



O.S.A.No.189 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.08.2025

Pronounced on : 12.09.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH  
and  
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

O.S.A.No.189 of 2025  
and C.M.P.Nos.16226, 12025 & 12026 of 2025  
and O.S.A.SR.No.75818 of 2025

K.S.Gita

.. Appellant

vs

1.Beena Kosaraju

2.Sarath Kakumanu

3.Sujini Kakumanu

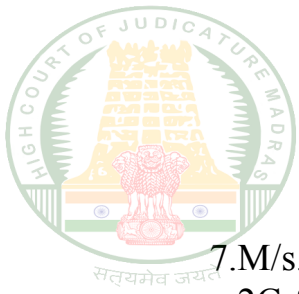
4.K.Ashwin Kakumanu

5.Canbank Factors Limited

Represented by its Assistant Vice President,  
Casa Blanca No.11/9, Casa Major Road,  
Egmore, Chennai 600 008.

6.Union Bank of India,

Mowbrays Road Branch, Represented by its Manager,  
265 TTK Salai, Chennai 600 018.



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7.M/s.Transstray (India) Limited,  
2C & 2F, 2<sup>nd</sup> Floor, Century Plaza,  
560-562, Anna Salai, Teynampet,  
Chennai-600 018.

.. Respondents

(R7 suo motu impleaded vide order of Court dated  
11.7.2025 made in OSA.No.189 of 2025 & OSA.SR.No.75818 of  
2025, CMP.Nos.12025, 16226 & 12026 of 2025)

Prayer: Appeal filed under Order XXXVI Rule 1 of the Madras High Court Original Side Rules read with Clause 15 of Letters Patent against the Order dated 25.04.2025 passed in A.No.5572 of 2024 in C.S.No.76 of 2009 on the file of this Court.

For Appellant : Mr.M.S.Krishnan, Senior Counsel  
For Mr.Pavan Kumar Gandhi

For Respondents : Mr.P.L.Narayanan, Senior Counsel  
For Mr.E.Hariharan (for R1)

Ms.Abitha Banu (for R2)

Mr.M.K.Kabir, Senior Counsel  
For Ms.M.K.Padma (for R3)  
For Mr.T.Jayaraman (for R4)

Mr.T.Jayaranga (for R6)

Mr.P.V.Balasubramaniam, Senior Counsel  
For Mr.Akhil Bhansah (for R7)

Not ready in notice – R5



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## J U D G M E N T

**(Delivered by Dr. ANITA SUMANTH.,J)**

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This OSA has been filed challenging an order passed on 25.04.2025 in A.No.5572 of 2024 in C.S.No.76 of 2009 filed by R1. The Suit has been filed seeking a judgment and decree against the respondents as follows:

- (a) that the properties comprised in the estate of late K.Subbiah, morefully described in the schedules hereunder be divided by metes and bounds and 1/4<sup>th</sup> (one fourth) share be allotted to the Plaintiff;*
- (b) consequently, that the Defendants be directed to render true and proper accounts of the income earned through the properties, running businesses and properties purchased thereof from and out of the assets and businesses of late K.Subbiah and give 1/4<sup>th</sup> share thereof to the Plaintiff*
- (c) Permanent injunction restraining the 2<sup>nd</sup> Defendant, her agents and servants, any person and every person claiming though or under her in any manner disturbing the plaintiff's use, occupation and enjoyment of the property morefully described as item No.2 in the schedule hereunder.*
- (d) that an Advocate Commissioner be appointed to divide the immovable properties comprised in the estate of late K.Subbiah morefully described in the schedules hereunder, by metes and bounds and deliver separate possession of the 1/4<sup>th</sup> share to the Plaintiff*
- (e) that the costs of the suit be deducted and borne out of the estate of late K.Subbiah.*



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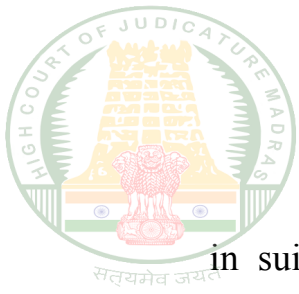
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2.The relationship inter se the parties is that the appellant, R1 and R2 are siblings and R3 and R4 are their niece and nephew, the children of their deceased brother. The learned Judge has, under the impugned order issued directions pursuant to the sale of property at 195, St.Mary's Road, Alwarpet, Chennai – 600 018. (Property/property in question).

