

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Contempt Petition.No.797 of 2015

S.Maragatham

... Petitioner

Versus

1.S.Shanmugaraj
2.S.Rajasekharan

... Respondents

Prayer : Petition filed under Section 11 of the Contempt of Court Act, to punish the respondents for having disobeyed and violated the order of this Hon'ble Court dated 27.04.2011 passed in Application No.4654 of 2010 in C.S.No.259 of 1999.

For Petitioner : Mr.V.S.Ravichandran

For Respondents: Mr.K.Kannan for R1.
Ms.B.Sumana for
Mr.C.Prasanna Venkatesh for R2.

O R D E R

This Contempt proceedings have been launched by the plaintiff/ decree holder in C.S.No.259 of 1999. The

preliminary decree for partition was passed on 25.06.2009, declaring that the plaintiff is entitled to 1/3rd share in items 1 and 2 of the suit schedule properties. The final decree came to be passed on 27.04.2011 allotting various portions of the properties to the parties as per the sketch annexed to the final decree.

2. The front portion abutting the 20 feet wide 27th Street shown as Plot A was allotted to the plaintiff, the portion on the immediate west of Plot A shown as Plot B was allotted to first defendant and the rear most portion of the west of plot B, shown as Plot C was allotted to the second defendant. A path way measuring about 10x57.10" was left on the north of the property to enable the allottees of Plot B and C to have access to their property.

3. After the said decree, the plaintiff as a decree holder filed an execution petition in EP.No.189 of 2012 seeking delivery of possession, there was obstruction caused in the process of execution, which had resulted in the present Contempt Petition being filed by the plaintiff.

4. During the pendency of the contempt petition, it is brought to the notice of the Court that the dispute between

the parties essentially relates to the building, that is situate in the suit property. A portion of the building falls within the property allotted to the plaintiff and the remaining portion viz., rear portion of the building is situate in Plot B allotted to the 1st defendant. The 1st defendant is in possession of the ground floor portion of the building and 2nd defendant is in possession of the first floor of the building. However, it is stated on behalf of the 2nd defendant that he is not in occupation of the first floor and the same is kept under lock and key. The parties are at variance on as to how the building is to be divided or the portions of the building which are situate in the common path way as well as in plots A and B to be demolished or preserved.

5. Sketch No.1, filed by the Advocate Commissioner, shows the portion of the building is now situated in the proposed path way. The same has to be demolished in order to provide a path way. Portion of the building is in plot A as well as in plot B. There appears to be some confusion between the parties on the mode of division of the building. After some persuasion by the Court, as well as by the learned counsel appearing

for the parties, the parties have agreed to have peaceful division of the properties.

6. The 1st defendant who is in occupation of the entire building has filed an affidavit of undertaking, wherein, he had undertaken to vacate the portion of the building, that is situate in A portion allotted to the plaintiff on or before 31.03.2008. He has also undertaken to demolish and remove the projection of the building over the common passage.

7. Similarly the plaintiff/ applicant has also filed a memo of undertaking, wherein, she had stated that, she has no objection for the 1st respondent/ 1st defendant to separate the B portion which has been allotted to him by erecting a partition wall on his side of the building and make necessary modification in his own portion. She has also further stated that if any bonafide damage is caused to the building in A portion during the course of such separation she would not make any claim against the 1st defendant for the same. She has also undertaken to demolish and remove the projection of the building in A portion over the 10 feet common passage as and when the owner of B portion demolishes or removes the projection of building in

B portion which is situate in common passage.

8. In the light of the above undertakings the following order is passed:

- 1) The 1st respondent Shanmugaraj shall vacate and handover possession of the building in A portion [allotted to the plaintiff] on or before 31.03.2018.
- 2) He shall also remove the portion of the building in Plot B which is situated on the common passage on or before 30.04.2018.
- 3) The 1st respondent/ 1st defendant shall construct a partition wall within his portion viz., the B portion dividing the building both in the ground floor as well as first floor. He shall also cut the ceiling with due care so that no damage or minimum damage is caused to the building in A portion.
- 4) The plaintiff shall remove the portion of the building in Plot A which is situated on the common passage as and when the 1st respondent removes the building in B portion situate in the common passage.

9. The 2nd respondent, Rajasekharan appears through counsel and the counsel states that he will also vacate the first floor of the building in his occupation by 31.03.2018.

10. In view of the above order, the Contempt Petition is closed. The parties shall abide by the time line prescribed in their affidavit and memo of undertakings filed by them.

SD/-
ASSISTANT REGISTRAR (COMM.CASES)
dsa

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

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KR/CO/14/03/2018

one cc to Mr. C. Prasanna Venkatesh ,SR.No.15425.

One cc to M/s. K. Kannan,SR, No. 15455.



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