

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 12-11-2019

JUDGMENT PRONOUNCED ON : 28-11-2019

CORAM

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

O.S.A.NO.175 OF 2019
AND
CMP.NOS.15307 AND 22557 OF 2019
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S.Shri Subitha .. Appellant

Versus

1. Mrs.P.Mariammal
2. P.Sakthikumar ... Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of Original Side Rules r/w Clause 15 of the Letters against the Order and Decree dated 27.03.2019 passed in Application No. 7789 of 2018 in C.S. No. 682 of 2018 on the file of this Court

For appellant : Mr.K.Chandrasekaran

For Respondents : K.V.Babu

JUDGMENT

R.SUBBIAH, J

This intra-court appeal is filed by the appellant, assailing the Order dated 27.03.2019 passed by the learned single Judge, dismissing the Application No. 7789 of 2018 in C.S. No. 682 of 2018 filed by her for appointment of an advocate receiver to collect the rent from the tenants in the suit property.

2. The Plaintiff has instituted the suit in C.S. No. 682 of 2018 praying to pass a preliminary decree for partition and other ancillary reliefs, as under:-

"(a) a preliminary decree for partition declaring the share of the plaintiff as 1/5th in the suit properties described in

Schedule A to I and divide the same by metes and bounds and put the plaintiff in separate possession of her 1/5th share

(b) directing the defendants 1 and 2 to pay to the plaintiff a sum of Rs.37,37,600/- towards past profits from 11.10.2015 to 11.06.2018 the date of plaint being the 1/5th share of the plaintiff

(c) Directing an enquiry into future profits under Order 20 Rule 12 CPC from .06.2018 the date of plaint till date of handing over of possession of the properties divided by metes and bounds

(d) Declaring that the settlement deed dated 09.10.2015 registered as document No. 103 of 2016, SRO, Neelankarai as null and void

(e) Declaring that the settlement deed dated 26.05.2016 registered as document No. 3825 of 2016, SRO, Neelankarai as null and void

(f) Declaring that the settlement deed dated 26.05.2016 registered as document No. 4212 of 2016, SRO, Neelankarai as null and void

(g) Declaring that the Gift deed dated 22.06.2016 registered as document No. 4537 of 2016, SRO, Neelankarai as null and void"

3. According to the plaintiff, the first defendant in the suit is her mother, second defendant is her brother and the defendants 3 and 4 are her sisters. The seventh defendant is the sister's husband of the first defendant. The fifth and sixth defendants are the sons of the seventh defendant. The eighth defendant is the holder of a Joint Development Agreement with the deceased Pitchamani in respect of some of the properties owned by him in Thoraipakkam Village. The defendants 9 to 27 are tenants inducted by the deceased Pitchamani in respect of certain items of the properties owned by him. According to the plaintiff, her father Pitchamani was a realtor and during his life time, he had purchased several properties either in his name or in the name of his wife or son or daughter, the third defendant herein. It is her contention that her father N. Pitchamani died intestate on 11.10.2015 and prior to his death, he was taking intensive treatment for his ailment at Fortis Malar Hospital, Adyar, Chennai and during the course of such treatment, he slipped into coma. However, after the

death of her father, the plaintiff came to know that the defendants 1 and 2 have forged and fabricated documents such as Will and settlement deeds to assert a right and title in the properties left by her father. It is the contention of the plaintiff that she preferred a complaint to the Central Crime Branch, Vepery against the defendants 1 and 2 on 30.06.2016 but no action was taken thereof, hence, she filed Crl.O.P. No. 16584 of 2016 before this Court for appropriate direction to register a case on the basis of her complaint dated 03.06.2016. On the basis of the direction issued by this Court on 08.08.2016, a case in Crime No. 374 of 2016 was registered on 29.11.2016 and upon registration of the case, the first defendant obtained anticipatory bail, while the second defendant and others were arrested and later released on bail. While the investigation in the case is pending, the second defendant filed Crl.OP No. 35 of 2017 before this Court to quash the criminal case registered against her, but later it was dismissed as withdrawn. According to the plaintiff, only to deprive her legitimate share in the properties left by her father, the defendants 1 and 2 have entered into a criminal conspiracy and forged and fabricated certain documents. The plaintiff is entitled to 1/5th share in the A schedule property in which she is in possession and enjoyment. Further, in respect of some other properties in A Schedule, there are tenants who are paying monthly rent to the tune of Rs.3,55,000/- per month of which the plaintiff is entitled to 1/5th share. It is in those circumstances, the plaintiff/appellant has instituted the suit for the reliefs mentioned above.

4. The suit was resisted by the defendants 1 and 2 by filing a written statement repudiating each and every one of the averments in the plaint.

5. Pending suit, the appellant herein has filed Application No.7789 of 2018 seeking to appoint an advocate receiver or an officer of court as receiver to take possession of the properties described in Schedule A to C in the plaint and manage the said properties including receipt of income by way of rental or otherwise and deposit such income into Court to the credit of the suit and also submit accounts periodically.