3.The order directing sale of that property and subsequent orders have not been challenged, and instead, what has been challenged, is only order dated 25.04.2025, where, post-sale certain directions had been issued to the Advocate Commissioner, inter alia, for receipt of consideration and deposit thereof, and execution of sale deed in favour of the successful auction purchaser.

4.The detailed submissions of the Mr.M.S.Krishnan, learned Senior Counsel for Mr.Pavan Kumar Gandhi, learned counsel on record for the appellant are as follows. The parties, barring R5, R6 & R7, are related. A preliminary decree had been passed in the suit on 23.12.2016, the suit for partition had been allowed and an Advocate Commissioner had been appointed.

5. The learned Judge, noticing that the relationship between the parties was admitted, had confirmed the entitlement of the appellant/D2



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in suit, to her share of the suit properties. That was as early as on 23.12.2016. Thereafter, an application had been taken by R1 in A.No.5572 of 2024 for sale of the subject property, that came to be ordered directing sale by auction.

6.The learned Judge had directed auction notice to be published and had appointed an Advocate Commissioner to conduct the sale of the property. The sale had been concluded and according to the learned Senior Counsel, proper procedure was not followed in the finalisation of the sale. He would take us in detail to the provisions of the Partition Act, 1893 (in short 'Partition Act') as well as the Civil Procedure Code, 1908 (in short 'CPC') and the following judgments to illustrate that the timelines prescribed under Order 21 Rules 84 and 85 of CPC are mandatory, and non-compliance therewith would render the sale a nullity.

7. The judgments are:

1.*Manilal Mohanlal Shah and others v. Sardar Sayed Ahmed Sayed Mahmud and another*<sup>1</sup>

2.*Balram Son of Bhasa Ram v. Ilam Singh and others*<sup>2</sup>

3.*Gas Point Petroleum India Limited v. Rajendra Marothi and others*<sup>3</sup>

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1 (1954) 1 SCC 724

2 (1996) 5 SCC 705

3 (2023) 6 SCC 391



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4.*R.Ramamurthi Iyer v. Raja V.Rajeswara Rao*<sup>4</sup>

5.*Central Mine Planning and Design Institute Ltd. v. Union of India and Another*<sup>5</sup>

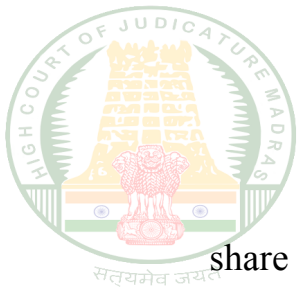
8.Per contra, Mr.P.L.Narayanan, Senior Counsel for Mr.E.Hariharan learned counsel for the first respondent, Ms.Abitha Banu learned counsel for the second respondent, Mr.M.K.Kabir, Senior Counsel for Ms.M.K.Padma, learned counsel for the third respondent and Mr.T.Jayaraman, learned counsel for the fourth respondent, would argue that the present appeal is bereft of any merit whatsoever. Admittedly, the appellant is related to respondents one to four. The share of the appellant has been duly crystallized under the preliminary decree and hence, the appellant has no cause for complaint. Thereafter, the applications filed by the respondents for sale of the property had been taken up by the Court and notice had duly been issued to the appellant as well, but she did not bother to appear.

9.It is under these circumstances that the Court passed a series of orders with directions for the sale of the subject property/plaint schedule item 2. There is no merit in the submissions of the appellant that she should be permitted to retain the property, as they are all entitled to a

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4 (1972) 2 SCC 721

5 (2001) 2 SCC 588



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share in the same. In fact, the appellant has created an encumbrance over the property and A.No.5572 of 2024 had been filed by the plaintiff/R1 specifically stating that the appellant owed money to R6 bank, following credit facilities that she had obtained and defaulted on.

10. Litigation had been initiated by the Bank and the suit had been decreed, the appellant being called upon to pay the decreetal dues to the banks. It was in those circumstances that R1 had prayed for the sale of the subject property by public auction, such that the share of the appellant may be paid over to R6 bank in settlement of her dues. The Court had from time to time entertained the applications and R7, who is the successful purchaser, has paid over a sum of Rs.32.22 crores (approx.) being the full consideration. Sale certificate has also been directed to be issued.

