



WEB COPY

OSA No. 298 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-09-2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

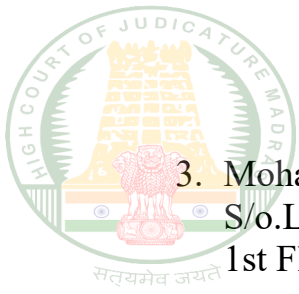
**OSA No. 298 of 2025
and C.M.P.No.22671 of 2025**

1. Kareem Ahamed
S/o.Late D.K.Hussain, No.18, 2nd floor,
P.V.Lane, M.K.Garden, Chennai - 600 001.
2. Shukoor Ahamed
S/o.Late D.K.Hussain, No.18, 3rd and 4th
floors, P.V.Lane, M.K.Garden, Chennai - 600
001.
3. Abdul Jabbar
S/o.H.Kareem Ahamed, No.18, 2nd floor,
P.V.Lane, M.K.Garden, Chennai - 600 001.
4. Mohammed Kassim
S/o.Shukoor Ahamed, No.18, 3rd floor,
P.V.Lane, M.K.Garden, Chennai - 600 001.

..Appellant(s)

Vs

1. Nazneen Begum
W/o.Late Shameem Ahamed, No.18, PV Lane,
1st Floor, M.K.Garden,
Chennai - 600 001.
2. Shabbir Ahamed
S/o.Late Shameem Ahamed, No.18, PV Lane,
1st Floor, M.K.Garden,
Chennai - 600 001.



3. Mohammed Ghouse Basha
S/o.Late Shameem Ahamed, No.18, PV Lane,
1st Floor, M.K.Garden, Chennai - 600 001.

4. Mumtaz Begum
D/o.Late Shameem Ahamed, W/o.Abdul
Gaffar, No.18, PV Lane, 1st Floor,
M.K.Garden, Chennai - 600 001.

5. Ruksana
D/o.Late Shameem Ahamed, W/o. Mohammed
Munavar, No.119, Savarayalu Street,
Pondicherry - 605 001.

6. LIC Housing Finance Ltd.,
Rep by its Area Manager, Having office at
Harrington Chambers, Block C No.30/1A
Abdul Razack,
1st Street Saidapet,
Chennai - 600 015.

..Respondent(s)

Original Side Appeal is filed under Order XXXVI Rule 1 of the Madras High Court Original Side Rules read with Clause 15 of Letters Patent to set aside the order dated 19-12-2024 passed in C.S.No.531 of 2018 by allowing the Original Side Appeal.

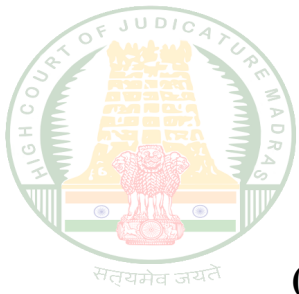
For Appellant(s):

MR.S.R.Rajagopal
Senior Counsel

for Mr.A.M.Sheik Mohammed Rafiq

For Respondent(s):

Mr.M.Radhakrishnan
For R1 TO R5.
For Mr.K.Ramesh for R 6



JUDGMENT

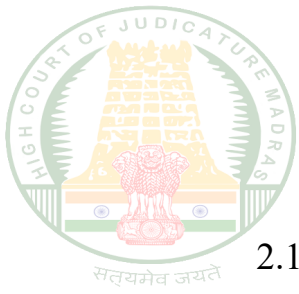
(Judgment of the Court was delivered by P.Velmurugan J.)

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This appeal is preferred as against the order dated 19.12.2024 passed in C.S.No.531 of 2018.

2. The facts of the case in brief:

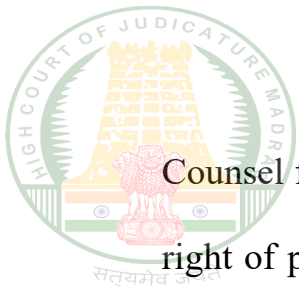
The respondents 1 to 5 are the plaintiffs in a suit in C.S.No.531 of 2018 filed for partition of three properties described in Schedules A, B and C. A preliminary decree was passed on 21.11.2019 by determining the shares of the parties and it is accepted by both the appellants and the respondents. There is no dispute with regard to the division or possession of Schedule – B and C properties. With regard to Schedule – A property, the Advocate Commissioner reported that the property was not physically divisible. Hence, the learned Single Judge vide order dated 08.11.2022 made in Application Nos.2773 & 2774 of 2020, directed both the parties to bring prospective buyers with quotations for sale. The appellants herein had submitted a final quotation of Rs.10.10 Crores which was not matched or exceeded by the respondents. On 27.02.2024 the learned Single Judge ordered a public auction of the property. Against which the appellants herein had filed an appeal in O.S.A.No.39 of 2024 which was allowed on 13.08.2024 by setting aside the auction and remanding the matter for fresh consideration of the final decree.



