



C.R.P(MD)No.854 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 18.03.2024

Delivered on : 06.06.2024

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P.(MD)No.854 of 2018

and

C.M.P(MD)No.3737 of 2018

Lakshmanan : Petitioner/1<sup>st</sup> Respondent/Plaintiff

Vs.

1.Dhanalakshmi

2.Sankaragomathi

3.Karthikeyan (died)

4.Shanmugasundari : Respondents 1 to 4/Petitioners/  
LRs of the deceased 1<sup>st</sup> Defendant

Avudaiyammal (died)

5.Murugan

6.Ananthammal

7.Gomathi

8.Ramanathan

9.Sankara Narayanan



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M.S.Muppidathi Mudaliar (died)

: Respondents 5 to 9/  
Respondents 3 to 7/  
Defendants 3 to 7

10.Thiruvoimozhi

11.Preethi Sankari (Minor)

12.Sivasankar Raja (Minor)

(The minor respondents 11 and 12 represented through their mother and natural guardian 10<sup>th</sup> respondent)

(Respondents 10 to 12 are brought on records as LR's of the deceased third respondent vide Court order, dated 04.01.2022 made in CMP(MD)No.2279/2020 in CRP(MD)No.854/2018)

**Prayer :** This Civil Revision Petition filed under Article 227 of the Constitution of India, setting aside the fair and decreetal order passed in I.A.No.97 of 2016 in O.S.No.6 of 2000, dated 09.11.2017 on the file of the Subordinate Court, Sankarankovil.

For Petitioner : Mr.S.Meenakshi Sundaram, Senior Counsel,  
for Mr.M.Sengu Vijay.

For Respondent : Mr.S.Sivakumar,  
for R1, R2, R4, R10 to R12.

### **ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.97 of 2016 in O.S.No.6 of 2000, dated 09.11.2017 on the file of the



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Subordinate Court, Sankarankovil, allowing the petition filed under Section 3 of the Partition Act.

2. The revision petitioner as plaintiff has filed a suit in O.S.No.6 of 2000 on the file of the Subordinate Court, Sankarankovil, claiming partition and allotment of 7/18 shares in the suit property. After full trial, preliminary decree came to be passed on 25.04.1991. Aggrieved by the preliminary decree, the first defendant has preferred an appeal before this Court in A.S.No.974 of 1991 and the same came to be dismissed vide judgment and decree, dated 13.03.2001. The plaintiff/decreed holder has filed an application in I.A.No.403 of 2010 in O.S.No.6 of 2000 (previously O.S.No.75 of 1987 on the file of the Sub Court, Tenkasi) under Section 2 of Partition Act, seeking orders to sell the suit property in Court auction sale and then to permit him to withdraw the amount proportionate to his share out of the sale proceeds and the same was pending.

3. Pending the above application filed under Section 2 of Partition Act, the respondents 1 to 4 being the legal representatives of the deceased first defendant have filed an application under Section 3 of the Partition Act in I.A.No.101 of 2011, praying the Court to fix the value of the property and



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to permit them to pay the amount to the plaintiff proportionate to his shares allotted to him. The plaintiff has filed a counter statement raising objections.

Pending enquiry in the above I.A.No.101 of 2011, the legal representatives of the first defendant have again filed a petition under Section 3 of the Partition Act in I.A.No.97 of 2016, praying the Court to fix the value of the property at Rs.43 lakhs or to fix the value through PWD Engineer and permit them to pay the amount, which is proportionate to the plaintiff's 7/18 shares to him.

4. The petitioner/first respondent/plaintiff has filed a counter statement raising serious objections wherein, he has prayed the Court to fix the value at Rs.55 lakhs and permit him to purchase the shares of the first defendant by paying proportionate amount to them. The learned Subordinate Judge, after enquiry, has passed the order, dated 09.11.2017, closing the petition in I.A.No.101 of 2011 and allowing the petition in I.A.No.97 of 2016 permitting the legal representatives of the first defendant to purchase the shares of the remaining shareholders at the valuation to be fixed by the Court and also appointed an Advocate Commissioner to fix the value of the property. Aggrieved by the impugned order, the plaintiff has preferred the present revision.



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WEB COPY 5. The learned Senior Counsel appearing for the revision petitioner would contend that the trial Court erred in deciding that the present petitioner invoking Section 2 of the Partition Act cannot invoke Section 3 of the said Act; that there can be no application under Section 3 of the Partition Act unless an application under Section 2 of the Partition Act is already filed; that mere expression to purchase the property is very much sufficient to satisfy the legal requirements under Section 3 of the Partition Act and there need not be a formal petition to invoke the same; that the application under Section 3 of the Partition Act can be invoked only when the larger shareholder files an application under Section 2 of the Partition Act; that the petitioner was allotted a share of 7/18, for which he is not a larger shareholder but, he is the only lesser shareholder.

6. The learned Senior Counsel would further contend that the plaintiff has prayed the Court to fix the value of the property at Rs.55 lakhs more than the amount sought to be fixed by the other side; that when the plaintiff was ready and willing to accept the price at Rs.55 lakhs, the trial Court erred in accepting the case of the respondents 1 to 4 and permitted them to purchase the shares of the other shareholders and that since the plaintiff has



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given more value and his readiness to purchase the other shares of the other shareholders, the learned trial Judge ought to have preferred the plaintiff.