11. Mr.T.Jayaranga learned counsel appearing for the sixth respondent, and Mr.P.V.Balasubramaniam, Senior Counsel for Mr.Akhil Bhansali, learned counsel appearing for the seventh respondent successful purchaser, who was impleaded on 11.07.2025, support the respondents in full. They would also submit that there is absolutely no



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error or flaw in the procedure followed for auction and that the decisions relied upon would not come to the aid of the appellant.

12.We have heard all learned counsel and have perused the material papers.

13.The relationship between the appellant and R1 to R4 is admitted. R5 & R6 had extended credit facilities to the appellant and R7 is the successful auction purchaser. The suit for partition filed by R1 had been decreed on 23.12.2016. The plaint schedule comprises eight properties. No party has thought it fit thus far to file a final decree application. While so, item No.5 of the suit property of the suit schedule being land and building in survey Nos.224/6 and 225/5 at Kottivakkam had been divided by consent of the parties.

14. This OSA has its genesis in application No.5572 of 2024 filed by R1. She seeks therein, direction of this Court for the sale of the subject property. She states that the appellant had encumbered the subject property to the Andhra Bank, now Union Bank/R6, and OA 648 of 2015 filed by the bank had been decreed on 25.10.2018.

15.The defence of the appellant to this is that the encumbrance had been created not by the appellant but by her father. This is however, a



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question of fact with which, we will not concern ourselves now, particularly in light of the conclusion in this order. Suffice it to say that in view of the encumbrance created, the bank held  $\frac{1}{4}$  undivided share of the subject property.

16.R1 had thus requested the Court to issue directions for the sale of the property by public auction such that their (R1 to R4) respective shares may be paid over to them and the share of the appellant may go towards the settlement of the dues to the bank. That application had been ordered and auction notice was directed to be issued on 26.01.2025, duly issued, stipulating the auction date as 12.02.2025.

17.It is relevant to note that the appellant did not participate in those proceedings, despite notice admittedly having been received by her. An order was passed on 22.11.2023 by this Court to following effect.

*'Heard the learned counsel appearing on either side. The learned Advocate Commissioner, Mr.R.A.Karimullah and additional Advocate Commissioner Mr.Ponram Rajaa are also present.*

*2.Considering the submissions of the learned counsel on either side and Advocate Commissioners, both the learned Advocate Commissioners are directed to*

*a) take steps to sell the properties with regard to Item Nos.2 and 4 and*

*b) finish the survey, measure the property and to file*



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*a report as regards division of the plaint schedule property in metes and bounds.*

*3.The warrant to carry out the commission work is extended till 31.12.2024 to both the learned Advocate Commissioners.*

*4.Post the matter on 13.12.2023.'*

18.This order is unchallenged as on date.

19. Pursuant to the order dated 22.11.2023, auction notice came to very issued and the terms were to the effect that

(i) EMD of 10% of the upset price be paid in the name of the Registrar General High Court three days in advance by Demand Draft. R7 has complied with the same.

(ii) 25 % of the auction bid amount be remitted within two days of the successful bidding by Demand draft in favour of the Registrar.

20.Mr.Krishnan, would draw the attention to the Partition Act, specifically, Sections 2, 4 and 7 as well as Order 24 Rule 9, Order 38 Rule 1 and Order 21 Rules 84, 85 & 86, arguing that the sale of the property by the Court, particularly, in cases of partition, must align scrupulously with those stipulations. According to him, there has been a violation of the timelines and hence, the sale must itself be held to be void.



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21.To test this, we now discuss the relevant provisions of the CPC and the Partition Act. Section 2(2) of the Partition Act states that the Court may, in cases where a decree for partition has been made, order sale of the property and distribution of the proceeds, if a division/subdivision of the property cannot reasonably or conveniently be made.

22.Mr.Krishnan has argued that the property ought not to have been brought to sale at the first instance, as according to him, the intention in cases of partition is to preserve the properties and assign portions thereof as individual shares. Thus, an effort should first be made to divide the property.

23.Section 2 reads as follows:

*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 circumstance, 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.*



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24.The terminology used is '*the Court may, if it things fit*'. Hence, full discretion vests in the Court to take a decision as to whether the property must be divided or sold. The parties would also submit that the property is in capable of being conveniently divided and it was hence that the parties preferred that the property be sold and the proceeds divided.

