

Supreme Court of India

Muthulakshmi Achi vs Meenakshi Achi And Ors. on 10 August, 1993

Equivalent citations: II (1993) BC 288 SC, JT 1993 (4) SC 494, 1993 (3) SCALE 355, 1993 Supp (4) SCC 658

Bench: K Singh, B J Reddy

JUDGMENT B.P. Jeevan Reddy.

1. Leave granted. Heard the counsel for the parties.

2. C.S.No. 83 of 1965 on the original side of the Madras High Court was instituted for partition and separate possession of the estate left by one Chidambaram Chettiar. With the consent of all the heirs, a preliminary decree was passed on 22nd November, 1968 directing the schedule mentioned properties to be divided into seven parts as between the plaintiff and defendants 1 to 6. Clause (2) of the preliminary decree provided "that the defendants 1 to 3 herein as executors do ascertain the debts due by the estate of T.S. P.L.P. Chidambaram Chettiar, deceased and file a report in this Court and sell sufficient properties of the estate for the early discharge of the debts due to the several creditors including those who have filed O.S. No. 49 of 1967 on the file of the court of the Subordinate Judge, Devakottah subject, of course, to the finding about the actual amounts due to those creditors in O.S. No. 49 of 1967 on the file of the court of the Subordinate Judge, Devakottah."

3. The debts due by the estate admittedly included certain tax arrears.

4. An advocate-commissioner was appointed by the Court inter-alia to sell the properties as per Clause (2) of the preliminary decree. On 16th September, 1976 the Commissioner submitted his first report suggesting that the Theatre (Gaiety Theatre) be sold and debts due to the estate be discharged from its sale proceeds. On 6th April, 1977, however, he submitted another report stating that the parties are anxious to keep the Theatre and, accordingly, recommended that the house and the vacant land with which we are concerned in this appeal, be sold. On 26th April, 1977, the Court directed the Commissioner to sell two items of immovable properties belonging to the estate, viz., (i) House, ground and premises bearing Nos. 5, 5A and 5B Williams Road, Tiruchirapalli and (ii) a vacant site known as Kallukuzhi situated at Tiruchirapalli. Accordingly, the Commissioner invited tenders. Two tenders were received, one from the appellant, Muthulakshmi Achi and the other from one Mohd. Ibrahim. The appellant offered to purchase Item No. 1 for Rs. 3,85,000/- and the vacant site at the rate of 0.60p per sq.ft. Mohd. Ibrahim, however, offered to purchase only the house but not the vacant land. The court accepted the offer of the appellant on 28th June, 1978, directing her to deposit the consideration within two months. Proceedings were taken by the Commissioner to obtain the permission for sale (exemption?) of the said two items from the appropriate authority under the Urban Lands (Ceiling and Regulations) Act, 1976('the Act'). These proceedings, however, remained inconclusive inasmuch as the heirs of the deceased (plaintiff and defendants 1 to 6) refused to cooperate by filing the requisite declarations etc.

5. The 1st defendant was adjudicated an insolvent on 12th August, 1977. He was discharged from insolvency on 14th November, 1980.

6. In the year 1981, the 1st defendant (Subramaniam Chettiar) filed two applications in the High Court. Application No. 1718 of 1981 was filed by him to modify the order dated 28th June, 1978 and to direct the Commissioner to divide the aforesaid Item No. 1 and 2 between the heirs. Application No. 1719 of 1981 was filed praying for stay of issue of sale certificate in respect of the said two items in favour of the appellant pending disposal of application No. 1718 of 1981. The appellant filed an application No. 1936 of 1981 for impleading herself as a party-respondent to the application No. 1718 of 1981. The Commissioner filed a memo before the court praying that he may be permitted to issue a sale certificate in respect of the said two items in favour of the appellant. The three applications and the memo filed by the Commissioner were considered together and disposed of by the learned Single Judge by his order dated 10th February, 1982. The learned Judge dismissed the applications filed by the first defendant. He directed the sale certificate to be issued in favour of the appellant on her depositing the balance amount still outstanding on the date of his order.

