

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 05.11.2019

Judgment Delivered on : 12.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

O.S.A.No.286 of 2018
and
C.M.P.No.13321 of 2018

1.A.Rajakumari
W/o.Late Ayyanathan

2.Dr.A.Jeevagan
S/o.K.M.Ayyanathan

3.J.Amarvanjitha
W/o.A.Jeevagan

... Appellants

Vs

1.Dr.A.Shivanraj
S/o.Late K.M.Ayyanathan

2.Dr.Arulnidhi
S/o.Late K.M.Ayyanathan
(R2 - suo motu impleaded as a party
respondent vide Court order dated
14/08/2018 made in O.S.A.No.286/2018)

... Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of
O.S.Rules r/w Clause 15 of the Letters Patent against the
judgment and decree of this Court dated 16.07.2018 passed in
A.No.3152 of 2017 in C.S.No.449 of 2017.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel for Mr.S.Bhargavan

For Respondents : Mr.V.K.Vijayaraghavan [R1]

No appearance [R2]

J U D G M E N T

R.SUBBIAH, J

This appeal has been filed against the order dated 16.07.2018 passed by learned Single Judge in A.No.3152 of 2017 in C.S.No.449 of 2017, whereby the learned Single Judge directed the appellants to deposit the admitted rental amount of Rs.13,86,000/- before this Court.

2. The appellants herein are defendants 1, 2 and 3 and the first respondent is the plaintiff in C.S.No.449 of 2017. Appellants/defendants 1, 2 and 3 are mother, brother and sister-in-law of the first respondent/plaintiff. The case of the first respondent/plaintiff is that his father Late K.M.Ayyanathan was doing business of retail outlet of arrack and wine shops and derived huge income therefrom. He purchased several immovable properties such as lands, buildings, house-sites etc., in the name of his wife and sons, for their welfare and in order to avoid property disputes in his family in future. The petitioner's father did not claim any interest over the properties. That apart, the petitioner's father purchased several other properties and he died intestate on 03.12.2012. It is the further case of the first respondent/plaintiff that himself and the defendants are equally entitled to 1/4th share in the properties standing in the name of Late K.M.Ayyanathan, i.e. properties listed in 'A' schedule. The properties belonged to the plaintiff and the defendants 2 and 3 are shown in Schedule 'B' and the properties belonged to plaintiff and third respondent are shown in Schedule 'C'. Since the respondents 1 and 2/defendants 1 and 2 refused for partition of properties, the first respondent/plaintiff filed C.S.No.449 of 2017 seeking for the following reliefs:

- (a) pass a partition preliminary decree declaring that the plaintiff is entitled to 1/4th share in the suit A Schedule properties, 1/3rd share in Suit B Schedule properties and ½ share in Suit C Schedule properties;
- (b) appoint a Commissioner to inspect suit A - C Schedule properties and divide them by metes and bounds, allot 1/4th share in the Schedule A, 1/3rd share in Schedule B and ½ share in Schedule C to the plaintiff taking into consideration of the convenience in enjoyment of properties and with reference to good and bad soil;
- (c) pass final decree in terms of Commissioners report;
- (d) direct the defendants 1 and 2 to render accounts of income received and expenditure incurred from December 2012 for the suit properties;

(e) grant a decree of mandatory injunction directing the defendants 1 and 2 to deposit the plaintiffs 1/4th share of rental income from suit Schedule properties from 12/2012 to till date.

3. Pending suit, first respondent/plaintiff filed an application in A.No.3152 of 2017 seeking a direction to the appellants 1 and 2/respondents 1 and 2 to pay or deposit 1/4th share of the past and future income realized from the suit Schedule properties. As no statement of accounts with regard to income actually derived from the suit properties, as directed, was furnished, the learned Single Judge directed the appellants/defendants 1 to 3 to deposit the admitted income from the joint family properties before this Court on or before 22.06.2018. However, the appellants/defendants 1 to 3 have deposited only a sum of Rs.2,40,000/- stating that the other earnings are from separate properties, which are the subject matter of the Will. However, the learned Single Judge, by the impugned order, observing that the first appellant/first defendant, in her affidavit dated 18.06.2018, admitted that she is receiving rental income of Rs.13,68,000/- from the tenants out of which Rs.41,442/- has been paid towards tax and other expenditure, directed the appellants/defendants 1 to 3 to deposit the admitted rental income of Rs.13,68,000/-. Against such order, the present Original Side Appeal has been filed.

4. Learned Senior Counsel appearing for the appellants/defendants 1 to 3 submitted that even the first respondent/plaintiff sought for a direction to deposit only 1/4th share of future income related to 'A' schedule properties. Therefore, the order of learned Single Judge directing appellants/defendants 1 to 3 to deposit the admitted sum of Rs.13,68,000/- requires modification.

5. On the other hand, learned counsel appearing for the first respondent/plaintiff submitted that appellants/defendants 1 to 3 are actually receiving rent of Rs.40,00,000/- and above, and it is incorrect to state that they are receiving only a sum of Rs.13,68,000/- from the tenants. Hence, the impugned order of the learned Single Judge directing the appellants/defendants 1 to 3 to deposit Rs.13,68,000/-, does not require any interference by this Court.

6. In reply, the learned senior counsel for the appellants submitted that this Court may suo motu appoint an Advocate Commissioner to inspect the properties towards finding out what is the actual rent being received by the appellants/defendants 1 to 3.

7. Keeping in mind the submissions made on either side, this Court had perused the materials available on record.

8. Considering the submissions made by both sides, we find that there is a dispute with regard to the quantum of rent received from the tenants, which issue can be decided only in trial. No doubt, the first respondent/plaintiff claims only 1/4th share. At the same time, this Court is of the view that without ascertaining the actual quantum of rent received, it is now not appropriate for this Court to interfere with the impugned order of the learned Single Judge directing the appellants to deposit the admitted rental amount of Rs.13,68,000/- before this Court.

For the aforesaid reasons, the Original Side Appeal is dismissed. However, the learned Single Judge is requested to dispose of C.S.No.449 of 2017, as expeditiously as possible. No costs. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

gm

To

The Sub Assistant Registrar, Original Side,
High Court, Madras.

+1cc to Mr.M.Balasubramanian, Advocate, SR.No.93482.
+1cc to Mr.V.K.Vijayaragavan, Advocate, SR.No.93511.

Judgment
in
O.S.A.No.286 of 2018

BS (CO)
CSR(18/12/2019)