25.We are of the considered view that there is nothing untoward or perverse in the discretion exercised by the Court to order auction of the property. If at all, the appellant was aggrieved by the order dated 22.11.2023 directing sale by auction, she ought to have challenged that order.

26.That apart, the question of division/apportionment of the property would arise only if the Appellant had made an offer to the family members to buy out their shares of the subject property. As the other family members together, prefer liquidity to possession of the property itself. However, there is nothing to indicate that any offer had been made, even when she was well aware of the move on the part of the family members for sale of the subject property. That apart, the entirety of the property would definitely fetch a better price rather that if it had



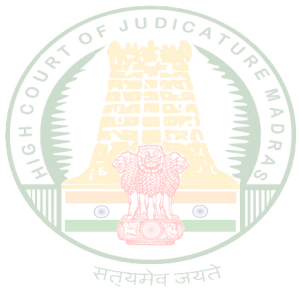
been divided and sold. For all the aforesaid reasons, this argument is rejected.

27. Moving on, Section 4 of the Partition Act reads as follows:

*‘4. Partition suit by transferee of share in dwelling-house(/) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.*

*(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the court shall follow the procedure prescribed by sub-section (2) of the last foregoing section’*

28. According to Mr.Krishnan, Section 4 applies specifically in the event one of the parties to the partition suit resides in one of the suit properties, utilising it as a dwelling house. In such an instance, he states that the Court shall direct a valuation of the property to be made and if the valuation was found to be proper, may direct the sale of the share to another share holder and in this exercise issue necessary directions.



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29. The sum and substance of Section 4 is that the parties must be permitted to buy out the shares of the other parties in the event of one of them resides in a suit property as a dwelling house. According to the appellant, this opportunity has not been extended to her. We have dealt with this aspect of the matter in the paragraphs supra, noticing that the Appellant had been well aware of the move for sale of the property.

30. Moreover, today the value of the subject property has been quantified, real time, in the auction conducted. However, even now, there is no submission to the effect that the Appellant would bring in the funds to buyout the family members. Thus, we find this argument is merely technical and academic and has no substantive merit.

31. Section 7, setting out the procedure to be followed in the case of sale has next been referred to, and the provision is extracted below:

*'7. Procedure to be followed in case of sales. Save as herein before provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted namely*

*(a) if the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay, in the exercise of its original jurisdiction, \*\*\* the procedure of such court in its original civil jurisdiction for the sale of property by the Registrar,*



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*(b) if the property be sold under a decree or order of any other court, such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules-art made the procedure prescribed in the Code of Civil Procedure in respect of sales in execution of decrees.'*

32.The Partition Act refers to the provisions of the CPC, and in this regard, Order 21 Rule 84, 85 & 86 are relevant, extracted below:

***'84.Deposit by purchaser and re-sale on default.-*** (1) *On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five percent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.*

*(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.' . . .*

***'85.Time for payment in full of purchase-money.-***

.....

*"85.time for payment in full of purchase-money and of stamp for certificate of sale. - The full amount of purchase-money payable and the general stamp for the certificate under rule 94 or the amount required for such stamp, shall be deposited into Court by the purchaser before the Court closes on the fifteenth day from the sale of the property:*

*Provided that in calculating the amount of purchase money to be so deposited, the purchaser, shall have the advantage of any set-off to which he may be entitled under rule 72.'"*



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**'86.Procedure in default of payment.-** *In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.'*

33. The Appellant has set out a tabulation of the timelines fixed by the Court and the breach thereof by the auction purchaser in support of her stand that the sale is itself a nullity:

