

CASE NO.:
Appeal (civil) 4561-4564 of 2005

PETITIONER:
T.N. Rajasekar

RESPONDENT:
N. Kasiviswanathan & Ors.

DATE OF JUDGMENT: 28/07/2005

BENCH:
Ruma Pal & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P.(C) Nos.14332-14335 of 2003)
Dr. AR. Lakshmanan, J.

Leave granted.

The above appeals were preferred by the appellant/plaintiff against the final judgment dated 11.03.2003 passed by the High Court of Judicature at Madras in O.S.A. Nos. 23 and 24 of 2003 and Cross Objection Nos. 4 and 5 of 2003. Respondent Nos. 1-3 \026 T.N. Kasiviswanathan, T.N. Natarajan and T.N. Shanmughavel and the appellant \026 T.N. Rajasekar are brothers. The fourth respondent Kalyani Gopalan is the sister of the appellant. The appellant's brother T.N. Ganapathi was sick and died on 06.05.1997 leaving the appellant and the respondents herein as his legal representatives of Class-II heir as per the Hindu Succession Act.

The suit property is the absolute property of T.N. Ganapathi. He died unmarried and issueless. The appellant and the respondents have succeeded to his estate.

During the pendency of the appeal, the appellant T.N. Rajasekar and the first respondent T.N. Kasiviswanathan died. Their legal representatives were brought on record in I.A.No. 1 of 2005 and I.A.Nos. 5-8 of 2004 respectively.

The appellant filed C.S. No. 110 of 1999 on the original side of the High Court for a preliminary decree for partition claiming 1/5th share for himself and for other incidental

and ancillary reliefs. The respondents have not filed any written statement. The learned single Judge passed the preliminary decree on 11.09.2000. The single Judge directed the respondents herein to remit a sum of Rs.37,68,000/- into the Court and render accounts. Aggrieved by this order, the respondents herein preferred O.S.A. No. 78 of 2001. The Division Bench of the High Court directed the respondents to deposit only 1/5th share of Rs. 37,68,000/- i.e. Rs.7,53,000/- which is the due share of the appellant and that there was no question of rendering accounts from the date of Power of Attorney given by late T.N. Ganapathi. The Division Bench by judgment dated 04.04.2001 directed that the properties of late T.N. Ganapathi which existed on the date of his death alone should be divided.

The appellant herein filed application No. 204 of 2001 for passing a final decree and for appointment of an Advocate Commissioner. On 05.08.2002, the learned single Judge passed the final decree assessing the value of the properties of Rs.2,98,79,569/- out of which the appellant's 1/5th share was Rs.59,75,914/-. Towards the share of the appellant, he was allotted item No. 6 of the schedule mentioned property i.e. House bearing Door No. 16, Dr. Vasudevan Street, Kilpauk, Chennai \026 10 and the value of the house was assessed at Rs.1,50,00,000/-. Thus it is evident that the appellant was allotted the house in excess of his share of Rs.59,75,914/-, the difference of which i.e. value of the house allotted deducting value of his share has to go to the other four legal representatives i.e. Rs.90,24,086/-. The learned single Judge also ordered that this amount of owelty to be adjusted from the land acquisition compensation amount due to the appellant/plaintiff herein.

As there was no specific direction in the judgment of the learned single Judge regarding the allotment of properties to the respondents, the respondents filed application No. 4307 of 2002 for specific order on other items of the properties to them. On the application of the respondents for seeking specific direction for allotment of properties, the learned single Judge ordered in the following terms on 22.11.2002.

- (i) Item No. 6 was allotted to the plaintiff towards his 1/5th share;
- (ii) The owelty amount of Rs.90,24,086/- being the excess value of Item No.6 allotted to the petitioner has to be paid by the plaintiff to the defendants as owelty;
- (iii) Item Nos. 1 to 5, 7 as well as owelty amount in relation to Item No.6 allotted to the respondents representing their 4/5th share of the schedule mentioned property;
- (iv) The defendants should pay 4/5th share of Rs.28,681/- to the plaintiff. This has already paid to the Advocate Commissioner by the plaintiff.

Aggrieved by this judgment and order both in the application Nos. 204 of 2001 and 4307 of 2002, the respondents filed OSA 23 of 2003 and 24 of 2003 respectively. The appellant filed Cross Objections for the Commissioner's Report and also reply affidavit to OSA Nos. 23 and 24. These appeals have been disposed of by the Division Bench of the High Court on 11.3.2003 allowing the appeals filed by the respondent partly by setting aside the direction issued by the learned single Judge to adjust the owelty amount from out of the land acquisition compensation proceedings. The Bench directed that the parties can get the compensation amount independently according to their shares as and when the amounts are deposited by the State Government. In other respects, the decree of the learned single Judge was confirmed and the cross objections were dismissed. It is now seen from the rejoinder affidavit that all the sharers have withdrawn their respective land acquisition compensation amounts.