7. Against the order of the learned Single Judge, the first defendant filed a Letters Patent Appeal being O.S.A. No. 37 of 1982. This appeal came to be allowed by a Division Bench on 24th October, 1991 against which order the present appeal is preferred. The Division Bench set aside the sale in favour of the appellant on four grounds: (1) there is no provision in the Civil Procedure Code empowering the court to order interim sale of some of the items in a suit for partition. The inherent powers recognised by Section 151 do not authorise such direction. (2) The sale of the said items without obtaining exemption from the provisions of the Act is contrary to law and invalid. (3) On 28th June, 1978 when the court directed the sale of said two items in favour of the appellant, the first defendant was adjudicated an insolvent but neither the official assignee/official receiver was impleaded nor was he given a notice before passing the said order. This is a violation of the principle of natural justice. (4) The appellant is not a bonafide third-party purchaser. She is indeed the wife of the third defendant. The said fact was cleverly concealed from the court at the time of acceptance of her tender.

8. Having declared the sale to be invalid, the Division Bench directed that the appellant shall be entitled to the refund of the amount paid by her in final decree proceedings, with interest at the rate of 15% per annum.

9. The correctness of the judgment of the Division Bench is assailed in this appeal.

10. With respect to the first ground on which the Division Bench has set aside the sale of the said items, we must say that the said objection was not open to the first defendant or to any other party to the suit in view of the preliminary decree passed with their consent. The preliminary decree was passed on the basis of a memorandum of compromise signed and filed by all the heirs including the first defendant and plaintiff. The preliminary decree expressly directed the sale of "sufficient properties of the estate for the early discharge of the debts." The said decree has become final. It is in pursuance of the said clause that an advocate-commissioner was appointed to sell the properties. The 1st defendant was himself participating in the proceedings. Even when the order dated 26th April, 1977 was passed by the "court directing the sale of the said two items he was participating in the proceedings. He submitted no objection thereto. In pursuance of the said order, the Commissioner invited the offers and on 28th June, 1978 the court accepted the appellant's offer,

being of the opinion that it is the better of the two offers received. In the circumstances, therefore, it is not open to the 1st defendant or any other heir to contend, after the event, that there is no power in the court to sell the said two items. In our opinion, the Division Bench ought not to have allowed the 1st defendant to raise the said contention before it in view of the above circumstances. In this view of the matter, we do not wish to express any opinion in the question whether in a suit of partition the court has no power to sell some of the items to discharge pressing debts and whether the inherent powers of the court do not enable to do so.

11. We are also not satisfied that the sale in favour of the appellant is liable to be set aside on the ground that before accepting the offer of the appellant no notice was given to the official assignee representing the estate of the 1st defendant. As pointed out hereinabove, the 1st defendant was a party to the consent preliminary decree. He was himself present when the court directed the sale of the said two items on 26th April, 1977. It is thereafter that he was adjudicated an insolvent. What was done by the court on 28th June, 1978 was merely to accept the better of the two offers received, in pursuance of the order dated 26th April, 1977. In other words, the order dated 28th June, 1978 was merely in implementation of the order dated 26th April, 1977. All the other heirs were duly represented when the above orders were passed. Assuming that it is an irregularity, it is not, in the facts and circumstances of this case, of a nature that vitiates the order dated 28th June, 1978, more particularly when the first defendant himself appeared (after being discharged) before the finalisation of the sale of the said items and was heard fully. In these circumstances, the acceptance of the offer of the appellant on June 28, 1978 is not liable to be set aside on the said ground.

12. We are also not satisfied with the ground given by the Division Bench that the appellant was not a bonafide third-party purchaser inasmuch as she did not disclose the fact of her being the wife of the 3rd defendant (one of the heirs of Chidambaram Chettiar). In the absence of any finding of fraud or other material irregularity giving rise to prejudice, the said fact, in our opinion, is irrelevant. The fact that the appellant was the wife of the third defendant did not debar her from making an offer. It cannot also be said that when her offer was being accepted in the court, the parties to the suit were not aware of her relationship with the 3rd defendant. No one ever raised any objection on that ground. The said ground appears to be an afterthought. In any event, in the absence of any finding of fraud or other material irregularity in the conduct of sale, the said fact has no significance. The offers were called for and placed before the Court by the Advocate-Commissioner and not by the third-defendant, who was no doubt one of the party-receivers of the estate.

