O.S.A.No.158 of 2022
and C.M.P.Nos.9745 & 13390 of 2022 and 12823 of 2023

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

(Order of the court was made by R.Mahadevan, J.)

According to the appellant, the subject matter of the suit in C.S.No.256 of 2018 relates to M/s.Jet Associates, a registered Partnership Firm, consisting two partners, viz. J.Jeppiar and Mrs.Remibai Jeppiar. The suit was filed by the first respondent, who is one of the daughters of the deceased Jeppiar for dissolution of partnership firm and to declare the reconstitution of the said firm after the demise of the deceased, as invalid and for other ancillary reliefs. The appellant herein is the fifth defendant in the suit. Six items of the properties are described in the schedule of properties and an extent of 967 acres of land is described as suit schedule items 1 to 4. Item no.5 of the schedule of property is a stone quarry located with an extent of 10 acres of own lands and 40 acres of leased land in Vellimalai Village, Kanyakumari District. The vehicles belonged to the suit firm are described in item no.6. By judgment dated 09.07.2018, a conditional consented decree was passed by this Court in the suit in terms of the Memorandum of Understanding dated 25.06.2018. The appellant has consented only to Clauses (j), (k) and (l). Clause (j) relates to discharge of bank loan availed by M/s.Jeppiar Power Corporation Private Limited, either by sale of properties or otherwise. But, neither the appellant nor M/s.Jet Associates firm which is the subject matter of the suit was shareholder in M/s.Jeppiar Power Corporation Pvt. Ltd / loanee company and the appellant is not a party to the said MOU. However, in the suit for dissolution of firm, such a conditional compromise decree for partition of the entire properties of the deceased Jeppiar and his wife Mrs.Remibai Jeppiar came to be passed.

2.Adding further, the learned counsel for the appellant submitted that while so, Mrs.Remibai Jeppiar has filed A.No.3070 of 2020 for appointment of an Advocate Commissioner to call for offer to sell the Jet Associates' properties alone to discharge the alleged loan outstanding of M/s.Jeppiar Power Corporation, for which counter statement was filed by the appellant stating that she is entitled for 1/5th share out of the total assets by denying her liability to discharge the loan availed by M/s.Jeppiar Power Corporation. But on 15.02.2021, an order was passed appointing an Advocate Commissioner with a direction to call for offer to sell the plaint schedule properties. The Advocate Commissioner has filed five interim reports till 29.03.2022 drastically reducing the extent of landed properties of M/s.Jet Associates from 967 acres to 429.07 acres and thereafter increased it to some extent without any justification or court permission. Therefore, the appellant filed her objections dated 03.02.2021, 08.03.2021, 08.04.2021, 15.04.2021 and 21.03.2022 and requested to ascertain the total assets available for partition and for rendition of accounts of all the establishments besides constantly denying her liability to discharge the loan outstanding of M/s.Jeppiar Power Corporation Pvt Ltd. Without considering any of the objections, by order dated 22.03.2022, the Advocate Commissioner was directed to file valuation reports of suit properties situated in other Districts, viz. Thiruvannamalai, Kancheepuram and Kanyakumari Districts. However, the Advocate Commissioner in his interim report no.5, has also included the individual properties of the deceased Jeppiar situated in Sunguvarchatram, Kancheepuram District and Thiruvannamalai District, which were also directed to be advertised for sale, by order dated 29.03.2022, which is under challenge in this appeal.

3.Continuing further, the learned counsel for the appellant submitted that there is no basis set out for ascertaining the market value; that, market value was not ascertained by verifying the title, ownership, marketability and encumbrances of the subject properties and the recent sale deeds of the adjacent properties situated in the same locality; that, the market value of the subject properties is much less than the guideline value and the earlier valuation report; that, the entire assets which are available for effective division of 1/5th share, have not been included and the required extent of properties to be sold for discharging the bank loan of M/s.Jeppiar Power Corporation Pvt Ltd, have not been ascertained; and that, there is a failure on the part of the learned Judge to examine and consider such of those relevant factors while giving permission to advertise sale of properties. It is also contended by the learned counsel that the upset price fixed relying upon the valuation report dated 26.03.2022 and permission to sell the properties will greatly affect the rights of the parties including the appellant.

Therefore, the learned counsel prayed for appropriate direction in this appeal.

4.On the above submissions, we have heard the learned counsel appearing for the respective respondents and also perused the materials available on record.

5.Considering the facts and circumstances of the case and as agreed by the learned counsel on either side, this court, in order to give quietus to the issue involved herein, is inclined to appoint an Advocate Commissioner afresh, for the purpose of division of the properties after ascertaining the actual value of the properties.

6.Accordingly, Mr.K.R.Tamizhmani, Senior Advocate, ALA Ultra Mango Thope Street, Pulliambed, Noombal, Chennai 600 077, Mobile No. 94442 53010, has been appointed as Advocate Commissioner, who shall inspect the properties in question, after issuing due notice to all the parties and in the presence of them, and ascertain the ownership, encumbrance, marketability, upset price, etc. He shall also ascertain the market value, sale price, etc. of the neighbouring land / property and thereafter, file a detailed valuation report, enclosing the necessary documents, within a period of four weeks from the date of receipt of a copy of this order. The Advocate Commissioner shall take the assistance of the qualified Engineer, if necessary, at the cost of the appellant. The remuneration for the Advocate Commissioner is fixed at Rs.2,00,000/- which has to be borne by the appellant. All the parties shall co-operate with the Advocate Commissioner for early completion of the task assigned to him.

7.Post the matter, after filing of the report by the Advocate Commissioner.

[R.M.D., J.] [M.S.Q., J.]
20.07.2023

nsd

R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

nsd/rk

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