

(2014) 10 MAD CK 0333

Madras High Court (Madurai Bench)

Case No: Appeal Suit (MD) No. 228 of 2009

Jemma Anne Vassou

APPELLANT

Vs

Aurean Agnes Marine Rozario

RESPONDENT

Date of Decision: Oct. 15, 2014

Acts Referred:

- Partition Act, 1893 - Section 3

Citation: (2014) 5 LW 766 : (2014) 8 MLJ 218

Hon'ble Judges: P. Devadass, J

Bench: Single Bench

Judgement

P. Devadass, J.

This Appeal Suit has been directed as against the final order passed in I.A. No. 228 of 2007 in O.S. No. 348 of 2004 in pursuance of the preliminary decree passed on 26.10.2006 by the learned I Additional District Judge, Trichirappalli.

2. The first plaintiff is the mother of plaintiffs 2 and 3 and defendants 1 and 2. The plaintiffs have filed the suit for partition in O.S. No. 348 of 2004 for partitioning the property bearing Door No. 26/25 situate in New Fathima Street, Ponmalaipatti, Trichy-4.

3. As per the preliminary decree, the first plaintiff is entitled to 4/12 share. Plaintiffs 2 and 3 and defendants 1 and 2 are each entitled to 2/12 shares. The plaintiffs have filed I.A. NO. 228 of 2007 for passing the final decree in pursuance of the preliminary decree.

4. Learned Advocate/Commissioner submitted his report to the effect that the property is indivisible and he suggested for selling the property in auction and fixed the price at Rs. 20 lakhs for the entire property. First Defendant filed her objections to the report to the effect that the property is divisible.

5. The learned I Additional District Judge, Trichirappalli, passed the impugned final order on 10.11.2008 to the effect that the property be sold for Rs. 20 lakhs and the sale proceeds shall be distributed among the sharers according to their eligible share. The trial court also directed the parties to bring the purchasers.

6. Aggrieved, the first defendant has directed this Appeal as against the said final decree.

7. The contention of the learned counsel for the appellant/first defendant is that the trial court has not properly considered her objections to the Advocate/Commissioner's report. Actually the trial court has given an impracticable solution that is how the stalemate. The learned counsel for the appellant would submit that there is possibility of dividing the property.

8. On the other hand, the learned counsel for the respondents would submit that the trial court has rightly concluded that the property is indivisible. But, the learned counsel for the respondents would also submit that actually no proper practicable solution has been given by the trial court.

9. I have anxiously considered the rival submissions. Perused the case-record and the impugned order of the trial court.

10. So far as partition of the property by metes and bounds are concerned, the principles and the procedures are also governed by the Code of Civil Procedure. When the parties are at the loggerheads and partition issue does not give any workable solution, naturally one has to refer to Partition Act, which is secular in character.

11. The suit property is situate in New Fathima Street, Ponmalaipatti in Trichy-4. It is a two storied building i.e. ground floor and first floor. The first defendant is residing for a longer time in the first floor. Being mother takes larger share namely 4/12 and others being her children each get only 2/12 shares. Considering the physical features of the property available in the sketch and report of the Advocate/Commissioner, it is seen that it cannot be divided in metes and bounds among the sharers. Further, there is no unanimity among the shares as to the division of the property. In this view of the matter, we have to concur with the view of the trial court that the property is indivisible. But it cannot be kept as it is. Under these circumstances, necessarily the court has to invoke the provisions of the Partition Act, 1893.

12. We agree with the submission of both the learned counsels that in the impugned order, the trial court has not given any workable solution. It has created complications. For instance, the parties are directed to bring purchasers for sale. Actually, it added fuel to the fire. When a sale is to take place at the direction of the court, more particularly, when there is no unanimity among the sharers, it should be under the direction and supervision of the court itself. Everything shall be done by

the court itself. The sharers can assist but shall not dominate the sale process.

13. In a partition suit once preliminary decree is passed, the matter is not ended. Actually in a preliminary decree, the court is just declaring the shares of the sharers. Thereafter, the direction for the preliminary decree has to be carried out. The work has to be completed. Then only, the suit itself will come to an end, in other words, get terminated.

14. The court has to give some workable solution. Otherwise, the litigation will go on without any end. Both the learned counsels are very anxious that their parties should get quick relief and shall get relieved of from this litigation in a manner agreeable to both sides.

15. In the facts and circumstance of this case, the property is to be sold and the sale proceeds shall be distributed among the sharers. But one important aspect is getting maximum price for the property, which will give maximum benefit to all the sharers. But, at the same time, the preemptory right given to the sharers should not be lost sight of. Even Section 3 of the Partition Act recognizes such right. The sharers individually or collectively can purchase the property without preference to third parties.

16. Even Section 3 of the Partition Act, the Court is expected to secure the highest price and it must take steps to fix the value and fix an upset price to the sharers. If there is competition among themselves, then it must sell the property to the sharer, who offers highest price. If they are not willing to purchase, then, necessarily it must go to public auction allowing third parties to participate.

17. In this case, the trial court has fixed the valuation of the property in 2008. The suit property is situate in a prominent place in Trichirappalli. Now the land value is almost like a gold value. Even there is fluctuation in gold value, but it is not so in land value. The land value always has an upward tendency. It is all because of the fast urban development and more particularly in and around Trichirappalli there is price increase of the land. Thus, definitely the value of the suit property now will be more than what it was fixed in 2008. Therefore, it calls re-valuation and re-fixation of the price.

18. In the circumstances, the decree passed by the I Additional District Judge, Trichirappalli, in I.A. No. 228 of 2007 in O.S. No. 348 of 2004 on 10.11.2008 is modified as under:

(1) The learned I Additional District Judge, Trichirappalli, will fix upset price afresh taking into account the present market value of the property within two months from the date of receipt of a copy of this judgment.

(2) A fresh valuation report by a competent person such as Civil Engineers/Approved Valuers shall be obtained and considered.

- (3) In finalizing the upset price, opportunity shall be given to all the sharers.
- (4) Within 15 days of fixation upset price as above, the court will fix a date of sale and issue notice to all the sharers to participate in the sale.
- (5) This sale shall be only among the sharers. The sharers may either individually or collectively bid at the auction.
- (6) The highest bid shall be accepted and the sale shall be concluded.
- (7) If no sharer is coming forward to purchase the property, thereafter within 20 days, a fresh sale date shall be fixed giving wide publicity inviting persons to participate in the sale.
- (8) In the said second sale, the sharers can also participate but not as sharers but as third parties and now no preferential right shall be available to them.
- (9) In the second sale, the highest bidder shall be accepted and the sale shall be concluded.
- (10) The sale proceeds shall be distributed among the sharers as per their share.
19. Since both sides are closely related, they shall bear their respective costs.
20. Accordingly, this Appeal is disposed of.