



C.R.P.No.1452 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.08.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN.

C.R.P.No.1452 of 2014

and

M.P.No.1 of 2014

- 1.Mrs.Sheila
 - 2.Mrs.Viney Preethi
 - 3.Vivian Prasad
- ... Petitioners

[Petitioner Nos.1 to 3 brought on record as Lrs of the deceased Petitioner Viz.P.Benedict vide court order dated 20.01.2023 made in C.M.P.No.14309 of 2022 in C.R.P.No.1452 of 2014 by GKIJ]

Vs.

- 1.K.Rama Naidu
 - 2.Sheshaiah
 - 3.Arunachalam
 - 4.Kumari
 - 5.Navaneethammal
 - 6.Varadhan
 - 7.Krishnaveni
 - 8.S.K.Parthasarathy Naidu (Deceased)
 - 9.S.P.Karukaran
 - 10.S.P.Prakash
 - 11.Jayalakshmi
 - 12.Kanka Lingcom
- ...Respondents



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India filed to set aside the fair and decreetal order dated 20.12.2013 and made in I.A.No.17478 of 2013 in I.A.No.783 of 2013 in O.S.No.5006/96 on the file of the VIII Assistant Judge City Civil Court, Chennai.

For Petitioners : Mr.S.Mukund,
: Sr.Counsel
For Respondents :
For R2 to R6 : Mr.S.Poovendham
: for Mr.R.Manickavel
For R9 to R11 : Mr.M.Gopalakrishnan

ORDER

This Civil Revision Petition challenges the order passed by the court below in I.A.No.17478 of 2013 in I.A.No.783 of 2013 in O.S.No.5006 of 1996 on the file of the VIII Assistant Judge City Civil Court, Chennai, Madras.

2.O.S.No.5006 of 1996 was presented for dissolution of partnership and for other reliefs. The matter came up to this Court in S.A.No.499 of 2000 and the appeal was allowed. The said decree reads as follows:



“1.That the findings of the Court below regarding the relief of dissolution of Partnership and consequential allotment of the 1/5th share etc are all do stand confirmed.

2.That the appellants herein be and hereby are entitled to recover a sum of Rs.1,00,000/- (One Lakh Only) together with 1/5th share in the profits made by the first respondent namely Mr.K.Rama Naidu out of the sale of the suit property with interest at 12% per annum from the date of Trial Court decree.

3.That the First respondent namely Mr.K.Rama Naidu be and hereby are directed to render the accounts relating to the sale of the suit property to the Appellants herein. That both the appellants herein shall pay the proper court fees on the Amount Recoverable.

4.That there be no costs in this Second Appeal.”

3.Against the order of this court, a special leave petition was preferred in S.L.P.Nos.954 and 955 of 2002. The said special leave petitions were dismissed by the Supreme Court vide an order dated 30.08.2012. On the disposal of the matter before the Supreme Court, an application was filed for appointment of a commissioner in I.A.No.783 of 2013 for the purpose of passing of the final decree.

4.An Advocate Commissioner was also appointed by the learned Judge on 14.09.2013. At the last portion of the order in the said application, it was stated that the Advocate Commissioner should take and assess the value of the property on the date of the petition.



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5. It is pertinent to point out that between the same parties, the matter came before this Court in C.R.P.No.1778 of 2003 and in that proceeding, this court was pleased to direct as follows:-

“8. In view of the rival submissions made by the learned counsel appearing for the petitioner and respondents, this court directs that

(i). The advocate commissioner appointed already by the trial court shall proceed with the matter and the first defendant, namely Rama Naidu shall render accounts relating to the sale of the suit property to the Advocate Commissioner;

(ii). If any portion of the suit properties remains unsold or if already has been dealt with by Rama Naidu by way of sale, gift, settlement, will etc., the Advocate Commissioner shall fix the value of those properties based upon the guideline value available in the Sub-Registrar's Office in the year 1995 and also taking into consideration of the sale deeds of the year 1995 filed by the plaintiff and respect of the adjacent lands and if necessary, the parties can let in evidence.”

6. It is accepted on all sides that this order has attained finality.

Therefore, the order passed in I.A.No.783 of 2013 was sought to be revised, in line with the order passed by this court in C.R.P.No.1778 of 2003. This was the application under Section 152 r.w. Section 151 of the CPC to amend the order passed in I.A.No.783 of 2013 in line with the



order passed by this court in C.R.P.No.1778 of 2003. The said application was allowed on 20.12.2013.

7.I heard Mr.S.Mukund learned Senior counsel for Mr.J.James and learned counsel for the petitioner Mr.S.Poovendham for Mr.R.Manickavel for Respondent Nos.2 to 6. It is not in dispute that the order passed by this court in C.R.P.No.1778 of 2003 has become final. As to how the Advocate Commissioner must assess or value the property has already been recorded by this court in the said order. Therefore, the Trial Court while passing the final decree in I.A.No.783 of 2013 should have been in accordance with the said binding orders. Unfortunately it has not been done so, the error has been corrected.

8.Therefore, I do not find any error in the order passed by the Trial Court. However, I have to take note of that Ms.T.Tamil Selvi, the learned Advocate Commissioner who was appointed by the court has taken ill and I was informed by her colleague Ms.Begum that she has not been coming to court regularly. She has informed the learned counsel appearing for the



respondents that she is intending to return the warrant, as physically she is not in possession to execute the same.

9.By keeping the application pending the agony of the parties would only increase, as they have already been litigating for the past 28 years. Therefore I have decided to appoint Mr.E.Prabu having Enrollment No.1215 of 1995 as an Advocate Commissioner in O.S.No.5006 of 1996.

10.The Learned VIII Assistant Judge City Civil Court, Chennai is requested to issue a warrant in the name of the Advocate Commissioner appointed by this Court. The Advocate Commissioner shall follow the orders passed by this court in S.A.No.499 of 2000 and C.R.P.No.1778 of 2003 and submit a report within a period of six (6) weeks from the date of issuance of warrant by the VIII Assistant Judge City Civil Court, Chennai. The VIII Assistant Judge City Civil Court, Chennai is requested to issue a warrant immediately on production of a copy of this order.He need not wait for the certified copy and he can act on the web copy that may be produced by the parties.



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11. I am passing this order because of the long pendency of dissolution of partnership. Mr.S.Mukund, learned Senior Counsel for the petitioner would submit that instead of granting a decree or money, the court may consider granting value of the land for the said purpose, if it is still available with the partnership firm. This is an issue which can be gone into by the court passing the final decree, when the report of the commissioner comes up before it, pursuant to the orders passed today.

12. With the above, this CRP stands disposed of. The initial fees of the Advocate Commissioner is fixed at Rs.50,000/-. The Advocate Commissioner will go through the accounts with the help of an auditor if necessary. The initial remuneration of the Advocate Commissioner will be paid by the petitioner. Thereafter at the time of the passing of the final decree, the court shall divide it on the basis of 20 per cent, in favour of the plaintiff, 60 per cent in favour of the first defendant or his legal heirs and 20 per cent in favour of the second defendant. No Costs. Connected miscellaneous petition is closed.



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Index : Yes/No

Speaking Order : Yes/No

Neutral Citations : Yes/No

V. LAKSHMINARAYANAN.J,

nst

To:
The
VIII Assistant Judge City Civil Court,
Chennai.

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and
M.P.No.1 of 2014



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