasers on 22.04.2019, as per the order of this Court in C.S.No.1176 of 2008 dated 18.11.2010 respectively.

For Applicants [in all applications]	:	M/s.S.Gayathri Devi for M/s.S.V.R.Ramprasad
For Respondent [in all applications]	:	M/s.E.V.Chandru @ E.Chandrasekaran Standing Counsel for AG&OT

COMMON ORDER

These Applications have been filed to direct the respondent to disburse the share amount to the applicants from the sale consideration deposited by the purchasers on 22.04.2019.

2. Heard the learned counsel for the applicants and the learned Standing Counsel for the respondent and perused the materials available on record.

3. The suit in C.S.No.1176 of 2008 has been filed for mandatory direction, directing the first defendant to sell the suit properties and divide the sale consideration into two equal moieties and allot one moiety to the first defendant and one moiety to the benefit of the legal heirs of the deceased G.Seethamma namely the plaintiffs and defendants 7 to 17; the suit has been decreed and memorandum of compromise has been signed by the plaintiff and the defendants; as per the terms of compromise, the parties had agreed to divide the sale consideration into two parts and one part shall be taken by the first defendant Trust with appropriate directions and other part shall be shared by the legal heirs as per ratio and it was also agreed by the parties to direct the first defendant to sell the suit properties in order to effect the decree as stated above.

3.1. However at the time of passing the compromise decree, this Court thought it fit to appoint Administrator General and Official Trustee of Tamil Nadu [hereinafter referred to as "*AG&OT*"] to sell the properties in public auction and deduct the expenses met out by the *AG&OT* for conducting the public sale; subsequently the *AG&OT* brought the property for sale in an open auction for a sale consideration of Rs.1,60,00,000/- and the same was confirmed by this Court on 04.10.2019; the sale consideration deposited in the Court and the suit was decreed in terms of the compromise by allowing half share to be allotted to the Trust and the another half share to the legal representatives of late G.Seethamma in accordance with the ratio prescribed in the decree as under:-

1.	S.Damodharan	Plaintiff No.1	1/16th share	Rs.5,00,000/-
2.	Sathiyanarayana	Plaintiff No.2	1/16th share	Rs.5,00,000/-
3.	Hemavathy	Defendant No.1	1/4th share	Rs.20,00,000/-
4.	Prabhavathy	Defendant No.8	1/16th share	Rs.5,00,000/-
5.	B.Ravanamma	Defendant No.9	1/4th share	Rs.20,00,000/-
6.	P.Padmavathi	Defendant No.12	1/16th share	Rs.5,00,000/-
7.	P.Parvathy	Defendant No.13	1/16th share	Rs.5,00,000/-
8.	B.Shakunthala	Defendant No.14	1/16th share	Rs.5,00,000/-
9.	C.H.Ramalakshmi	Defendant No.15	1/32nd share	Rs.2,50,000/-
10.	B.Chayyalakshmi	Defendant No.16	1/32nd share	Rs.2,50,000/-
11.	S.Sarojini	Defendant No.17	1/16th share	Rs.5,00,000/-

3.2. Now these applications have been taken out by the applicants viz. Hemavathy (D-7), P.Parvathy (D-13), C.H.Ramalakshmi (D-15) and V.Chaya Lakshmi (D-16) for getting disbursal of the sale proceeds in accordance with the share already agreed.

4. The *AG&OT*, who had taken the task of selling the property upon the Court auction sale has submitted that as per Section 41(1) of the Administrators-General Act, 1963, the *AG&OT* is entitled to deduct 7% of the capital from the apportioned share of the applicants. Since the parties had agreed to meet all expenses out of the total sale consideration, they are liable to bear the sale proceeds. As per Schedule-I (II) (b) of the *AG&OT* Rules, the Commission of *AG&OT* for selling an immovable property is at the rate of 7% or the value of the assets.

