



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.662 of 2017

C.T.N.Narayanan Chettiar ... Appellant/Petitioner/Defendant.

Vs.

Gowri ... Respondent/Respondent/Plaintiff.

Prayer: Appeal filed under Order 43 Rule 1(s) of Civil Miscellaneous Code against the order and decree dated 12.04.2017 made in I.A.No.36 of 2017 in O.S.No.64 of 2015, dated 12.04.2017 on the file of the Additional District Judge, (Fast Track) Tenkasi.

For Appellant : Mr.T.S.R.Venkataramana

For respondent : No Appearance

J U D G M E N T

The appellant in this Civil Miscellaneous Appeal is the sole defendant in the suit for partition.

2.The subject matter of the suit is a bungalow bearing Door.No.69 & 70, Five falls Road, Kuttralam. The said suit property originally belonged to Narayanan Chettiar, father of the appellant herein. The said Narayanan Chettiar died leaving behind three legal heirs namely two sons including the appellant herein and one daughter namely Umayaal.

3.The husband of the respondent, Madasamy was the care-taker of the said suit property. The respondent Gowri claims to have purchased the shares of the said Umayalammal and Annamalai Chettiar, the brother of the appellant herein. She therefore claims to be holding two third share in the suit property. Even according to the respondent, the appellant is having one third share in the suit property. She has chosen to file O.S.No.64 of 2015 for allotment and partition of her two third share by metes and bounds. She sought passing of a preliminary decree in this regard.

4.According to the appellant the suit property belongs only to him and his brother Annamalai Chettiar. He would contend that Umayalammal has no share in the suit property. The defence of the appellant is founded on the terms of the family settlement. He has therefore, filed a counter claim in which he has sought a declaration that the purchase of the respondent herein from the said



Umayaal is null and void. In other words, the appellant's contention is that he is having 50% share in the said suit property.

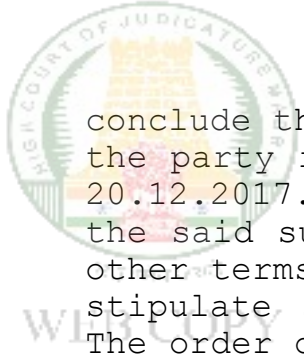
5. Since the suit bungalow is used as lodging house and is fetching substantial rent, which is appropriated by the respondent to the exclusion of the appellant, he filed I.A.No.36 of 2017 for appointing him as a party receiver. An alternative prayer was also made for auctioning the property for fixing the annual lease between them. The respondent herein filed a counter opposing the said prayer. The learned Trial Judge by order dated 12.04.2017, dismissed the Interlocutory Petition. The learned Judge took the view that the request of the appellant herein did not fulfil any one of the principles laid down by this Court in the case reported in AIR 1955 Mad 430.

6. Heard the learned counsel appearing for the appellant.

7. Though the respondent was served with the notice both through Court as well as privately, she has not chosen to enter appearance. Her name is however printed in the cause list.

8. The suit property is admittedly being utilised as a lodging house. It is not a dwelling house that is in the possession of one of the co-owners. In fact, it is the appellant, who is the original co-owner. The respondent is a subsequent purchaser. In all such cases where there is a subsequent purchaser of shares of one or some of the co-owners. The remedy open to the subsequent purchaser is to apply for partition and separate possession. In the present case, since the husband of the respondent was the care-taker of the suit property she gained easy control over the said suit property. Otherwise, the respondent could not have been in possession or occupation of the said suit property.

9. The suit property is located in a tourist place namely Kuttralam. It is stated that the suit property is a bungalow with four rooms and ten independent rooms. The respondent is letting out the said rooms and earning a handsome revenue. The respondent is not maintaining any accounts and in any event she is not sharing the revenue with the appellant herein. The only controversy is whether the appellant owns 50% share or two third shares. Since the suit property happens to be a lodging house, both the plaintiff as well as the defendant are not residing therein. It is only fit and proper that the party receiver is appointed to maintain the suit property. The appellant is residing at Chennai. The plaintiff is residing at Door No.5/47F, Ananddas Nagar, Five Falls Road, Kuttralam. Of course in such cases, appointing a third party receiver may not be in the interest of the justice. Now the only question is who should be appointed as a party receiver. Since the suit property is only a lodging house, as on date, the issue can be very easily resolved. The Trial Court can conduct an auction between the plaintiff and the defendant in the open Court. Who ever is the highest bidder can be appointed as a party receiver. The Trial Court is directed to



conclude the action proceedings and also finalise as to who would be the party receiver based on the outcome of the auction on or before 20.12.2017. The party receiver so appointed shall take possession of the said suit property with effect from 24.12.2017. With regard to other terms of receivership if any, it is open to the trial Court to stipulate such terms as it deems fit and in accordance with law. The order dated 12.04.2017 made in I.A.No.36 of 2017 in O.S.No.64 of 2015 on the file of the Additional District Judge, (Fast Track) Tenkasi, is set aside. The Civil Miscellaneous Appeal stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar.

To

The Additional District Judge, (Fast Track) Tenkasi.

+1CC to Mr.T.S.R.Venkataramana, Advocate, SR.No. 90204

C.M.A. (MD) No.662 of 2017

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