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C.R.P.No.4878 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.01.2024

PRONOUNCED ON: 12.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.4878 of 2023

and

Civil Miscellaneous Petition No.28845 of 2023

A. Umashankar

...

Petitioner

Vs

1. Premavathy

2. Chandralekha

3. A. Kumari

4. Mahalakshmi

5. A.Mayandi

6. Padmavathy

7. A.Kumar

...

Respondents



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Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order passed in I.A.No.1 of 2019 in I.A.No.17008 of 2016 in O.S.No.1635 of 2012 dated 06.04.2023 on the file of the III Additional City Civil Court, Chennai and allow the Civil Revision Petition.

For Petitioner : Mr G.Mohanarangan

For respondent : Mr. V. Manisekaran,

ORDER

This Civil Revision has been preferred against the fair and decreetal order passed in I.A.No.1 of 2019 in I.A.No.17008 of 2016 in OS.No.1635 of 2012, dated 06.04.2023 on the file of the III Additional City Civil Court, Chennai.

2. The fact of the case is that the respondents/plaintiffs filed a suit in O.S.No.1635 of 2012, on the file of the III Additional City Civil Court, Chennai against the petitioner/defendant for partition claiming 7/11 share in



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the plaint A schedule property, besides "B" schedule movable properties, in which, a preliminary decree was passed on 07.03.2015 in favour of the respondents/plaintiffs. No appeal had been filed as against the preliminary decree and hence, it become final. As per the preliminary decree, the respondents/plaintiffs are entitled for partition of 7/11 share in the suit "A" & "B" schedule properties. In pursuance of the preliminary decree, the respondents/plaintiffs had filed a petition in I.A.No.17008 of 2016 for passing final decree and to divide the suit properties by metes and bounds through the Advocate Commissioner and to allott 7/11 share. In pusuance of the same, Mrs. K. Jayakarthiga, Advocate, was appointed as an Advocate Commissioner. The Advocate Commissioner had visited the suit property and filed his Report dated 30.11.2017 stating that as per warrant, the extent of land in "A" schedule property is mentioned as 936 sq.ft., but, when it is measured physically, it comes around 972 sq.ft. the building can be divided into two shares, i.e., 616 sq.ft, for 7/11 shares to the respondents/plaintiffs and 352 sq.ft for 4/11 shares to the petitioner/defendant. For more precise division, the Engineer's opinion can be taken. Since the Advocate Commissioner's report was not certain



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about the divisibility of the building, one Mr.P.Anbarasan, Chartered Engineer was appointed for the purpose of finding out the divisibility of the suit "A" schedule property. He has filed his Report dated 28.06.2019 and opined that the suit "A" schedule property is not divisible for allotting each such one share to each plaintiff and market value of the property is Rs.1,11,17,000/-. In pursuance of that report the learned Trial Judge, by an order dated 20.09.2019, fixed the value of the suit "A" schedule property at Rs.1,11,00,000/- for sale of the same. Thereafter, the respondents/plaintiffs had filed a petition in I.A.No.1 of 2019 seeking to appoint an Advocate Commissioner to bring the Suit "A" schedule property for sale by way of Public Auction and the same was allowed and Mr.P.Periyasamy, Advocate, was appointed as Advocate Commissioner to bring the suit "A" schedule property for sale by Public Auction after following all the formalities and procedure required for public auction. Aggrieved over the same, the present revision has been filed.



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3. The learned counsel for the petitioner submitted that the Trial Court failed to note that the respondents herein did not ask 1/11 share each. The share of the respondents/plaintiffs is 7/11 and the petitioner/defendant is 4/11 share. As per the preliminary decree, 4/11 share comes to 346.56 sq.ft and 7/11 share comes to 606.48 sq.ft respectively and it is possible to divide and as per the report of the Advocate Commissioner dated 30.11.2017, "A" schedule property is divisible in nature. Therefore, seeking to allow the Revision and set aside the impugned order.

4. The learned counsel for the respondents/plaintiffs supported the impugned order of the Trial Court and contended that even after negotiation, the petitioner/defendant was not ready to sell his share. "A" schedule property being a land with house and not possible for division as it is a small area. Even if it is divided, there is no access for each of plaintiff's share. The respondents/plaintiffs had no objection for conducting public auction for selling "A" schedule property and to divide their share as per the preliminary decree and seeks to dismiss the revision.



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5. This Court considered the matter in the light of the submissions made by the learned counsel on either side and also perused the materials available on record carefully.

6. Admittedly, in the suit in O.S.No.1635 of 2012, which was filed for partition of A schedule property, besides "B" schedule movable properties, preliminary decree has been passed on 07.03.2015 in favour of the respondents/plaintiffs. As per the preliminary decree, the respondents/plaintiffs are entitled for partition of 7/11 shares in the suit "A" & "B" schedule properties. Pursuant to which, I.A.No.17008 of 2016 was filed by the respondents/plaintiffs for passing final decree and to divide the suit properties by metes and bounds through the Advocate Commissioner and to allot 7/11 shares to the plaintiffs. In this regard, Mrs. K. Jayakarthiga, Advocate, was appointed as an Advocate Commissioner and she had filed his Report dated 30.11.2017 stating that the building can be divided into two shares, i.e., 616 sq.ft, for 7/11 shares to the respondents/plaintiffs and 352 sq.ft for 4/11 shares to the petitioner/defendant. For more precise division,