| <i>Auction Notice</i>                               |                               | <i>26.01.2025</i>                                                 |                                                                                    |                                                                                                                               |
|-----------------------------------------------------|-------------------------------|-------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <i>Auction Sale</i>                                 |                               | <i>12.02.2025</i>                                                 |                                                                                    |                                                                                                                               |
| <i>Requirement</i>                                  | <i>Amount to be Deposited</i> | <i>Time within which it is to be deposited as per publication</i> | <i>Time within which it is to be deposited as per O.21 Rule 84, Rule 85 of CPC</i> | <i>Amount actually Deposited</i>                                                                                              |
| <i>EMD – 10% (3 days prior to the auction)</i>      | <i>Rs.3,32,20,000/-</i>       | <i>09.02.2025</i>                                                 |                                                                                    | <i>Rs.3,30,00,000/-</i>                                                                                                       |
| <i>First Instalment – 25% of Auction Bid amount</i> | <i>Rs.8,30,50,000/-</i>       | <i>14.02.2025</i>                                                 | <i>12.02.2025</i>                                                                  | <i>NIL</i>                                                                                                                    |
| <i>Final Instalment – 65% of Auction Bid amount</i> | <i>Rs.21,59,30,000/-</i>      | <i>27.02.2025</i>                                                 | <i>27.02.2025</i>                                                                  | <i>NIL</i><br><br><i>Rs.10 Crores paid via DD dated 13.03.2025</i><br><br><i>Rs.19.92 Crores paid via DD dated 17.04.2025</i> |

34. The first argument is that the timelines as per the auction notification are in violation of those set out under the CPC. However, this submission would militate against the language of Section 7 of the Partition Act that states that the procedure set out under the CPC shall



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*'as far as practicable, be followed in the matter of sale'.* Thus, while the auction notification has varied the timelines set out under Order 21 Rules 84, 85 & 86, we find that discretion is provided for and properly exercised in this matter.

35. The second submission is that R7 has violated the timelines. On the contrary, we find that the parties have been obtaining proper directions from the learned Judge in a timely fashion, and at every stage of the proceeding, specifically to obtain extension of the timelines.

36. After the sale of the property, the matter had come up on 14.02.2025, when, the Court notes as follows:

*'Learned counsel for the sole successful bidder submits that he has not been given inspection of the title and revenue documents relating to the property.*

*2.Learned counsel for the plaintiff submits that such inspection would be provided on or about 17.02.2025.*

*3.The successful bidder is directed to pay the balance sale consideration after setting off the sum of Rs.3,30,00,000/- which was paid as EMD. Such payment shall be made on or before 14.03.2025. Remuneration of the Advocate Commissioner shall be shared by all the parties equally and paid within a period of two weeks from today.'*

37. The learned Judge has directed the payment of the balance on or before 14.03.2025. When the matter came up on 14.03.2025, the Court records as follows:



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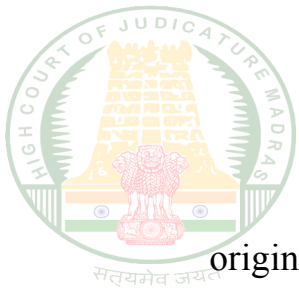
*'The successful bidder has produced a demand draft for Rs.10 crores issued by the State Bank of India, under demand draft no.477642 dated 13.03.2025. The demand draft has been handed over to learned Advocate Commissioner in Court today. He is directed to retain the demand draft without submitting the same for realisation until further orders.*

*2. As regards the remaining sale consideration, learned counsel for the successful bidder states that the amount would be paid by way of a demand draft or other appropriate instrument in the name of the Registrar General, High Court, Chennai within two days after the conclusion of the inspection of original documents.*

*3. The original documents are stated to be in the custody of the Recovery Officer of the Debt Recovery Tribunal III, Chennai in D.R.C.No.1054 of 2023.*

*4. Ms.Ananda Gomathy, learned counsel, appears on behalf of the secured creditor, Union Bank of India. She states that the bank would extend all necessary co-operation to facilitate the inspection of the original documents by the successful bidder. This process shall be completed on or before 19.03.2025. The Recovery Officer is directed to enable such inspection within the time line stipulated above. The amounts outstanding to the Advocate Commissioner shall be paid prior to the next date of hearing.'*

38.The Court records that a DD for a sum of Rs.10 crores has been remitted and as regards the balance, the Court records that the same would be paid within two days after conclusion of the inspection of



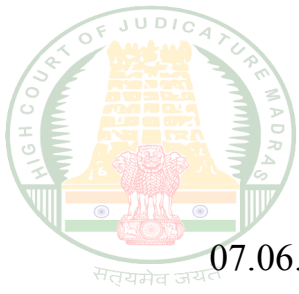
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original documents that were in the custody of the recovery officer of DRT III, Chennai in DRC No.1054 of 2023.