5. The learned counsel for the applicants submitted that the property was not allowed to be administered by the *AG&OT* and in the order itself, the Court has made it clear about the charges which ought to be paid to the *AG&OT*; the *AG&OT* has also deducted the said charges incurred by him for bringing the property for sale through public auction and hence the applications should be allowed and the amounts due to the applicants should be paid without any deduction. It is further submitted that similar applications have been filed by some other defendants also with the very same contentions raised by the respondent and the Court did not accept the same.

6. The learned Standing Counsel for the *AG&OT* / respondent submitted that in the earlier order on the applications filed by some other defendants, this Court did not deal with all the provisions under the

AG&OT Act. Since the fees payable to the *AG&OT* is a statutory entitlement the same has to be deducted from the shares of the applicants in the sale proceeds kept in the deposit of the Court and paid to *AG&OT*.

7. There is no objection from the respondent as to the entitlement of the respective applicants in the sale proceeds in accordance with the share fixed already. But the one and only contention of the *AG&OT* is that the *AG&OT* is entitled to statutory fees for administering the estate and the same can also be deducted from the sale proceeds for selling the estate. The *AG&OT* invited the attention of this Court to Section 25 of the *AG&OT* Act which speaks about the power of the High Court to give directions with regard to administration of the estate done by the Administrator-General.

8. Section 10 of the *AG&OT* Act speaks about how and when the estate falls under the administrative control of the *AG&OT*. As per Section 10 of the Act, if a person died leaving assets within any State exceeding rupees ten 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 give directions to the Administrator-General to take possession of such assets and manage its income by maintaining the accounts properly. But in the case in hand, the property never fell under the management of the administration of the Administrator-General. The *AG&OT* at no point of time had moved any application also to appoint himself as the Administrator of the estate. Section 10(1) of the *AG&OT* Act is not applicable to the estate involved in this case.

9. In fact the founder of the trust has made clear about the apportionment of the benefits of the estate by creating a trust. So there is no necessity for the High Court to give any directions as contemplated under Section 25 of the *AG&OT* Act. It was the plaintiff, who had filed the suit for seeking certain directions with regard to the sale of the property in accordance with the desires of the Founder Trustee by name Seethamma and in whose name the Trust stands as 'Seethamma Trust'. So no occasion had ever arisen to subject the suit property under the administration of the *AG&OT*.

10. In fact, the parties to the suit in C.S.No.1176 of 2008 did not contest and they arrived at a compromise between themselves. Since the property belongs to a trust, they wanted the permission of the Court to sell the property and only at this juncture the suit in C.S.No.1176 of 2008 came into existence. Even though the terms of the compromise was to the effect that the first defendant should sell the property, this Court thought fit to appoint the *AG&OT* for conducting the public auction sale.

11. It is rightly contended by the learned counsel for the applicants that the Trust created by the founder is a private trust and not a public trust. Despite this Court had ordered *AG&OT* to conduct the sale, it is not a direction on any application made by the Administrator-General or on application filed by any person interested in the assets. This Court *suo motu* entrusted the responsibility of bringing the property for sale through public auction to the *AG&OT*. Even in the order of this Court it has been made clear that *AG&OT* is entitled to claim any expenses incurred by him for bringing the property for sale through public auction. The expenses incurred towards the said process has also been deducted and the amount now lying in the Court is the remaining balance of the sale proceeds.

12. In fact, the respondent has addressed a letter to the successful bidder in public auction about the difficulties in handing over the possession of the estate. His letter dated 30.11.2020 is subsequent to the order of this Court made in A.No.666 of 2020 in C.S.No.1176 of 2008. In the order of this Court dated 18.11.2010, though it is made specific that the *AG&OT* has to sell the properties in public auction, the *AG&OT* has raised a doubt as to its possibility in view of the fact that the possession of the property did not lie with the *AG&OT*.