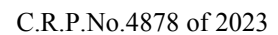


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Engineer's opinion can be taken. Since the Advocate Commissioner's report was not certain about the divisibility of the building, one Mr.P.Anbarasan, Chartered Engineer was appointed for the purpose of finding out the Precise divisibility of the suit "A" schedule property and he filed his Report dated 28.06.2019 and opined that the suit "A" schedule property is not divisible and the market value of the property is Rs.1,11,17,000/-. In pursuance of that report, the learned Trial Judge, by an order dated 20.09.2019, fixed the value of the suit "A" schedule property is at Rs.1,11,00,000/-. Thereafter, the respondents/plaintiffs had filed a petition in I.A.No.1 of 2019 seeking to appoint an Advocate Commissioner to bring the Suit "A" schedule property for sale by way of Public Auction and the same was allowed by appointing Mr.P.Periyasamy, Advocate, as an Advocate Commissioner . Against which, the present revision has been filed.

7. On perusal of the impugned order, it is seen that the learned Trial Judge had discussed about the report of the Advocate Commissioner in paragraph no.7 of the impugned order. For better appreciation, paragraph



No.7 of the impugned order is extracted as under:-

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settling the matter amicably among the parties in the suit from 11.03.2020 till 22.02.2023 despite no steps were taken by either of the parties under Section 2 or 3 of the Partition Act and no settlement arrived between the parties. Similarly none of the parties came forward to purchase the suit “A” schedule property. In the above said circumstances, this Court has no other option except to order for sale of the suit “A” schedule property comprised in 953 sq.ft. Therefore, this Court appoints Mr.P.Periyasamy, Enroll No.1799/2004, No.12, 2nd Floor, Kondi Chetty Street, Parry's Chennai 600 001 (cell NO.98415 58825) as Advocate Commissioner for bringing the suit “A” schedule property for sale by Public Auction following all the formalities and procedure required for Public Auction”

8. I have gone through the Commissioner Report and Chartered Engineer's Report as well as the sketch filed during the course of argument.



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The relevant portion of the Chartered Engineer's Report runs as follows:

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“ 'A' SCHEDULE PROPERTY

The entire house and ground premises bearing New Door No.71, Old Door No.30, formerly Door No.30, Labbai Street, Pudupet , Madras – 600 002, bounded on the

North by : Property bearing Door No.70, Labbai Street belongs to Munusamy Pillai.

East by : House belongs to Khader Meeran Saheb

South by :Property of Hazran Bibi Old Door No.56, Labbai Street,

West by : Labbai Street

Situate in O.S.No.374(old), R.S.No.1088, Present R.S.No.927, Egmore Village, measuring East to West 36 feet, North to South 26 feet admeasuring 936 sq.ft. Situate in the registration District of Periamet. The Corporation Division No.106.

I was ordered by this Hon'ble Court to inspect property and give the opinion as to divisibility , if so, mode of division, to ascertain market value and guideline value



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of the “A” schedule property. Hence, I took measurements of the property and also noted down the physical features and specification of the building. The property comprises of land and building. The building consists of ground floor only.

Location of property

The property is located in the commercial and residential locality on Lubbai street in Pudupet area near Haries Road. This area is famous for automobile spare parts businesses.

Specification of building

The building consists of ground floor only. Madras Terraced Roof has been provided in the building. Walls are constructed with brick work in lime mortar and plastered by lime/cement mortar. Tiled/cement flooring is laid. Teak and country wood is used. The age of the building is assessed as approx.40 years assessed by physical observations.



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Condition of building

Eventhough the building is old, the building is in good condition.

Area details

Site extent

Site extent-as per schedule = 936 sq.ft.

Site extent-as per site measurements = 953 sq.ft.

Built up area

Ground floor – Madras Terraced Roof = 905 sq.ft.

Descriptions

I am asked to find out whether the suit property is capable by dividing into 11 equal shares for allotting each such share to each seven plaintiffs and the remaining four shares to defendant.

The “A” schedule property is measuring an extent about 953 q.ft. If the property is divided into 1/11th share, then each share will be about 86.64 sq.ft. The suit property comprises land and ground floor building We have to allot 86.64 sq.ft. of land in the property to each plaintiffs. By providing the common passage and allotting the respective share to put them into separate possession



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by metes and bounds in the said circumstances is not possible. Besides the same will not have convenient enjoyment and getting planning permission for future construction after demolishing the building.

In my opinion, it is not possible to divide schedule property into eleven equal shares for allotting each such one share to each plaintiff. Hence, I have suggested the actual market value of property considering all advantages and disadvantages and present market situation etc., and also enclosed the guideline value certificate of land value for Lubbai Street, issued from sub-registrar office letter No.150/2019-dated 03.04.2019. “

9. Considering the above said Commissioner Report and the Chartered Engineer Report, I find no infirmity or illegality in the impugned order passed by the Trial Court for public auction in “A” schedule property and there is no reason to interfere with the same and I find no merit in this revision and the same is liable to be dismissed.



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10. Accordingly, this Civil Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed.

12.02.2024

Index: yes/no
Internet:yes/no
mrp

To

III Additional Judge,
III Additional City Civil Court,
Chennai.



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V. SIVAGNANAM, J.

mrp

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