

A.No.10019 of 2018
in
C.S.No.306 of 2002

R.SURESH KUMAR, J.

This application has been filed by the 4th defendant with the prayer to direct the Branch Manager, i.e., ICICI Bank (Previously 'Bank of Madura') Pandiyanallur Branch to pay 1/6th share to the applicant from the Savings Bank Account No.603501061077 with interest at Bank rate from 01.03.2008 for the balance credit of Rs.9,88,905/- and similar share of amount to the other parties to the suit.

2. Heard Mr.P.K.Siva Subramaniam, learned counsel appearing for the applicant/D4, Mr.Vasutha Thiagarajan, learned counsel for the respondent/plaintiff, Mr.P.Raja, learned counsel appearing for the respondent/D1 and Ms.Rajalakshmi, learned counsel appearing for D3.

3. It is submitted by all the learned counsel appearing for the parties that, the suit is for partition wherein, compromise decree was passed in the year 2008 and pursuant to the compromise, the preliminary decree was passed on 24.04.2008.

4. Mr.S.Venkatesan, has been appointed as Advocate Commissioner. He has filed a report dated 20.12.2018 wherein, he has stated about the money lying in the bank account, including the account number mentioned in this application at Pg.Nos. 1 & 2 of his report which reads thus:

"11. It is represented by the parties that there are two bank accounts one in (1) ICICI Bank, Padiyanallur Branch with SB No.603501061077 and (2) Indian Bank, Red Hills Branch, with SB A/c. Old No.2290/4 and New No.469215516 and Current A/c. Old No.1051 and New No.469375386 in which amounts are laying which has to be shared by the sharers as per their entitlement. Suitable directions may be issued by this Hon'ble Court for distribution of the amount available with the said banks to the parties herein as per their entitlement.

12. It is also further prayed that suitable directions may be issued to the Advocate Commissioner with regard to the share of the mother (Late Mangaleswari) whose share has been kept separately as per the orders of this Hon'ble Court."

5. By relying upon this report of the learned Advocate Commissioner, the learned counsel appearing for the parties would submit that, as per preliminary decree, each of the party i.e., plaintiff as well as defendants are entitled for 1/6th share each. Insofar as the immovable property of the money lying in the bank account at ICICI Bank, Padiyanallur Branch is concerned, all these parties are entitled to get 1/6th share each and therefore, only in

that context, the present application has been filed seeking permission of this Court to get the respective shares by the applicant/D4 as well as other parties. In this regard, it is to be noted that, D2 is the mother, who is no more and insofar as, her share is concerned, it shall be kept in the account itself as some other litigation, with regard to the Will executed seems to be pending.

6. As so far as the D5/respondent is concerned, there is no representation. However, either parties i.e., applicant/D4, respondent/plaintiff and respondents D1 and D3 are represented by the counsel. All the counsel made a request that, in this application itself the 1/6th share for which, each of the parties i.e., four persons entitled to, who are represented by the counsel before this Court today, kept in the fixed deposit referred above, can be ordered.

7. Considering the said submissions made by the learned counsel for the parties and also after having taken into account the Advocate Commissioner's report and by taking into account the preliminary decree passed in this regard dated 24.04.2008, this Court is inclined to pass the following order in this application:

(i) The Advocate Commissioner since sought for Additional remuneration of Rs.1,50,000 (Rupees one lakh fifty thousand only) and for the payment of the same, no parties have raised any objection, hence, the said amount has to be paid to him. In this regard, by producing the copy of this order, if the learned Advocate Commissioner makes a request to the Bank i.e, ICICI Bank, Padiyanallur Branch, the said bank shall pay the sum of Rs.1,50,000 (Rupees one lakh fifty thousand only) in favour of the Advocate Commissioner, Mr.S.Venkatesan.

(ii) After having paid the remuneration to the Advocate Commissioner from the remaining amount together with accrued interest as of now kept in the bank account, the applicant/D4 as well as other three respondents i.e, plaintiff, D1 & D3 shall be paid 1/6th share for each of them, on production of a copy of this order, along with the formal request letter, addressed to the Bank Authorities/Manager of the Bank. The 1/6th share for D5 as well as D2 mother (deceased) shall be kept in the account itself.

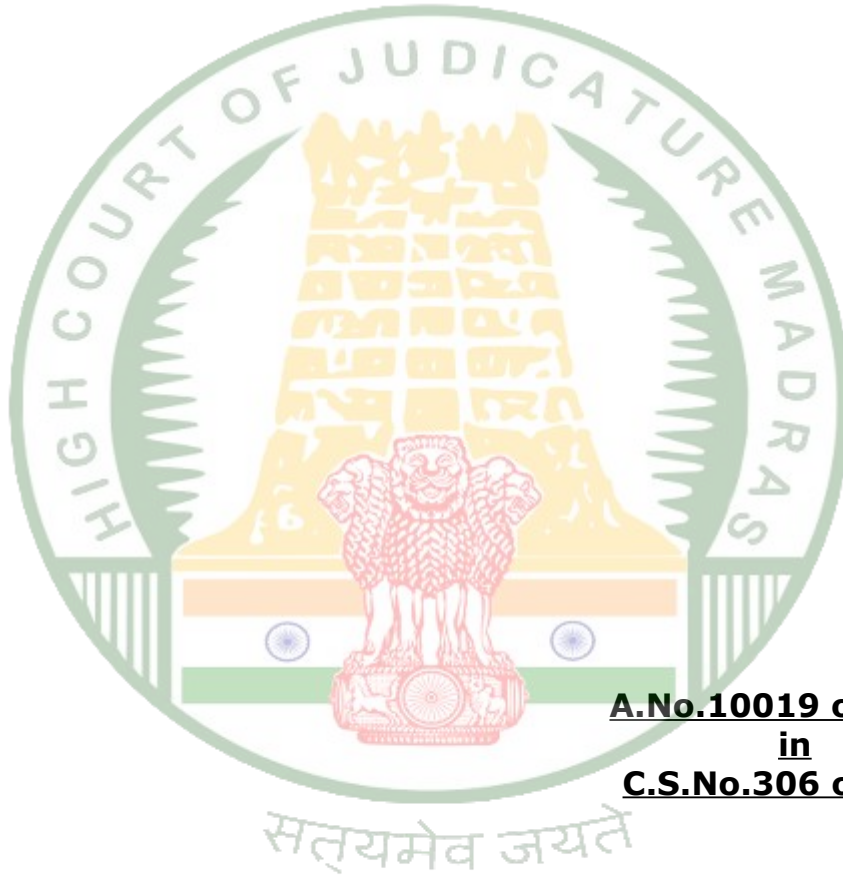
8. With these above said directions, this application is ordered.

20.12.2018

Note: Issue copy of the order on 21.12.2018

R.SURESH KUMAR, J.

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