



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-2-2010

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

O.S.A.Nos.24 of 2007

1.Rajalakshmi
2.K.Jayashree
3.Sukumari Andal
4.P.Vaishnavi

.. Appellants /
Defendants 4 to 7

vs

1.Dwarakanath
2.C.Nirmala Devi

3.N.V.S.Krishna
4.N.Sakunthala
5.B.Sumathi

...Respondents 1 and 2/
Applicants 1 and 2

.. Respondents 3 to 5/
Defendants 1 to 3

Original side appeal preferred under Order XXXVI Rule 1 of Original Side Rules and Clause 15 of Letters Patent against the judgment and decree of this Court made in C.S.No.1009 of 1993 dated 27.2.2006.

For Appellants : Mr.K.F.Manavalan

For Respondents : Mr.V.Narayanasamy
for RR! & 2
Mrs.G.Sridevi for RR3 to 5

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This appeal challenges a judgment of the learned Single Judge of this Court made in C.S.No.1009 of 1993 granting a preliminary decree.

2.The respondents 1 and 2 herein as plaintiffs have filed the suit for partition, and on trial, a preliminary decree came to be passed by the learned Single Judge declaring the rights of the parties. Aggrieved over the same, the defendants 5 to 8 have brought forth this appeal.



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3. On the earlier occasion, when the appeal was taken up for hearing, the parties brought to the notice of the Court that the properties need not be sold, and they want to enjoy the same. Hence, with the consent of the parties, this Court appointed a retired District Judge as Advocate Commissioner to value the property and file a report.

4. Now, the Advocate Commissioner has valued the property and filed his report before the Court. The parties were given opportunity to file their objections. They have filed so. This Court perused the report of the Advocate Commissioner and also the objections made by them.

5. Now, at this juncture, the value of the property has got to be fixed. After hearing the submissions made on either side, looking into the report of the Advocate Commissioner and the objections and also hearing the parties, the properties are valued properly and fixed by this Court as follows.

6. Admittedly, 'A' Schedule property is situated at Old Door No.126, New Door No.132, Present No.40, Audiappa Naicken Street, Chennai 600 079. This property is in the possession of the appellants. Its plinth area is 4800 sq. ft., and the extent of the site as per the document is 2980 sq. ft. The Advocate Commissioner has fixed the value at Rs.2,36,08,000/- after valuing the building at Rs.200/- per sq. ft. and the site at Rs.7600/- per sq. ft. Now, it is contended by the learned Counsel for the appellants that the property is occupied by three tenants, and they have got to be vacated for which they have to incur expenditure, and it has got to be considered by the Court. Taking into consideration the facts and circumstances of the case, this Court is of the opinion that the site value can be taken as Rs.7400/- per sq. ft., and hence the value of 'A' Schedule property could be fixed at Rs.2,33,00,000/-.

7. As regards 'B' Schedule property, it is situate at Old No.2/187, New No.74, Present No.15, Govindappa Naicken Street, Chennai 600 001. The respondents 1 and 2 herein are in possession of this property. The total plinth area is 2400 sq. ft., and the extent of the site as per patta is 1435 sq. ft. The Commissioner has fixed the value of this property at Rs.75,25,000/- taking the value of the building as Rs.325/- per sq. ft. and the value of the site as Rs.4700/- per sq. ft. This Court is of the view that since it is situate in the prime locality, it could be fixed at Rs.78,00,000/- after taking the value of the site as Rs.4900/- per sq. ft.

8. Insofar as "C" Schedule property which is situate at Old door No.34, New door No.76, Present No.156, Gengu Reddy Road, Chennai 600 008, it is in the possession of the respondents 3 to 5 herein. As per the plaint schedule, the total plinth area is 2600 sq. ft., and the extent of the site is 1088 sq. ft. The additional extent in respect of the building is 450 sq. ft. and that of site is 177 sq. ft. The Commissioner has fixed the value at Rs.91,14,000/- after taking into consideration the value of the



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building as Rs.375/- per sq. ft. and the value of the site as Rs.6300/- per sq. ft. This Court is of the view that the value of the site could be taken as Rs.3900/- per sq. ft. If this is applied, the value of this property could be fixed at Rs.60,00,000/-.

9. Accordingly, the following value is fixed:

- (i) 'A' Schedule property - Rs.2,33,00,000/- (Rupees two crores thirty three lakhs only);
- (ii) 'B' Schedule property - Rs.78,00,000/- (Rupees seventy eight lakhs only); and
- (iii) 'C' Schedule property - Rs.60,00,000/- (Rupees sixty lakhs only).

