



C.R.P.No.2473 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2473 of 2024

N.Gunasekaran [Deceased]

1.G.Kanagavalli

2.G.Krishnakumari

3.G.Karunamoorthy

... Petitioners

Vs.

1.N.Damodaran

N.Deivasigamani [Deceased]

2.N.Somasundharam

3.C.Arunkumar

4.C.Duraisamy

5.Naganandhini

6.Narmadha Devi

7.Anitha Lakshmi

8.Krithika

9.D.Kasturi

10.D.Rajkumar

11.D.Aravindan

12.S.Bhuwaneshwar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to issue suitable directions to the XV Assistant City Civil Court,



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Chennai to pass final order in the I.A.No.653 of 2017 in O.S.No.2962 of 2006 within a stipulated period.

For Petitioners : Mr.D.Bharathy

ORDER

The petitioners filed I.A.No.652 of 2017 in O.S.No.2962 of 2006 before the XV Assistant City Civil Court, Chennai to appoint an Advocate Commissioner with a direction to sell the suit properties by auction and deposit the sale proceeds into the suit account so as to enable the parties to get their respective shares as per the final decree. The Lower Court by order dated 16.08.2017 appointed an Advocate Commissioner, interim report filed by the Advocate Commissioner and thereafter, the interim application was kept pending. Against which, the present civil revision petition filed.

2.Since the prayer sought for by the petitioners is to the limited extent, notice to the respondents is dispensed with.

3.The contention of the learned counsel for the petitioners is that I.A.No.653 of 2017 was initially filed by one Gunasekaran whose legal heirs



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are the petitioners herein. The said Gunasekaran filed a partition suit in O.S.No.2962 of 2006 before the XV Assistant City Civil Court, Chennai seeking 1/5th share in the suit property and preliminary decree was passed in O.S.No.2962 of 2006 on 26.06.2009. The said Gunasekaran filed an application in I.A.No.15075 of 2010 for appointment of Advocate Commissioner and I.A.No.15076 of 2010 for passing final decree. In I.A.No.15075 of 2010, an Advocate Commissioner was appointed to inspect the suit property and to find out the possibility of dividing the suit property by metes and bounds with a view to provide 1/5th share in the suit property to each of the legal heirs of late Nagarathinam. The Advocate commissioner inspected the suit property and filed his report stating that the said property is indivisible in nature, hence the property may be sold and the sale proceeds can be divided amongst the legal heirs of late Nagarathinam. In view of the report by the Advocate Commissioner, the petitioners filed I.A.No.653 of 2017 to appoint an Advocate Commissioner to sell the suit property by public auction and with a direction to deposit the sale proceeds into the suit account with a view to take the respective shares by the legal heirs of late Nagarathinam as per the



final decree. The Trial Court failed to consider the application for appointment of Advocate Commissioner and inspection of the property for sale by public auction and the same is kept pending due to interim applications filed by some of the legal heirs with a sole intention to scuttle the process by bringing the property to sale by public auction and thereby denying the petitioners to get the share of their inherited property. The Trial Court further failed to consider that the preliminary decree has been passed in the year 2009 and still the decree is unable to be executed. Further, already four Advocate Commissioners appointed but for one reason or other the Advocate Commissioners could not proceed and complete the warrant and bring the property for sale.

4. Thereafter, some of the respondents came forward to purchase the property and the petitioners had given no objection for the same. The 4th respondent Duraisamy in his counter objected to bring the property for public auction for the reason that the suit property is an ancestral property and it is an iconic building in Triplicane area, if publications were made by the Advocate Commissioner for public auction, it would greatly affect the



family dignity and hence, prayed for an opportunity to bring a purchaser by private sale. The 11th respondent Aravindan filed a counter stating that instead of appointing an Advocate Commissioner, the 11th respondent may be permitted to effect a private sale by which the property would fetch better rates benefiting both the plaintiffs and the defendants. The said Aravindan also filed a civil revision petition before this Court in C.R.P.No.1029 of 2023 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 and this Court passed a detailed order and recorded that O.S.No.2962 of 2006 was initially filed by Gunasekaran who died on 07.06.2020, thereafter the present petitioners/legal heirs of the said Gunasekaran were brought on record as plaintiffs in I.A.No.3 of 2020 by order dated 19.11.2020. The suit was filed seeking for division of 'A' Schedule property into five shares and allot 1/5th share for the plaintiffs and to the other defendants respectively and 'B' schedule to divide the gold jewels of 100 sovereigns, silver articles of 50 kgs and brass vessels of 400 kgs. Thereafter, I.A.No.653 of 2017 was filed to appoint an Advocate Commissioner which was allowed on 16.08.2017. The Advocate Commissioner filed an interim report stating that a sum of Rs.2



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Crores can be fixed as upset price and there is no objection from either side.

Subsequently, some of the respondents filed I.A.No.7 of 2022 and 8 of 2022 asking for private sale and further on 01.11.2022 a valuation report was filed by some of the respondent showing that the present market value of the property was arrived at Rs.2,60,05,000/-. Since there was no objection, an order was passed on 23.12.2022 in I.A.Nos.7 and 8 of 2022 directing the petitioners therein to participate in the auction and the person who offers to pay the highest price was directed to purchase the property and ordered to fix the upset price as per the valuation report dated 01.11.2022. Finding no contra submissions with regard to fixation of estimated land and building of Rs.2,60,05,000/- on 01.11.2022, this Court referred to I.A.No.653 of 2017 filed by the petitioners seeking appointment of Advocate Commissioner to sell the suit property by public auction and there is no objection by the respondents referring to the present market value of Rs.2,60,05,000/- dated 01.11.2022 and directed the Trial Court to proceed as per this order.

5.Considering the submissions made and on perusal of the materials, it is not in dispute that preliminary decree was passed in O.S.No.2962 of



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2006 on 26.06.2009. Thereafter, Advocate Commissioner appointed and

the suit property was inspected. From the Advocate Commissioner's report,

it is found that the parties to the proceedings are not interested to divide the

property by metes and bounds among themselves and hence, the suit

property to be auctioned by the public auction and the sale proceeds to be

given to the parties as per their share in the preliminary decree. Memo has

filed by some of the defendants in the suit that they have no objection to sell

the entire property and the sale proceeds can be divided among the parties.

Two of the defendants raised objection for bringing the property for public

auction and they were willing to participate in the auction and the upset

price was arrived at Rs.2,60,05,000/- as per the valuation report dated

01.11.2022. Thus, now it is for the Trial Court to appoint an Advocate

Commissioner, if not already appointed, to effect publication and bring the

property for auction without further delay. The Advocate Commissioner to

deposit the auction amount to the credit of the suit in O.S.No.2962 of 2006

and thereafter, it can be apportioned as per the judgment and decree. This

exercise has to be completed within a period of three months from the date

of receipt of a copy of this order. This order to be scrupulously followed



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since the preliminary decree was passed as early as 26.06.2009 and for the past 15 years, the suit is still at the stage of preliminary decree.

6. With the above directions, the civil revision petition stands allowed.

No costs.

16.07.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

The XV Assistant City Civil Judge,
Chennai.

Note: Issue Order Copy on 29.07.2024.



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M.NIRMAL KUMAR, J.

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