39.The matter came up on 28.03.2025, when, in partial modification of earlier order dated 14.03.2025, R7 was permitted to make payment of the remaining sale consideration on or before 15.04.2025. That order, dated 28.03.2025 reads as follows:

*'The parties report that inspection could not be completed on or before 19.03.2025, as directed by order dated 14.03.2025. It is submitted that such inspection would be carried out today. Learned counsel for the successful bidder states that two weeks would be required to pay the remaining sale consideration from the beginning of the next financial year. In partial modification of earlier order dated 14.03.2025, the successful bidder is directed to make payment of the remaining sale consideration in the manner indicated in such order on or before 15.04.2025.'*

40. The remittance has been made within the time that was granted. Through all these, the appellant has remained absent. In fact, an application had been taken out by the appellant on 06.02.2024 seeking condonation of 2572 days in seeking to set aside exparte decree dated 23.12.2016 passed in C.S.No.76 of 2009. The condonation was sought on medical reasons. A detailed order has been passed by the Court on



07.06.2024 dismissing the application, and, in the interests of a full narration, the aforesaid order is extracted below in entirety:

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*This Application has been taken out by the Applicant/second defendant seeking condonation of delay of 2572 days in filing the petition to set aside the exparte decree dated 23.12.2016 in CS. No.76 of 2009.*

*2. The Applicant, in support of the said Application has stated that between 2011 and 2014, she was bedridden because of health issues and was undergoing treatment in allopathy and siddha hospitals and therefore, she was not in a position to attend the Court. Only in the year 2023, she was informed by a Junior Advocate that a decree had been passed in the year 2016 itself. Contending that writ proceedings are also pending between her and the Bank and there are liabilities left by the father which are to be discharged by the Legal Representatives and the properties of the father should not be auctioned and should be given on priority to the family members, the second defendant seeks for condonation of delay of 2572 days.*

*3. The first respondent/plaintiff has filed a counter affidavit denying the allegations set out in the affidavit in support of the condonation of delay application. The first respondent submits that the second defendant was represented by a Counsel and suppressing the same, the Application has been filed.*

*4. The third respondent has filed a counter stating that the second defendant's 1/4 share was never disputed and the Application is only an attempt to protract litigation and vexatious in nature.*

*5. The fourth respondent has filed a counter affidavit stating that the second defendant has not made out any sufficient cause for condonation of delay, close to 8 years and that the affidavit is totally silent as to when the Applicant became aware of the decree dated 23.12.2016. The medical records produced along with the Application are all not sufficient to cover the entire period of delay and therefore, the said documentary evidence is of no avail. Thus, all the respondents including the plaintiffs and*



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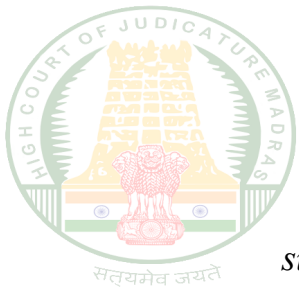
*the co-defendants have strongly objected to the delay being condoned.*

*6. I have heard Ms.K.S.Gita. the Applicant/Second defendant in person and Mr.P.L.. Narayanan, learned Senior Counsel for Mr.E Hariharan, Cleared counsel for the first respondent/plaintiff and Mr.T.Jayaraman, learned counsel for the third respondent and Mr.K.F.Manavalan, learned counsel for the fourth respondent.*

*7. On a perusal of the affidavit filed in support of the Application for condonation of delay. I find that the Applicant has not even disclosed the fact that she has engaged a Counsel and the said vakalathnama was alive until the passing of the preliminary decree on 23.12.2016. As rightly contended by the learned counsel for the respondents, the medical records produced on the side of the Applicant/second defendant are neither sufficient nor satisfactory to accept the reasons assigned in the affidavit seeking condonation of delay of 2572 days. In any event, after 2018, there is absolutely nothing on record to show what prevented the Applicant from filing an appropriate Application to set aside the exparte decree. Equally, the Applicant does not state as to when exactly she became aware of the exparte decree.*

*8. The Applicant does not dispute her share in the property and her only concern appears to be that the properties of her father should not be WID CU sold in auction at any cost and that, if at all it is put to auction, then priority must be given to the family members. Therefore, I do not see any useful purpose in the attempt on the part of the Applicant/second defendant to set aside the exparte decree as she does not even dispute the shares of the plaintiffs. Her concerns and apprehensions can always be addressed and equities can be worked out during the final decree proceedings and no prejudice would be caused to her interest whatsoever.*