13. There remains the last ground based upon the provisions of the Act.

14. Tied-up with this question is the issue of delay in paying the full consideration on the part of the appellant-purchaser. As mentioned hereinbefore, the appellant's offer was accepted on June 28, 1978 in view of the statement made by the Advocate-Commissioner that "there is no complication arising out of Land Ceiling Act for the sale of its properties". The Court permitted the Advocate-Commissioner to sell the house and the vacant land at Rs. 3,85,000/- and at 0.60 p per square foot respectively to Muthulakshmi Achi. She was given two months time to deposit the amount with the Commissioner. On August 26, 1978, the appellant wrote to the advocate-Commissioner to obtain extension of time for payment of sale consideration by a period of

three months "to enable the estate of Chidambaram Chettiar to obtain permission from Urban Land Ceiling Authority which seems to be important under the said Act to conclude the sale on my behalf in my name and in the names of my nominees (M-2) as informed in my letter dated June 3, 1978." She enclosed a bank draft of Rs. 50,000/- alongwith the said letter. Thereupon, the Commissioner filed a memo before the Court stating inter alia that the Urban Land Ceiling Authority have intimated him that "permission is required from the competent authority for the sale of the vacant land". Accordingly, it appears that efforts were made for obtaining the permission but on account of non-cooperation of the heirs, (parties to the suit) the permission could not be obtained. In December, 1980, first defendant, as stated above, applied to ignore the sale in favour of the appellant and to divide the said two items among the heirs. The Court not only dismissed the said application on February 10, 1982, but also permitted the appellant to deposit the balance consideration. Thereupon, the appellant deposited the total consideration from Item No. 1 and partial consideration for Item No. 2 on February 19, 1982. It would be relevant to notice at this stage that in his order dated February 10, 1982, the learned Judge considered the reasons for delay in depositing the full consideration by appellant and held that she cannot be held guilty of delay. Inter alia, the learned Judge observed: "finding that the Commissioner is not able to obtain a clearance certificate from the Government under the Urban Land Ceiling Act and he is not able to convey both the house as well as the Kallukuzhi land, Muthulakshmi Achi wrote to the Commissioner stating that she is prepared to take a sale atleast of the house in view of the fact that the condition of the house is getting deteriorated day-by-day. It is in these circumstances that the Commissioner has come forward with this memo. I do not find any deliberate laches or default on the part of Muthulakshmi Achi. If at all any delay has occurred, it is on account of the fact that the parties to the suit who are sharers in respect of the properties, have, not cooperated with the Commissioner by filing appropriate returns before the authorities and the Urban Land Ceiling Act to the Commissioner to get a clearance. I have therefore no hesitation in holding that there is no breach of the terms of the order dated 28-6-1978 by Muthulakshmi Achi." It is in pursuance of this order that the appellant had deposited the balance consideration still outstanding viz., Rs. 75,380/-, within the prescribed date. On appeal, the Division Bench did not hold the appellant guilty of delay in depositing the sale price, though it opined that in view of the provisions of the Urban Land Ceiling Act, the sale in favour of the appellant cannot be upheld-apart from other grounds mentioned hereinbefore. The result is that though the appellant has deposited the full consideration by February, 1982, she has not been put in possession of Item No. 1. According to the accounts maintained by the Advocate-Commissioner, who was represented by a council before us, this amount has been utilised by him to discharge the debts including the taxes outstanding against the estate.

15. Before we take up the question of absence of clearance under the Act for the sale of the said items, it is necessary to refer to certain contentions having a bearing upon this issue. It was submitted before us by the learned counsel for the first defendant that the Advocate-Commissioner sold the Gaiety Theatre even before the sale of these two items but did not bring the said fact to the notice of the Court. The learned counsel suggested that the Advocate-Commissioner had obtained the Court's permission for sale of these two items by suppressing the fact of sale of Gaiety Theatre. This does not appear to be correct inasmuch as the order of the learned Single Judge (Mr. Justice Ramaswami) dated September 12, 1977 (Annexure 16 in the paper-book) clearly shows that the Court had indeed directed the sale of these two items as well as the Gaiety theatre. The following

portion from the said order may usefully be extracted:

The Advocate-Commissioner is directed to bring the House property at Tiruchirapalli for sale as the amount that might be realised by the sale of the vacant site will not be enough for discharging the liabilities. He is also directed to take expeditious steps to sell the Gaiety Theatre as the lease proposals had not fructified as per order dated 22-9-1976.

16. It was next submitted by the learned counsel for the first defendant that the amount realised by sale of Gaiety Theatre was by itself sufficient to discharge all the outstandings. But this fact has also been stoutly denied by the counsel for the Commissioner. According to him, it was necessary to sell these two items too for meeting the several debts and obligations.

