

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

DATED, THE 05TH DAY OF DECEMBER 2018

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

O.A.NO.46 OF 2018

in

A.No.3801 of 2018

and

A.Nos.7285 to 7288 of 2018

in

C.S.No.29 of 2018

A.Ganesan  
S/o.Late Angu  
No.220, Ist Floor  
Alwarpet Stret, Teynampet  
Chennai - 600 018.

... Applicant/Plaintiff  
(O.A.NO.46 OF 2018)

-Vs-

A.Paramasivan  
S/o.Late Angu  
No.220, Ground Floor  
Alwarpet Stret, Teynampet  
Chennai - 600 018.

... Respondent/Defendant  
(O.A.NO.46 OF 2018)

A.Nos.3801 & 7285 to 7288 of 2018

A.Ganesan  
S/o.Late Angu  
No.220, Ist Floor  
Alwarpet Stret, Teynampet  
Chennai - 600 018.

... Applicant/Plaintiff

-Vs-

1.A.Paramasivan  
S/o.Late Angu  
No.220, Ground Floor  
Alwarpet Stret, Teynampet  
Chennai - 600 018.

2.Mr.Giri,  
Inspector of Police,  
Law & Order, E3-Police Station,  
Teynampet, Chennai 600 006

3.V.Thyagaraman,  
No.10/166, 1<sup>st</sup> Cross Street,  
Sri Devi Karumari Amman Nagar,  
Thiruverkadu, Chennai 600 077

...Respondents/Respondents 2 & 3

A.No.7285 of 2018:

Application praying that this Honble Court be pleased to reopen the enquiry in A.No.3801/2018.

A.No.7286 of 2018:

Application praying that this Honble Court be pleased to restore possession of the room in the second floor to the plaintiff with liberty to utilise it by delivery of the keys deposited into this Hon'ble Court on 14.06.2018.

A.No.7287 of 2018:

Application praying that this Honble Court be pleased to recall the order dated 14.06.2018 in A.No.3801/2018.

A.No.7288 of 2018:

Application praying that this Honble Court be pleased to direct the First Respondent/Defendant to comply the directions of this Honble Court dated 27.04.2018 in its letter and spirit.

These applications coming on this day before this Court for hearing the court made the following order:

These applications have been filed by the plaintiff to  
(i) reopen the enquiry in A.No.3801 of 2018 ; (ii) recall the order dated 14.6.2018; (iii) direct the first respondent/defendant to comply with the directions of this

Court dated 27.04.2018 in its letter and spirit ; and (iv) restore the possession of the room in the second floor to the plaintiff with liberty to utilise it by delivery of the keys deposited into this Court on 14.06.2018.

2. In a suit for partition, the applicant filed O.A.No.46 of 2018, seeking an order of interim injunction. This Court by order dated 23.01.2018 allowed the application. Further, the applicant filed an application in A.No.3801 of 2018, to punish the respondents 1 to 3 for disobedience of the order passed by this Court in O.A.No.46 of 2018 dated 23.01.2018.

3. The case of the applicant is that subsequent to the order of this Court dated 23.01.2018, the first respondent with the help of the HENCHMAN, the third respondent herein, had locked the room in the second floor, which was under occupation of the applicant.

4. The respondent filed a counter affidavit stating that the defendant is in possession of the ground floor of the suit property and the plaintiff is in possession of the first floor of the suit property. By an oral partition, the defendant has been using the front portion of the second floor since 2004 and he has been running a service centre viz., SAMSUNG APM INSTA CARE and another room was allotted for common usage by the applicant and the defendant, which

was in exclusive possession of the applicant. After hearing both the parties at length, this Court by order dated 27.04.2018, directed the parties to lock the door leading to the second floor and hand over the key of the second floor before this Court on or before 07.06.2018. Subsequently, when the matter was taken up for hearing on 07.6.2018, it was informed that the defendant is running a business in one of the room in the second floor and another room is in possession of the plaintiff and he attempted to induct third parties and in order to prevent the third parties, the defendant closed the room and took possession of the room.

5. When the matter was taken up for hearing on 14.6.2018, it was reported that the key was handed over before this Court, as per the earlier order dated 07.06.2018 and on the same day, issues were framed and the matter was posted before the learned Additional Master-I for trial.

6. The learned counsel for the applicant would state that admittedly, the applicant was in occupation of one of the room in the second floor and the defendant had locked the room, which was under the occupation of the applicant and thereby violated the order of this Court in O.A.No.46

of 2018, dated 23.01.2018. Hence, the applicant is entitled to reopen the enquiry in A.No.3801 of 2018 and sought for a direction in this application.

7. Per contra, the learned counsel for the respondent submitted that the property was originally purchased by the father of the respondent in the year 1938 and that there was a partition in the year 1970. After the demise of the father of the respondent and the plaintiff, in the year 1993 an oral partition was entered between the plaintiff and the respondent. As per the oral partition, the respondent is residing in the ground floor and using the front portion of the second floor as a service centre and another room, which was in exclusive possession of the applicant is used for common usage by both the parties. Hence, the learned counsel prayed for dismissal of this application.

8. It is not in dispute that the applicant and defendant are the brothers and the suit has been filed for partition. Alleging violation of the injunction order, A.No.3801 of 2018 was filed to punish the respondent. After hearing the parties, this Court passed a detailed order dated 07.06.2018 before closing the application on 14.6.2018. It is also represented that trial already

commenced and the suit is in an part heard stage.

9. Considering the above facts in the considered opinion of this Court, I find no merit in these applications, hence, all the applications are closed. The parties are directed to co-operate for early disposal of the suit and the trial in the suit shall be completed within three months.

Sd/.M.K.K.S.J

05.12.2018

//Certified to be a true copy//  
Dated this the        day of        2019.

R.s/28.06.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.