*9. The Applicant/second defendant has not made out any prima facie case for condonation of huge delay of 2572 days. especially when she has been served with suit summons and she had engaged a Counsel to represent her in the proceedings, which factum has been totally suppressed in the affidavit filed in*



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*support of the condonation Application. I do not find any just or sufficient cause made out for condoning the delay of 2572 days. Consequently, this Application is dismissed.*

41.To summarise the above order, the Court notes that it was not persuaded with the medical records as being satisfactory to justify the delay. Then again, the Court notes that the shares of the family members in the properties was not disputed and in fact, in the preliminary decree, the appellant was given her rightful share of the property.

42.The Court thus notes that her apprehensions could always be worked out in the final decree proceedings and there was no justification for the delay since she had been served with suit summons and had also engaged counsel to represent her. Incidentally, the Court notes that she had suppressed the fact that she had been served with suit summons and engaged counsel in her petition seeking condonation of delay.

43. In light of the detailed discussion as above, we conclude that the auction process is in line with the stipulations under law. The parties, including the auction purchaser, have been vigilant in approaching this Court from time to time to obtain extension of deadlines where necessary. The submissions on this account are rejected and the auction sale is confirmed.

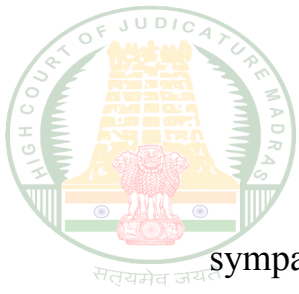


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44.The appellant next argues that the family members have not been bonafide in choosing this property to be sold as there were other properties that could have been sold. We do not agree. The property is subject to an encumbrance for default in repayment of financial facilities obtained from R5 and R6. As to whether the financial facilities were obtained by the father of the parties or by the Appellant, is a matter to be decided by the competent forum.

45.Suffice it to say that there was a subsisting charge on the property and it is but natural for R1 & R2, who are in fact the older sister and brother of the appellant, to have been anxious to secure the property in their own interests. Hence, we do not find anything sinister or motivated in the family choosing this property for sale. We have, in conclusion, given directions for the protection of the sale consideration pending consideration of this issue by the competent authority.

46.Finally, the Brahmastra of Mr.Krishnan is that the appellant is elderly, sick and residing in the subject property, and the present auction would have the result of leaving her on the streets. Undoubtedly, we



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sympathise. However, in light of the narration of events and our conclusions on the legal issues as above, we can do little else.

47.Bearing in mind the relationship between the parties, we asked whether they could mediate upon their differences and find a solution but the family members say they cannot and are unwilling for any reference for settlement.

48.Since there is a dispute in regard to the encumbrance created and as to which parties the liability would fall upon, the entirety of the sale consideration shall be retained by the Registrar General and transferred to an interest bearing account with a nationalised bank forthwith upon being furnished a copy of this order. Let the sale certificate be issued to R7 within two days from date of issuance of this order.

49. Let R7 hold over from taking of possession of the subject property for 30 days from the date of issuance of this order, to enable the appellant to work out a proper remedy for herself.

50.This appeal is dismissed. Connected miscellaneous petitions are closed.



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51.In light of our order dismissing OSA.No.189 of 2025, we find no reason or justification to condone the delay of 166 days in filing the Original Side Appeal as against order dated 28.10.2024. Accordingly, CMP.No.12026 of 2025 is dismissed as is the OSA in SR stage. No costs.

[A.S.M., J] [N.S., J]  
12.09.2025

Index:Yes/No  
Speaking Order/ Non-Speaking Order  
Neutral Citation:Yes/No  
sms

To

The Sub-Assistant Registrar,  
Original Side,  
High Court, Madras.



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*O.S.A.No.189 of 2025*

DR. ANITA SUMANTH.,J.  
and  
N.SENTHILKUMAR.,J.

sms

O.S.A.No.189 of 2025  
and C.M.P.Nos.16226, 12025 & 12026 of 2025  
and O.S.A.SR.No.75818 of 2025

12.09.2025