

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2015

CORAM :

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

C.M.A. No. 1709 of 2015

and

M.P. No. 1 of 2015

Naveen

.... Appellant/Defendant No.3.

..Vs..

1. Mrs. Sasikala

2. Mrs. Lalitha

3. Mr. S.V. Jayaprakash Respondents/Plaitiff,D1 & D2

PRAYER : Civil Miscellaneous Appeal is filed under Order XLIII Rule 1 (u) read with Section 104 of the Civil Procedure Code, against the fair and final order dated 01.07.2015 passed by the learned II Additional District Judge, Salem in I.A. No. 67 of 2015 in O.S. No. 81 of 2005 and to set aside the same.

For appellant : Mr. L. Mouli

For respondents : Mr. V. Nithyanandam
for M/s. Star Associates

JUDGMENT

Notice is taken on behalf of the contesting 1st respondent/ Caveator/Plaintiff. On consent the Civil Miscellaneous Appeal is disposed of at the stage of admission. For the sake of convenience the parties are ranked as stated before the trial court.

2. The third defendant in O.S. No.81 of 2005, who is the third respondent in I.A. No. 67 of 2015 is the appellant herein. The appeal is filed questioning the correctness of the order appointing Advocate Mr. A.K. Chandrasekar, as a receiver to take possession of the suit properties and to manage and administer the same on behalf of both the parties to the suit. From the facts available, it is seen that the parties are closely related to each other. The first respondent/ Plaintiff and the respondents 2 & 3 who are defendants 1 & 2 in the suit, are sisters and brother and the 3rd defendant who is the appellant herein is the son of the 2nd defendant/ 3rd respondent Mr. S.V.

Jayaprakash. The suit O.S. No.81 of 2005 is filed for partition of the plaintiff's 1/3rd share in the suit A & B schedule property. While suit A schedule property is RCC Building having two floors, suit B schedule property is a vacant site with building. While A schedule property is used by the third defendant for his residential and commercial purpose, B-schedule property is let out to third party tenants and the third defendant has been admittedly collecting the rents. The suit is seriously contested by all the three defendants. While the first defendant sister is seeking 1/3rd share in the suit property as that of the plaintiff, the claim for partition by the sisters is seriously contested by the second defendant brother and the third defendant brother's son. All the three defendants filed separate written statements during 2005, 2006 and 2011 respectively and the third defendant also filed an additional written statement. Thereafter the trial court framed the issues and trial was taken up during 2015 and the plaintiff filed proof affidavit on 01.02.2015.

3. When the suit was pending for cross examination of the plaintiff, the plaintiff has come forward with I.A. No. 67 of 2015 for appointment of Receiver to take possession and to be in management of the suit properties. The same was seriously contested by the third defendant along with the second defendant. The trial court after due consideration passed the impugned order, thereby appointing a Receiver to take possession of the suit properties and to be in management of the same and aggrieved against the same, the third defendant is now before this Court.

4. Heard the learned counsel for the appellant and the respondents. Notice is dispensed with for the other respondents.

5. Regarding the appointment of the Receiver is concerned, the same in my considered view is totally unwarranted at the stage of trial. Admittedly, the suit property has been in possession and enjoyment of the third defendant and the tenants under him, much before the institution of the suit and it is he who has been collecting the rents, as the suit properties are said to have been purchased by the plaintiff's mother. The plaintiff has come forward with the suit for partition, after the death of the mother during 2005. However, the plaintiff has not come forward with any application for appointment of Receiver along with the Plaint. She has not thought it fit to do so for more than a decade, since the institution of the suit. The application for appointment of a Receiver is filed only during 2002, that too, after commencement of the trial. There is absolutely no reason raised in the affidavit filed in support of the petition for the necessity to appoint a Receiver. The trial court has also not applied its mind to ascertain as to whether the prevailing circumstances is such, warranting appointment of a Receiver. As rightly pointed out by the learned counsel for the third defendant, in the event of the plaintiff's success in the suit, the suit can be decreed with mesne profits after the shares of the parties are declared, as such, the management of the property by the third defendant need not be

interfered and the present arrangement need not be interfered with. The learned counsel for the first defendant/ Caveator would also fairly concede and appeal to this Court to pass appropriate direction to dispose of the suit as expeditiously as possible. In view of the above stated position, this Court deems it fit to set aside the impugned order.

6. In the result, the impugned order is set aside and direction is issued to the trial court to dispose of the suit, on merits and as per law, as expeditiously as possible by not later than three months from the date of receipt of a copy of this order. The parties are directed to co-operate with the trial court, for early disposal of the suit. Office is directed to send back the lower court records, along with the order forthwith. Consequently, the connected M.P is closed. No costs.

avr

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1 The II Additional District Judge,
Salem.

+1 C.C. to MR.L.MOULI, Advocate in Sr.No.40804

Copy to :

The Section Officer,
V.R.Section, High Court,
Madras

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C.M.A. No. 1709 of 2015
and
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KSJ(CO)
sd : 05/10/2015