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C.R.P.(MD)No.994 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.994 of 2023

and

C.M.P.(MD)No.4671 of 2023

1.Hemalatham, W/o.Late.Hariram
2.Sudharasan, S/o.Late.Hariram

.. Petitioners

Versus

1.Ragubathi Gandhi, S/o.Late.T.M.Nagarajan
N.Sundara Babu (Died)
2.N.Anantha Giri
3.N.Muthuraman
4.S.Chitra
5.T.S.Girija
6.T.S.Sridhar

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 21.12.2022, passed in I.A.No.2 of 2022 in I.A.No.466 of 2016 in I.A.No.56 of 2015 in O.S.No.36 of 2013, on the file of the I Additional District Court (PCR), Tiruchirapalli and allow this Civil Revision Petition.

For Petitioners : Mr.C.Jeyaprakash

For Respondents : Mr.K.S.Kathiravan



ORDER

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This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 21.12.2022, passed in I.A.No.2 of 2022 in I.A.No.466 of 2016 in I.A.No. 56 of 2015 in O.S.No.36 of 2013, on the file of the I Additional District Court (PCR), Tiruchirapalli.

2.The petitioners are the legal heirs of the deceased first defendant namely, Hari Ram. The suit was filed by the respondents herein to partition the suit schedule properties contiguous to each other. The contesting defendants including the first petitioner's husband late Hari Ram, remained exparte. They attempted to set aside exparte decree by filing an application to condone delay in filing the application to set aside the exparte decree and the same was rejected and no further proceeding was initiated.

3.A preliminary decree was passed by the Court on 14.08.2014. Later, C.R.P. (MD)No.994 of 2021 was filed. C.R.P.(MD)No.994 of 2021 was also dismissed by this Court, by its order dated 16.07.2021. Thus, the preliminary decree that was passed on 14.08.2014 has attained finality. Pursuant to the preliminary decree dated 14.08.2014, the plaintiffs, who are the respondents herein, have filed I.A.No.56 of 2015 for passing of final decree. In the said I.A., the plaintiffs filed I.A.No.466 of 2016 for appointment of an Advocate Commissioner to partition the property.



4. Advocate Commissioner was appointed on 01.03.2017 in I.A.No.466 of 2016 to bring the property to sale by preserving peremptory right among family members. In the proceedings, late Hari Ram offered to pay a sum of Rs.40,00,000/-, as he was in possession of the suit schedule property.

5. In the proceedings, the Valuer was appointed. The Valuer has given a report, wherein it has been stated that the value of the property as on 27.11.2018 was Rs.1.31 Crores. However, on 10.08.2019, auction is said to have taken place and thereby, the market value of the property was fixed as Rs.1 Crore.

6. The property was sought to be purchased by the plaintiffs, who are siblings of the deceased Hari Ram. A report is also said to have been filed by the Advocate Commissioner on 19.11.2019. During the lifetime of the first defendant, the husband of the first petitioner, father of the second petitioner Hari Ram, had also filed an objection to the report of the Advocate Commissioner on 25.11.2019. The relevant portion of the objection of the deceased Hari Ram reads as follows:-

“It is submitted that the Commissioner has stated in his report (filed into Court on 19.11.2019) the petitioners (Raghupathy and others) made an offer of Rs.1 Crore to purchase the property. This 1st respondent/ 1st defendant has strong and stubborn objection to the offer made by the petitioners. It is submitted that if the property is auctioned open and publicly, it would fetch more than 2 Crores. Further the property situate at commercial area. Hence, the purchase price of 1 Crore is absolutely a meagre amount.



It is submitted that to prove the claim of this 1st respondent/1st defendant, he engaged a qualified chartered civil engineer and examined and inspected the property directly and value the property with a minimum of Rs.1,31,00,000/-. Hence, the basic price ought to have been fixed as Rs.1 Crore. And on that basis, the properties have to be auctioned in public for the benefit of all. It seems the commissioner has not stated anything about how he fixed the basis price. The Chartered Civil Engineer and Registered Valuer Er.V.S.Hemalatha and Er.M.C.Muthuraman report is filed herewith for the Honourable Court perusal.”