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2.1 During reconsideration, the learned Advocate Commissioner recommended demolition of the Schedule – A property to facilitate division into three shares. The appellant objected the same citing concerns over loss of property value and feasibility of such division. It is alleged that without considering the objections raised by the appellants, the learned Single Judge passed an order dated 19.12.2024 directing the Advocate Commissioner to proceed with demolition. On 08.01.2025 the Advocate Commissioner issued a notice to the appellants to clear statutory dues. The appellants again reiterated their objection to demolition and expressed their intent to exercise the right of pre-emption. However, the learned Single Judge directed the appellants to hand over keys and documents to the Advocate Commissioner for demolition. Aggrieved by the said order, the appellants have filed an appeal in O.S.A.No.236 of 2025 and the same was dismissed on 24.07.2025 with liberty to challenge the daily order dated 19.12.2024. Therefore, the present appeal has been filed against the order passed by the learned Single Judge dated 19.12.2024 in C.S.No.531 of 2018 directing the Advocate Commissioner to proceed with demolition.

3. The learned Senior Counsel for the appellants would submit that if the building in Schedule – A is demolished, the value of the property would be diminished and it could not benefit any of the sharers. The learned Senior

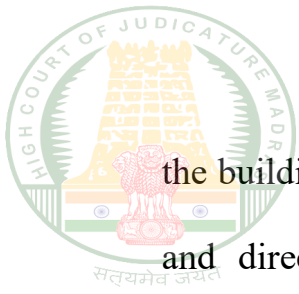


Counsel for the appellants would further submit that the appellants have got the right of pre-emption and they have also quoted Rs.10.10 Crores for buying the property in Schedule – A. Even the Commissioner's Report does not show that the condition of the building is in a dilapidated condition. In such a situation, the order directing the Advocate Commissioner to proceed with the demolition is liable to be set aside.

4. The learned counsel for Respondents 1 to 5 would submit that the property in 'A' Schedule is indivisible without demolition of the building. The order passed by the learned Single Judge ordering demolition of the building and divide the vacant land into three equal parts, requires no interference. Hence, the appeal is liable to be dismissed.

5. We have heard both sides and perused the materials available on record.

6. Admittedly, the parties have filed a suit for partition in which a preliminary decree was passed and final decree proceedings are pending. Pending final decree proceedings, the Advocate Commissioner was appointed and he had also filed a report. It was suggested that 'B' and 'C' schedule properties are divisible and 'A' Schedule property cannot be physically divided. The learned Single Judge, vide order dated 19.12.2024, ordered demolition of



the building in 'A' Schedule and to divide the vacant land into three equal parts and directed the Advocate Commissioner to submit a preliminary report.

Aggrieved over the same, the present appeal has been preferred.

7. The learned Senior Counsel for the appellants would submit that the appellants have the right of pre-emption over the building in 'A' Schedule and hence objected for demolition of the building. The right of pre-emption can always be on a dwelling house and not on any commercial building or land. Therefore, the appellants are not entitled to the right of pre-emption as claimed by them.

8. It is submitted that the building in 'A' Schedule is in dilapidated condition. However, no materials have been produced to prove that the building in 'A' Schedule is in a dilapidated condition. We are of the view that as there are no materials or any report of a Chartered Engineer to show that the building in 'A' Schedule is in a dilapidated condition, the same need not be demolished. Hence, the order dated 19.12.2024 passed by the learned Single Judge in C.S.No.531 of 2018 is liable to be set aside to this extent.

9. The learned Single Judge is permitted to proceed with the final decree proceedings and in which the value of the property in 'A' Schedule can be fixed on the basis of a report received from a Chartered / Scheduled Engineer with



regard to the condition / stability of the building in 'A' Schedule. If any of the party to the proceedings is willing to purchase other's share, the learned Single Judge shall proceed further in accordance with law.

10. In view of the above direction, this appeal is partly allowed. The order dated 19.12.2024 passed in C.S.No.531 of 2018 is modified to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

(P.V.,J.) (G.K.M.,J.)
07-09-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

BKN

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



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**P.VELMURUGAN, J.
AND
GK.MUTHUKUMAAR, J.**

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