

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 14TH DAY OF FEBRUARY 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A.No.4541 of 2018

in

C.S.No.540 of 2017

Mrs.Dr.Christiana Jaya Shobana Jayapaul
Daughter of late Dr.A.Jayapaul
Wife of Mr.R.Suresh
Ritz Grove Apartments Flat No.2 C
Door No, 34/87 Mylappa Street
Ayanavaram, Chennai - 600 023.

...Applicant/Plaintiff

-Vs-

1. Babiola Marie Jayasree,
W/o.late Dr.A.Jayapaul,
2. Dr.Regina Jaya Shalini,
D/o.late Dr.A.Jayapaul,
3. Mr.Stephen Jaya Pradeep,
S/o.late Dr.A.Jayapaul,
1 to 3 are at No.123, Ragavan Street,
Perambur, Chennai-600 011.

... Respondents/Defendants

A.No.4541 of 2018:

Application praying that this Hon'ble Court be pleased to Appoint an Advocate Commissioner to collect the rental income from the properties described in the schedule to the Judges Summons and deposit the same into Court to the Credit of the above suit.

The Application coming on this day before this court for hearing the court made the following order:

The plaintiff/applicant has filed a suit for partition and separate possession of the 1/6th share of the suit properties contending that they belong to her

father Dr.A.Jayapal, who died intestate. The plaintiff seeks appointment of advocate commissioner with a direction to him to collect the rental income from the properties described in the schedule to the Judges summons.

2. In the counter affidavit filed, the respondents have denied the said contention. It is claimed that the properties shown at Item No.3 and 5 do not belong to the father but they stand in the name of the mother who is the 1st defendant. Except the 4th item which fetches the monthly rent of about Rs.15,000/-. The other properties are not yielding any income.

3.I have heard Mr.S.Ravichandran, learned Counsel for the applicant and Mr.Ashok Menon, learned Counsel for the respondents.

4.The fact that items 3 and 5 stand in the name of the mother is not in dispute. The applicant claims that those properties were purchased by the father out of his income in the name of the mother. It is a matter for trial. There is a presumption under 'The Prohibition of Benami Property Transactions Act, 1988' that a property standing in the name of the wife or in the name of an unmarried daughter, though, purchased by the husband or the father as the case may be, will be presumed to be the property acquired for the benefit of the wife or an unmarried daughter, unless the contrary is proved.

5.Therefore, at this interlocutory stage, the question of the ownership cannot be decided, since the

property stands in the name of the mother. I do not think it will be proper to appoint a commissioner to collect the rents while she is alive. As regards the 4th item, it fetches a monthly rent of Rs.15,000/- and the plaintiff would be entitled to 1/3rd share of Rs.10,000/- which is about Rs.3,000/- in all. Ultimately if the plaintiff succeeds, she will be entitled to a share in the income also. Hence, this application for appointment of commissioner is dismissed.

Sd./- R.S.M.J.

14.02.2019

//Certified to be a true copy//

Dated this the day of 2019.

DL/27.02.2019

COURT OFFICER

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

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