13. After the auction conducted by the *AG&OT* in pursuant to the earlier direction of this Court dated 18.11.2010, this Court directed the *AG&OT* to execute the Sale Deed. In the said order, it is stated that the subject property is in no way connected to the *AG&OT* who just acted as an auctioneer and the sale proceeds were collected and deposited in the Court after the auction was over. So the property was not under the administrative control of *AG&OT*. A limited role was played by the *AG&OT* in conducting the auction sale. Even as per the order of this Court, the *AG&OT* is entitled only to get the expenses incurred by him in connection with the auction sale and not anything else. It is obviously because of the fact that the *AG&OT* was not performing any of the functions which he used to carry out in terms of Section 25 or 41 of the *AG&OT* Act.

14. At the risk of repetition, the situation is once again clarified that the involvement of the *AG&OT* was not invited neither at the instance of the parties to the proceedings nor at the instance of the *AG&OT* himself. Since this Court thought it fit that the better person to conduct the auction would be the *AG&OT* and not the first defendant, the *AG&OT* has been entrusted with the responsibility of conducting the sale. The specific role played by the *AG&OT* is not as similar as to the situations contemplated under Section 25 or 41 of *AG&OT* Act. So, the *AG&OT* is not entitled to deduct any statutory fees except what is allowed by the Court explicitly in its order. Earlier order of this Court dated 18.11.2020 speaks about the terms of the decree wherein it is stated as under:-

> *"**1.** That the Administrator General and Official Trustee, (i.e. A.G. & O.T.), High Court Buildings, Madras, be and is hereby directed to sell the properties in public auction either by inviting tenders or by conducting public auction, after making due publication in newspapers.*
>
> ***2.** That the Administrator General and Official Trustee herein, be and is hereby further directed to deduct the expenses met out by him by conducting the public sale and D1 is directed to assist the A.G. & O.T. to complete the sale transaction.*
>
> ***3.** That defendants 1 to 6 be and are hereby directed to move the Court after completion of public sale, for utilisation of the said fund for the benefit of the Trust as D1-Trust is represented by D2 to D6 Trustees."*

15. In para 2 of the above terms, the *AG&OT* has been given with the liberty to deduct only the expenses incurred in conducting the public sale and not otherwise. Only in view of the above limited scope, in the earlier orders passed on the applications filed by the other defendants for releasing their respective share in the sale proceeds, this Court has made it clear that *AG&OT* can not claim any other fee except the fees. In fact, the sale proceeds have been deposited in the Court after deducting the expenses to the tune of Rs.2,72,800/-., which is said to have been incurred by the *AG&OT*.

16. In such circumstances, the *AG&OT* is not entitled to get any further fees in the sale proceeds and hence the claim raised by the *AG&OT* for further deductions of the fees cannot be allowed. The sale proceeds is available in the deposit of the Court and the applicants are entitled to get their respective apportionment in accordance with their share. Hence the *AG&OT* is directed to disburse the share amount to the applicants in accordance with the apportionment.

17. Accordingly, these Applications are allowed and the *AG&OT* is directed to disburse the share amount of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the applicant Hemavathy (D7) in Application No.2479 of 2023; Rs.5,00,000/- (Rupees Five Lakhs only) to the applicant P.Parvathy (D-13) in Application No.2480 of 2023; Rs.2,50,000/- (Rupees Two Lakhs

Fifty Thousand only) to the applicant C.H.Ramalakshmi (D-15) in Application No.2481 of 2023 and Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) to the applicant V.Chaya Lakshmi (D-16) in Application No.2482 of 2023 respectively.

18. With the above directions, the applications in Applications Nos.2479, 2480, 2481 and 2482 of 2023 are allowed.

25.07.2023

Speaking order
Index : Yes
Neutral Citation : Yes

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To

The Administrator General and
The Official Trustee of Tamil Nadu,
High Court Buildings,
Chennai - 600 104.

R.N.MANJULA, J.

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**Pre-Delivery Common Order made in
Application Nos.2479 to 2482 of 2023
in C.S.No.1176 of 2008**

25.07.2023