7. Before entering into further discussion, it is necessary to refer Section 2 and 3 of the Partition Act.

*Section 2: Power to Court to order sale instead of division in partition suits:- Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein or of any other special circumstances, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.*

*Section 3: Procedure when sharer undertakes to buy: (1) if, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in such manner as it may think fit and offer*



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*to sell the same to such shareholder at the price so ascertained and may give all necessary and proper directions in that behalf.*

*(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.*

*(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay a costs of or incident to the application or applications.*

8. It is not in dispute that the revision petitioner/plaintiff has already been allotted 7/18 shares and whereas the deceased first defendant was also given similar share of 7/18 in the suit property, which is now claimed by the respondents 1 to 4. No doubt, in view of the report of the learned Advocate Commissioner and the acceptance of the same by the trial Court that the suit property cannot be divided conveniently, the plaintiff has invoked Section 2 of the Partition Act and sought for sale of the suit property and distribution of the proceeds. When the said petition filed by the plaintiff is pending, the legal representatives of the deceased first defendant by invoking Section 3 of the Partition Act have filed two applications praying the Court to value the properties and permit the applicant to purchase the shares of the party asking for a sale.



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WEB COPY 9. Considering the above two provisions, the Hon'ble Supreme Court in the case of *R.Ramamurthi Iyer Raja V. Rajeswara Rao* reported in **1972 2 SCC 721**, has observed that the scheme of Sections 2 and 3 of the Partition Act apparently is that if the nature of the property is such or the number of shareholders is so many or if there is any other special circumstance and a division of the property cannot reasonably or conveniently be made, the court can in its discretion on the request of any of the shareholders interested individually or collectively to the extent of one moiety or upwards direct a sale of the property and distribute the proceeds among the shareholders. The Hon'ble Apex Court has further observed that when a Court has been requested under Section 2 of the Act to direct a sale 'any other shareholder can apply for leave to by at a valuation the share or shares of the party or parties asking for sale and in such a situation it has been made obligatory that the court shall order a valuation of the share or shares and offer to sell the same to the shareholder who has applied for leave to buy the share at a price ascertained by the court and if a-plaintiff in a suit for partition has invoked the power of the Court to order sale instead of division in a partition suit under Section 2 of the Act and the other shareholder undertakes to buy at a valuation the share of the party asking for sale the court has no option or



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choice or discretion left to it any, it is bound to order a valuation of the shares in question and offer to sell the same to the shareholder undertaking or applying to buy it at a valuation.

10. As rightly observed by the learned trial Judge, a cursory perusal of the above Sections 2 and 3 of the Partition Act would clearly show that the scope and nature of both the above provisions are totally distinct and different. When an application under Section 2 of the Partition Act is pending requesting the Court to order for sale of the suit property, then only Section 3 of the said Act can be invoked by the other shareholder, who has not filed the petition under Section 2 of the Partition Act.

11. As rightly contended by the learned counsel for the respondents, the words in Section 3 assumes importance. Section 3 does not say anywhere that any of the shareholder can apply for leave to buy, but only the other shareholder, who has not invoked Section 2 of the Partition Act. Moreover, it is pertinent to note that any other shareholder can apply for leave to buy at a valuation the share or shares of the party or parties asking for a sale and in such a situation, the Court can order valuation of the sharers.



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WEB COPY 12. Taking note of the above words used in Section 3 of the said Act

'any other shareholder would only refer to a shareholder other than the one, who has already invoked Section 2 of the Partition Act. The learned trial Judge has referred the judgment of Allahabad High Court in the case of **Jageshwar Singh and others vs. Kandhaiya Bux Singh and another** reported in **AIR 1949 Allahabad 753**, wherein the High Court has held that under Section 3 of the said Act, the only person who may apply for leave to buy will be any shareholder other than the only who has applied under Section 2 of the said Act.

13. The Hon'ble Supreme Court in the case of **Mrs.Malati Ramchandra Raut (Mrs) and others vs. Mahadevo Vasudeo Joshi and others** reported in **AIR 1991 SC 700**, has held as follows :

*“It is the duty of the court to order the valuation of the shares of the party asking for a sale of the property under Section 2 and to offer to sell the shares of such party to the shareholders applying for leave to buy them in terms of Section 3 at the price determined upon such valuation. As soon as a request for sale is made by a shareholder under Section 2, any other shareholder*



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*becomes immediately entitled to make an application under Section 3 for leave to buy the shares of the former. The right to buy having thus arisen and become crystallised, the date with reference to which valuation of the shares in question has to be made is the date on which the right arose.”*

14. Considering the above, this Court has no hesitation to hold that since the plaintiff has invoked Section 2 of the Partition Act, claiming for sale of the property and during the pendency of the said application, the plaintiff cannot invoke Section 3 and ask for leave to purchase the shares of others and only the shareholders other than the person, who has applied under Section 2 of the said Act, can apply under Section 3 of the said Act.

15. Regarding the valuation of the properties, as already pointed out, the defendant has fixed the same at Rs.43 lakhs and whereas the plaintiff has fixed at Rs.55 lakhs. But the learned trial Judge, without accepting the valuation given by the respondents, has appointed an Advocate Commissioner to fix the value of the petition mentioned property with the help of the civil engineer and the documents available in the Sub Registrar Office. Considering the above, the impugned order cannot be found fault



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with and this Court is in entire agreement with the findings recorded by the learned trial judge. Consequently, this Court concludes that the Civil Revision is devoid of merits and the same is liable to be dismissed.

16. In the result, the Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

**06.06.2024**

NCC :Yes/No  
Index :Yes/No  
Internet : Yes/ No  
das

To

- 1.The Subordinate Judge, Sankarankovil.
- 2.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

DAS

Pre-delivery order made in  
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Dated : 06.06.2024