



C.R.P.[NPD].No.4061 of 2024
and C.M.P.No.22334 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD]No.4061 of 2024
and C.M.P.No.22334 of 2024

D.Rajkumar
Represented by guardian
D.Aravindan

.. Petitioner

Vs.

N.Gunashekar (deceased)
1.G.Kanagavalli
2.Krishnakumari.G
3.Karunamoorthy.G
4.N.Damodharan
N.Deivasegamani (deceased)
5.N.Somasundharam
6.C.Arun Kumar
7.C.Duraiswamy
8.C.Nandhini
9.C.Narmadha Devi
10.C.Amitha Lakshmi
11.S.Kiruthika
12.D.Kasthuri
13.S.Bhuvaneswari

.. Respondents



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the docket order dated 11.09.2024 made in application in I.A.Sr.No.57828 of 2024 in I.A.No.15076 of 2010 in O.S.No.2962 of 2006 on the file of the XV Assistant City Civil Court, Chennai District.

For Petitioner : Mr.Samjayaraj Houston
For R1 to R3 : Mr.D.Bharathy
For R4 to R13 : Mr.H.Shabeer Ali

ORDER

This Civil Revision Petition has been filed seeking to set aside the docket order dated 11.09.2024 made in application in I.A.Sr.No.57828 of 2024 in I.A.No.15076 of 2010 in O.S.No.2962 of 2006 on the file of the XV Assistant City Civil Court, Chennai District.

2.The brief facts of the case are as follows:

2.1.Originally the suit has been filed for partition by one Gunashekaran as against his brothers. The suit property was house property. The preliminary decree was passed on 26.06.2009 and thereafter, the plaintiff filed I.A.No.15075 of 2010 for passing of final decree. In the said



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application, the learned Advocate Commissioner was appointed to find out the possibility of dividing the suit property. The Advocate Commissioner inspected the suit property and filed the report stating that the suit property was indivisible in nature. Therefore, the plaintiff filed I.A.No.653 of 2017 to appoint the Advocate Commissioner to sell the suit property by public auction. While so, the petitioner herein, who is the legal heir of the 2nd defendant filed I.A.No.7 of 2022, seeking permission to purchase the plaintiff's 1/5th share in the suit property. Since the others defendants also filed similar application for the purchase of the plaintiff's share, the Court below directed the petitioner to participate in the auction sale of the suit property. Against the said order, the petitioner filed the Civil Revision Petition in C.R.P.No.1029 of 2023, and the same came to be dismissed.

2.2.The legal heirs of the plaintiff also filed a Civil Revision Petition in C.R.P.No.2473 of 2024, seeking to issue suitable direction and pass final orders in I.A.No.653 of 2017, wherein, this Court directed the Court below to appoint the Advocate Commissioner and bring the suit property for auction. At this stage, the petitioner filed the application under Section 5 of



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the partition Act, claiming that his brother has mental illness suffering permanent disability of 65% and he is advised to be kept under the same environment. Therefore, the petitioner is willing to purchase the property for the well-being of his brother viz., Rajkumar. However, the Court below returned the application holding that in C.R.P.No.2473 of 2024, this Court had issued direction to bring the suit property for auction and therefore, the if the petitioner wants to purchase the plaintiff's share, he can very well participate in the auction. Aggrieved over the same, the present Civil Revision Petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the petitioner herein has filed the application under Section 5 of the Partition Act, to purchase the property for the benefit of his brother who is suffering from mental illness. Therefore, the petitioner ought to have given opportunity to prosecute the case.

4.The learned respective counsel appearing for the respondents submitted that the petitioner keep on filing various petitions to purchase the



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property even after the direction of the Court below and this Court to participate in the auction. The Court below has rightly returned the application filed under Section 5 of the Partition Act, which does not requires any interference.

5.For better appreciation, Section 5 of the Partition Act,1893 reads as follows:

“5. Representation of parties under disability.—In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the court shall not be bound to comply with any such request, undertaking or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.”

6.The above provision makes it clear that though request is made by any party under disability to purchase the property, the Court shall not be bound to apply any such request, undertaking or application unless it is of



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the opinion that the sale or purchase will be for the benefit of the party under such disability. Therefore, mere filing of such application will not give any benefit to purchase property. Since the other respondents are willing to purchase the property, the Court below and this Court directed the petitioner to participate in the auction. Merely filing applications seeking to purchase the property would only prolong the case. If the petitioner wants to purchase the property for the benefit of the disabled brother, nothing prevent him, from participating in the public auction. In such view of the matter, this Court do not find any merits in the present Civil Revision Petition. If the petitioner wants to purchase the plaintiff's share, he can very well participate in the auction and quote highest bid.

7. Accordingly, the Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non-Speaking Order

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To:

The XV Assistant City Civil Court,
Chennai District.



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N.SATHISH KUMAR, J.
rst

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