7.Under these circumstances, the petitioners, who are the wife and son of late Hari Ram, have filed I.A.No.2 of 2022 to scrap the report of the Advocate Commissioner dated 19.11.2019, pursuant to an order in I.A.No.466 of 2016 in I.A.No.56 of 2015 in O.S.No.36 of 2013 under Order XXVI Rule 14(2) r/w. Section 161 of C.P.C. The Court below has rejected the application vide the impugned order dated 21.12.2022. The petitioners have thus filed the present Civil Revision Petition.

8.It is further submitted that even though the market value is fixed as Rs.1.31 Crores, the upset value was fixed at Rs.78,08,608/- and thereby, the value of the property has been undervalued and by reducing the amount, the petitioners would receive a lesser amount from sale consideration of the property, which is under their custody and possession.



9. It is noticed that in the final decree application filed by the respondents in I.A.No.56 of 2015, an Advocate Commissioner was appointed to assist the Court to arrive at the guideline/market value and the upset price for the purpose of auctioning the property. The Advocate Commissioner has given a supplemental report dated 06.04.2019, whereby the Advocate Commissioner has concluded the guideline value of the property was Rs.78,08,608/-. The basis for arriving at the above said guideline value in the report, reads as under:-

"4.The earlier guideline value was Rs.48,30,380. In the normal course, guideline values used to double every 5-7 years. Since nearly four years have elapsed since my first report, it would be fair to conclude that the guideline value ought to have increased by around 50% to 60%. Taking into account the higher end, that is, 60%, the present guideline of the properties would have been Rs.78,08,608/- [Rupees Seveny Eight Lakhs Eight Thousand Six Hundred and Eight]."

10. The above said value is contrary to the report of the registered Valuer, who had given a report dated 27.11.2018 for Rs.1,31,00,000/-. Based on the above report, a docket order was passed by the Court below on 03.07.2019 by fixing the upset value for the sale as Rs.78,08,608/- being the guideline value arrived by Advocate Commissioner.

11.Pursuant to the above, the auction was held on 10.08.2019 and in the auciton, the respondents as parties to the proceedings, offered their bid and have



purchased the property for a sum of Rs.1 Crore. The respondents have deposited Rs.20,00,000/- being 1/5th share that was payable on the above said amount of Rs.1 Crore, as the respondents are claiming 4/5th shares.

12.In my view, the value cannot be arrived at by an Advocate Commissioner, as the Advocate Commissioner appointed was merely to assist the Court. The Advocate Commissioner cannot guess the value of the property and it is not the role played by an Advocate Commissioner to assess the value of the property. The valuation has to be backed by a report of the Valuer. The value determined by the registered Valuer as early as 27.11.2018 at Rs.1,31,00,000/-, which was subsequently reduced to Rs.78,08,608/- and the same has resulted in uncontested sale in favour of the respondents for Rs.1 Crore, raises a serious question.

13.Under these circumstances, this Court is inclined to interfere with the impugned order, by setting aside the impugned order and remitting the case back to the I Additional District Court (PCR), Tiruchirapalli, to either to appoint a fresh Advocate Commissioner or to issue a fresh warrant to the same Advocate Commissioner to produce a fresh report duly backed by an independent Valuer's report. The value determined by the Valuer shall form part of the report of the Advocate Commissioner, which shall be the basis for a fresh auction sale by



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preserving peremptory rights to the respondents. The entire exercise shall be completed by the Court below within a period of four months from the date of receipt of a copy of this order.

14.This Civil Revision Petition stands allowed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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27.06.2023

To

The I Additional District Judge (PCR),
Tiruchirapalli.



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C.SARAVANAN, J.

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Order made in
C.R.P.(MD)No.994 of 2023

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