10. Now, the ovelty has got to be fixed. As per the rights already declared in the preliminary decree, the respondents 1 and 2 are entitled to 50%, while the appellants are entitled to 25% and the respondents 3 to 5 are entitled to 25%. All the above three amounts representing the value of the three properties would come to Rs.3,72,00,000/-, and it has got to be divided according to their respective shares. Accordingly, while calculating ovelty, the value of the property which the appellants should get, would be Rs.93,00,000/- and that of the respondents 3 to 5 would be Rs.93,00,000/- and that of the respondents 1 and 2 would be Rs.1,86,00,000/-. As far as the appellants are concerned, the value of the property in their possession is on the higher side. As regards the respondents 1 and 2 on the one part and the respondents 3 to 5 on the other part, the appellants have to give them compensation for the excess of the property in their hands. Accordingly, ovelty is calculated. Thus, the respondents 3 to 5 are entitled to get Rs.33,00,000/- (Rupees thirty three lakhs only) from the appellants since the property in their hands is valued at Rs.60,00,000/-. In respect of the respondents 1 and 2, the total value of the property in their possession is valued at Rs.78,00,000/-, and hence they are entitled to get Rs.1,08,00,000/- (Rupees one crore and eight lakhs only) from the appellants. All the parties are amenable and agreeable to both these amounts namely Rs.33 lakhs to which the respondents 3 to 5 and Rs.108 lakhs to which the respondents 1 and 2 are entitled. Accordingly, final decree is passed thereon as follows:

(a) The properties which are in their respective possession as found above, have got to be retained by them.

(b) It is admitted by the first respondent that the original sale deeds of purchase in respect of the three properties are with him. Insofar as the other two properties to which the appellants and the respondents 3 to 5 are entitled, the first respondent undertakes to deliver the original sale deeds of purchase immediately after the payment what is mentioned herein is made by the appellants. At the same time, the first respondent is at liberty to retain the documents relating to the property which he is entitled to as per the decree.

(c) Insofar as the payment, the learned Counsel for the



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appellants would submit that for the payment of the above ovelty i.e., Rs.33 lakhs to the respondents 3 to 5 and Rs.108 lakhs to the respondents 1 and 2, the appellants require time. Accordingly, the appellants are given four months' time herefrom to make the payment.

(d) Both the payments by way of ovelty have got to be made by the appellants by way of Demand Draft or Cheque therefor with due acknowledgement thereon.

(e) Insofar as the respondents 1 and 2, the appellants while giving the payment of Rs.108 lakhs to them, the first respondent is entitled to 3/8 and the second respondent is entitled to 1/8 out of the half share. Accordingly, the appellants are directed to make payment of Rs.81,00,000/- (Rupees eighty one lakhs only) being 3/4 of Rs.108 lakhs, to the first respondent and of Rs.27,00,000/- (Rupees twenty seven lakhs only) being 1/4 of Rs.108 lakhs, to the second respondent.

(f) On compliance of the above procedure, the parties are at liberty to apply to the authorities for getting the necessary entries made in the revenue records to which course the other parties have to necessarily give no objection.

(h) Since the amounts are being taken by way of ovelty from the appellants, insofar as the adjudication of the rights of the respondents 1 and 2, their respective shares mentioned in the preliminary decree in respect of 'B' Schedule property at Govindappa Naicken Street, will be retained by both.

11.Now, the Advocate Commissioner appointed by this Court, has filed a memo for additional remuneration. This Court heard the learned Counsel on either side. It is seen that the Advocate Commissioner has taken the assistance of an Approved Valuer while executing the work. Considering the facts and circumstances, this Court feels that additional remuneration has got to be ordered. Accordingly, the Advocate Commissioner is entitled to get Rs.30000/- (Rupees thirty thousand only) as additional remuneration, and out of Rs.30000/-, Rs.10000/- is payable by the appellants, Rs.10000/- by the respondents 1 and 2 and Rs.10000/- by the respondents 3 to 5.

12.Accordingly, this original side appeal is disposed of leaving the parties to bear their costs.

Sd/-
Asst.Registrar.

/true copy/

Sub Asst.Registrar.

nsv



To

The Sub Assistant Registrar
Original Side,
High Court, Madras

Copy to

Mr.K. Balasubramanian,
retired District Judge
No.1069, 18th Block
LIC Colony, Anna Nagar (West)
Chennai (Advocate Commissioner)

1 cc to Mrs. G Sridevi, Advocate, SR. 13608
1 cc to Mr.K. F. Manvalan, Advocate Sr. 2184

OSA No.24 of 2007

VSV (CO)
kk 24/3