17. The other contention urged by the counsel for the first defendant is that the Item No. 1 sold for a very low price viz., Rs. 3,85,000/-, whereas he had himself offered a sum of Rs. 10 lakhs. The order of the learned Single Judge dated February 10, 1982 mentions the relevant facts in this behalf. The order says that the first defendant had in his application (1718 of 1981) offered only a sum of Rs. 4 lakh for item No. 1. However, in his objections to the memo filed by the Commissioner, he offered a sum of Rs. 7 lakhs and during the course of argument in the Court, his counsel gave a written offer in a sum of Rs. 10 lakhs. In this view of the matter, the learned Single Judge opined, and in our opinion rightly, as follows: "this only show that the first defendant is not prepared to take a consistent stand with regard to the value of the property and his only attempt is to get the property if he could by offering a lower amount or by raising it by convenient figures at different stages of the proceedings. I have therefore no hesitation in coming to the conclusion that there is absolutely no bonafides at all in the belated offer that has been made by the first defendant."

18. Now coming to the question of bar created by the Act in the way of effectuating the sale in favour of the appellant, the fact is that the Commissioner had applied for permission/exemption to the authorities under the said Act not only in respect of Item No. 2 but also in respect of Item No. 1. There is some vacant land appertaining the house in Item No.1 though the particulars of the extent of the vacant land are not available. The said proceedings have remained inconclusive, as stated hereinbefore. The counsel for the appellant stated before us that his client is prepared to take Item No. 1 alone for a consideration of Rs. 3,85,000/-. He stated that the appellant will take the risk of the bar, if any, arising from the Act. According to him, no such bar rises in respect of Item No. 1. The question is whether it is equitable to accept the said offer and whether such a course is permissible in law?

19. So far as equities are concerned, there can be little doubt that they are in favour of the appellant. She has deposited the full amount of consideration for Item No. 1 as far back as February, 1982- indeed, a major part of it much earlier. She has not been put in possession of Item No. 1 so far. The money paid by her has been utilised for discharging the debts outstanding against the estate. There is nothing to show that she is in any way guilty of any fraud or misrepresentation. Even the charge of delay in depositing the entire sale price has been repelled by the learned Single Judge, which finding has not been reversed by the Division Bench in appeal. The permission/exemption under the Act could not be obtained because of the non-cooperation of the parties to the suit i.e., the heirs of late

Chidambaram Chettiar. According to the direction of the Division Bench (given in the order under appeal) the appellant will be entitled to the refund of the said amount alongwith interest (a)15% per annum at the time of the final decree proceedings. In other words, according to the said direction, each of the seven shares will have to bear equal brunt in discharging the dues to the appellant. This is likely to involve further delay. In the context of all the circumstances, we are of the opinion that it would be just and proper that the appellant is allowed to purchase, if not the entire Item No. 1, at least the house proper in item No. 1 along with appurtenant land to the extent of 500 sq. yards (excluding the area of the land covered by the house), subject to her paying an additional sum of three lakhs (in addition to the sum of Rs. 3,85,000/- already paid by her) within a period of two months from today. (We have made this dissection with respect to the extent of open land to be sold to the appellant on the supposition that the vacant land appurtenant to the house is more than 500 sq. yards. In case, the appurtenant land is only 500 sq. yards or less, then, it is obvious, whole of the Item No. 1 shall be sold to the appellant. There shall, however, be no change in the consideration determined by us herein even if the appurtenant land is less than 500 sq. yards). If any access needs to be provided to the house, an approach road with ten feet width may be provided to reach the nearest road. This aspect may be looked into and appropriate orders, if need be, be passed by the learned Single Judge before whom the suit is pending.

20. But then the question is how is the sale in favour of the appellant to be effected in the light of the provisions of the Act. We are of the opinion that in the peculiar facts and circumstances of this case, it would be just and proper to direct the Government to grant exemption under Section 20 of the Act to the extent of the building and land now being permitted to be sold in favour of the appellant. The said exemption shall be granted within three months from today. The appellant shall produce a copy of this order before the Government within three weeks from today. Let it be made clear that we are making this unusual direction in the peculiar facts and circumstances of this case with a view to do complete justice between the parties. In case, the appellant fails to deposit the amount of three lakhs within the period prescribed herein, the direction made for sale of the house to appellant shall become inoperative and the order of the Division Bench (under appeal) shall stand affirmed. In case of deposit of the said amount of three lakhs, the same shall be to the credit of the suit. Soon upon the deposit of the said sum, the advocate-Commissioner shall deliver possession of the house property (described above) in Item No. 1 to the appellant. He shall also execute the sale deed therefor soon after obtaining the exemption under Section 20 of the Act, referred to hereinbefore.

21. For the above reasons, the appeal is allowed in part to the extent indicated above. The remaining portion of Item No. 1 and Item No. 2 shall be available for division among the heirs in the final decree proceedings in accordance with law. No costs.