Against the above judgment, the appellant preferred the Special Leave Petition Nos. 14332-14335 of 2003.

We heard Mr. S.D.N. Vimalanathan, learned counsel for the appellant and Mr. A.T.M. Sampath, learned counsel for the respondents. Mr. S.D.N. Vimalanathan made the following submissions:-

- a) The order of the learned trial Judge and of the Division Bench is not correct in stating the rough value given by the appellant/plaintiff in the plaint as Rs.1,50,00,000/- for the purposes of valuation in the plaint as the valuation given in the plaint is tentative and not based on the market value of the site and building on the date of filing of the plaint;
- b) All the immoveable properties are valued by the approved engineer who was the retired Chief Engineer for which no objections were raised by either parties;
- c) There cannot be any estoppel against the statute as the non-judicial stamp papers to be supplied cannot be on the value stated in the plaint.

Concluding his arguments, the learned counsel submitted that this Court should accept the value of Item No. 6 as stated by the Commissioner and the owelty amount be arrived at and as the appellant has deposited over and above their value to the tune of Rs.60 lacs, suitable directions may be passed for adjustment. The learned counsel also submitted that the learned Judges of the Division Bench have not answered many of the contentions raised before them and, therefore, such an omission by the learned Judges of the Division Bench amounts violation of the principles laid down under Order XXVI Rule 13 of C.P.C. and Order XXXI Rule 31 and Rule 33 and the original side rules of the High Court and since there is an apparent omission to answer the questions raised in the OSAs and the cross objections except Item No. 6 and the said infirmities is not legally sustainable, the matter may be remitted for a fresh consideration before the Division Bench except Item No.6 of the plaint schedule.

Per contra, Mr. A.T.M. Sampath, learned counsel for the contesting respondent submitted that the appellant himself valued Item No.6 at Rs.1,50,00,000/- both in the plaint as well as in the final decree application and that the Court appointed Commissioner recorded the same in his report with reference to Item No.6 of the suit item. He would also further submit that since the learned Judges of the Division Bench have elaborately dealt with all the submissions made by both the parties there is no need or necessity to remit the matter for fresh consideration insofar as other items of the plaint schedule properties are concerned.

We have perused the entire pleadings and all the annexures filed along with the appeals. We have also carefully perused the judgment under appeal. We are of the opinion that there is no infirmity in the judgment passed by the learned Judges of the Division Bench. The learned Judges in paragraphs 16 and 17 have elaborately considered the valuation arrived at by the advocate Commissioner and the valuation of Item No.6 suggested by the appellant and the respondent and the decisions arrived at

by the learned single Judge and ultimately held that there is no infirmity in the determination and value of Item No.6 as made by the learned single Judge.

As already noticed, the learned single Judge passed the final decree assessing the value of the properties at Rs.2,98,79,569/- out of which the appellant's 1/5th share was Rs.59,75,914/- and towards the share of the appellant he was allotted Item No.6 the house property situated at Kilpauk, Chennai, the value of which was assessed at Rs.1,50,00,000/-. The appellant's 1/5th share comes to Rs.59,75,914/-. The appellant, pursuant to the directions of this Court, have deposited Rs.60,00,000/- in this Court which is now deposited in short term fixed deposit with the UCO Bank, Supreme Court Compound, New, Delhi. Deducting the value of the house allotted to the share of the appellant, the balance sum of Rs.90,24,086/- has to come to the other four legal representatives. Deducting the sum of Rs.60,00,000/- which was deposited by the appellant earlier, the appellant is now directed to pay the balance of Rs.30,24,086/- with interest to the respondents as owelty amount as has been directed in the lower Court's order. The appellant wants three weeks time to deposit the same in this Court. We, therefore, grant three weeks' time from today to deposit the balance of Rs.30,24,086/- in the UCO Bank towards the credit of the present proceedings in this Court. The respondents are at liberty to withdraw the entire sum deposited with accrued interest from the UCO Bank, Supreme Court Compound, New Delhi on production of the copy of this judgment. On deposit of the balance amount of Rs.30,24,086/-, the respondents shall hand over the peaceful vacant possession of the suit Item No. 6 i.e. House bearing No. 16, Dr. Vasudevan Street, Kilpauk, Chennai 600 010 to the appellant herein/plaintiff within one week thereafter. The above directions shall be complied with punctually by both parties.

In the result, the judgment of the Division Bench of the Madras High Court is confirmed subject to the directions mentioned in paragraphs supra. The appeals stand disposed of accordingly. There would be no order as to costs.