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OSA No. 262 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

**OSA No. 262 of 2021
and C.M.P.Nos.12378 & 12379 of 2021**

1. Mrs.J.Dhakshayini,
W/o Late A.R.Jagadeeswaran,
Old No.17/3, New No.47,
Kariappa Street,
Purasawalkam,
Chennai-600 007
2. Mr.J.Saravanan
S/o Late A.R.Jagadeeswaran,
No.161/284, 2nd Street,
Kellys, Purasawalkam, C
hennai-600 007 Old No.17/3, New No.47,
Kariappa Street, Purasawalkam, Chennai-600
007

..Appellant(s)

Vs

1. Mrs.Jayashree Selvakumar
D/o. Late A.R.Jagadeeswaran,
W/o. Mr.Selvakumar, Blk 131b,
Kim Tian Road, 05-171,
Singapore-162 131
2. Mrs.J.Rajashree
D/o. Late A.R.Jagadeeswaran, W/o.
Mr.Lingeswer, Old No.17/3, New No.47,
Kariappa Street, Purasawalkam, Chennai-600
007

..Respondent(s)



Original Side Appeal is filed under Clause 15 of Letters Patent read with Order XXXVI Rule 9 of Original Side Rules to set aside the order dated 13.07.2021 passed in Application No.2932 of 2020 in C.S.No.430 of 2019.

For Appellant(s): Mr.Bijai Sundar.K

For Respondent(s): Ms.Kalyani Kailasam
for Ms.K.Surendar

JUDGMENT

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

The appellants have filed the present Original Side Appeal challenging the order dated 13.07.2021 passed by the learned Single Judge in A.No.2932 of 2020 in C.S.No.430 of 2019, by appointing an Advocate Commissioner.

2. The brief facts of the case in C.S.No.430/2019 are as follows:

The appellants are the defendants and the respondents are the plaintiffs in a suit in C.S.No.430 of 2019 filed for partition, declaration and also for mesne profits. The parties are the legal heirs of deceased A.R.Jagadeeswaran. The respondents / plaintiffs are daughters, first appellant / first defendant is the wife and second appellant / second defendant is the son of the deceased A.R.Jagadeeswaran. A.R.Jagadeeswaran died on 12.07.2018. The suit schedule mentioned properties are ancestral properties of the deceased



A.R.Jagadeeswaran. After his death, the appellants and the respondents have become the joint owners of the coparcenary properties mentioned in the schedule.

3. According to the respondents / plaintiffs, only after the death of their father, they came to know about the settlement deed dated 30.02.2018, through which their father had conveyed Item No.1 of the schedule mentioned property in favour of the second appellant / second defendant. The respondents further came to know that their father A.R.Jagadeeswaran had also executed a Will dated 25.05.2000. According to the respondents / plaintiffs, the properties in question are generating regular income and Item No.2 of the schedule mentioned property were rented out for a valuable consideration and total monthly rent accrued from it is about Rs.1,00,000/-. It is the claim of the respondents / plaintiffs that being the joint owners of the schedule mentioned properties, the plaintiffs are entitled to their 5/16th shares in the rental income accrued from the schedule mentioned properties. The contention of the respondents / plaintiffs is that the second appellant / second defendant is deliberately misappropriating the entire rental income from the month of August, 2018 to the complete exclusion of the claim of the plaintiffs. Hence, a legal notice was issued by the defendants / plaintiffs to the second appellant / second defendant. Since the second appellant did not choose to give any reply, the respondents / plaintiffs have filed the suit for partition.



3.1 The respondents / plaintiffs have also filed an application in A.No.2932 of 2020 seeking to appoint an Advocate Commissioner for ascertaining the mesne profits derived from the schedule mentioned properties. Later, the respondents have filed an Application in A.No1090/2021 to amend the prayer in A.No.2932 of 2020. This Court has allowed the amendment application and amended the prayer in A.No.2932 of 2020. Hence, the application in A.No.2932 of 2020 is for appointing an Advocate Commissioner for ascertaining the quantum of rent derived and the rental potential of the schedule mentioned properties, pending disposal of the suit.

3.2 The learned Single Judge, considering the facts and circumstances of the case, has allowed the application and appointed an Advocate Commissioner to ascertain the quantum of rent derived from and the rental potential of the scheduled mentioned properties. Aggrieved over the same, the appellants / defendants have filed the present Appeal.

4. The learned counsel for the appellants / defendants would submit that the respondents / plaintiffs have filed a suit for partition and the same is pending. Pending suit, they have filed an application to appoint an Advocate Commissioner and the same was allowed and the learned Single Judge has appointed an Advocate Commissioner. It is the contention of the learned



counsel for the appellant that in a suit for partition, the Court cannot appoint an Advocate Commissioner for fixing the rental or mesne profits pending suit before passing a preliminary decree. Therefore, the order passed by the learned Single Judge has to be set aside.

5. The learned counsel for the respondents / plaintiffs submitted that two sisters have filed a suit for partition and subsequently, one of them is not cooperating for proceeding the case. Therefore, she was transposed as third defendant in the suit. Now one of the sister is proceeding the suit. The respondents have initially filed an application in A.No.4958 of 2019 for appointment of Receiver to collect rent from the tenants of the schedule mentioned properties and deposit the same to the credit of the above suit. The appellants herein had undertook to deposit a sum of Rs.10,000/- per month from and out of rent received from the suit properties. This Court vide order dated 03.02.2020 disposed the application with a direction to the appellants to deposit a sum of Rs.10,000/- per month from and out of the rent received from the suit schedule properties. Subsequently, the respondents have filed an application for appointing Advocate Commissioner to ascertain the quantum of rent derived and the rental potential of the schedule mentioned properties. There is no perversity in the order passed by the learned Single Judge and hence the same does not require any interference.



6. We have considered the submissions made on either side and perused materials available on records.

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7. Admittedly, the respondents / plaintiffs have filed the suit for partition against the appellants. Pending suit, they filed an application for appointment of Receiver to collect rent from the tenants of the schedule mentioned properties and deposit the same to the credit of the above suit. Subsequently, the respondents have filed the application for appointment of Advocate Commissioner to ascertain the quantum of rent derived and the rental potential of the schedule mentioned properties. The learned Single Judge allowed the said application and appointed an Advocate Commissioner.

8. Once a suit is filed for partition, declaration of sale and also for mesne profits, without passing a preliminary decree and declaring the entitlement of the parties and also quantum of share, there is no necessity to appoint the Advocate Commissioner. Only after passing a preliminary decree and after declaring the share and past and future mesne profits, the Court can appoint an Advocate Commissioner / Receiver to ascertain the quantum of rent or rental potential of the suit property. Therefore, under these circumstances, the order passed by the learned Single Judge is liable to be set aside.



9. Accordingly, this Original Side Appeal is allowed and the order dated 13.07.2021 passed in Application No.2932 of 2020 in C.S.No.430 of 2019, is hereby set aside. No costs. Connected miscellaneous petitions are closed. The observations made in this judgment are only for the purpose of disposal of this appeal and the same shall not cause prejudice to any of the parties.

The learned Single Judge shall proceed with the case further for passing the preliminary decree in accordance with law. Considering the age of the parties and the duration of the litigation, the learned Single Judge shall dispose of the case as expeditiously as possible.

(P.V.,J.) (K.G.T.,J.)
06-08-2026

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

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**P.VELMURUGAN, J.
AND
K.GOVINDARAJAN THILAKAVADI, J.**

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