6. The learned single Judge, after hearing the counsel for the plaintiff and the respondents 1 and 2/defendants 1 and 2, dismissed the application with the following observation:-

"4. It is the settled law that appointment of Receiver is an extraordinary remedy and cannot be resorted to unless there is proof of acts of waste. Hence, I do not think it will be proper to appoint Receiver. At the same time, the rights of the

plaintiff should be protected, Hence, this application is disposed of with directions to the defendants 1 and 2 to file half yearly accounts of rent collection into Court."

7. Assailing the order passed by the learned single Judge, the learned counsel for the appellant would contend that before the death of the father of the appellant, he was admitted in Fortis Malar Hospital, Adyar in a critical condition. Even though the learned single Judge admitted the relationship between the parties and that the defendants 1 and 2 are in receipt of the rental income, refused to appoint a Receiver on the ground that even in the absence of settlement deeds, the plaintiff/appellant, as a heir, would be entitled to inherit the estate of her father. However, the learned single Judge did not consider that during the pendency of the suit, if an advocate receiver is not appointed for collection of rents, the defendants 1 and 2 may swindle the entire rental income without disclosing the true and correct receipt of the amount. In a suit for partition, when prima facie it was established that the plaintiff is likely to be deprived of her share, from and out of the income derived from the suit property, as a co-owner, whose share is likely to be deprived, is entitled to get an Advocate Receiver appointed so that the properties would be in custodia legis and would enure to the benefit of the other co-owner. According to the learned counsel for the appellant, there are 25 rooms and nine shops occupied by ten tenants situated in a very busy area in Thiruvananthapuram, Chennai and the rent received thereof is being utilised by the second defendant. The rent collected per month will not be less than Rs.3,55,000/- per month. Further, a sum of Rs.2,25,000/- is being collected by the second defendant by leasing out the property in Okkiam Thoraipakkam Village. While so, it would be appropriate and desirable to appoint an Advocate Receiver to receive the rent for and on behalf of the plaintiff and the defendants 1 and 2 and if such an appointment is made, no prejudice will be caused to the defendants 1 and 2. The defendants 1 and 2 against whom the appellant has made allegations with respect to creation of fraudulent document cannot be permitted to cause alienation of the suit schedule properties by virtue of the order of the learned single Judge refusing to appoint an Advocate Receiver during the pendency of the present suit. The learned counsel for the appellant therefore prayed for setting aside the order of the learned single Judge.

8. The learned counsel for the respondents would contend that by an order dated 27.03.2019 in Application No. 7789 of 2018 in C.S. No. 682 of 2018, the learned single Judge had directed the second respondent herein to file half yearly accounts with respect to the rents received relating to the suit

property into the Court. As directed, the second respondent has filed such statement of account periodically before this Court. Such statement filed by the second respondent is duly certified by the competent authority. Furthermore, with respect to the 17 items of property described in A Schedule, which is a guest house, there are 23 rooms which are not let out on monthly basis but on a day to day accommodation to the guests who wanted to stay. The second respondent also is willing to produce the accounts with respect to the 17 items in Schedule A along with the repayment of loans payable in respect of the loan availed for the said property. Similarly, in respect of the property described in Schedule I situate at Oothu Pannaikadu Village, Kodaikanal, there is no monthly income receivable and only annual income is received thereof. The second respondent is also ready and willing to produce the accounts relating to the same. In such circumstances, the learned counsel for the respondents only prayed for dismissal of the appeal.

9. We have heard the counsel for both sides and perused the records. The suit was filed by the plaintiff/appellant for partition and separate possession of the properties set out in the schedule of the plaint. The plaintiff claims that she is entitled for 1/5th share in the suit properties. The properties set out in the plaint schedule are admittedly owned and possessed by the father of the plaintiff by name Pitchumani during his life time and he died intestate. The suit was filed by the plaintiff against her mother, sister, sister's husband and their children. The relationship between the parties is also admitted by both sides. In the plaint averments, there is no reference to any acts of waste said to have been committed by the defendants in the property in question. In such circumstances, as rightly held by the learned single Judge, in the absence of any averments relating to acts of waste said to have been committed by the defendants, there is no necessity for appointment of an Advocate Receiver. Moreover, in the order, which is impugned in this appeal, the learned single Judge has also protected the interest of the plaintiff by directing the respondents 1 and 2 to produce periodical statement of account in respect of the income derived from the suit properties once in six months. Even in the counter affidavit filed in this appeal, the second respondent has specifically undertaken to produce the statement of accounts with respect to the subject matter of properties. Therefore, we feel that the interest of the plaintiff is adequately and fully protected and in such circumstances, there is no necessity to appoint an advocate receiver to receive the rent and to furnish a statement of account thereof. It is needless to mention that the plaintiff, as one of the legal heirs, is entitled to succeed the estate of her deceased father, however, such right or entitlement of the plaintiff for a share in the suit properties can be decided only

after trial in the suit. In such circumstances, the apprehension of the appellant/plaintiff that her share in the suit properties has been deprived by the defendants 1 and 2 has to be allayed.

10. In the result, we dismiss the Original Side Appeal by confirming the Order and Decree dated 27.03.2019 passed in Application No.7789 of 2018 in C.S.No.682 of 2018 by the learned single Judge. No costs. Connected CMPs are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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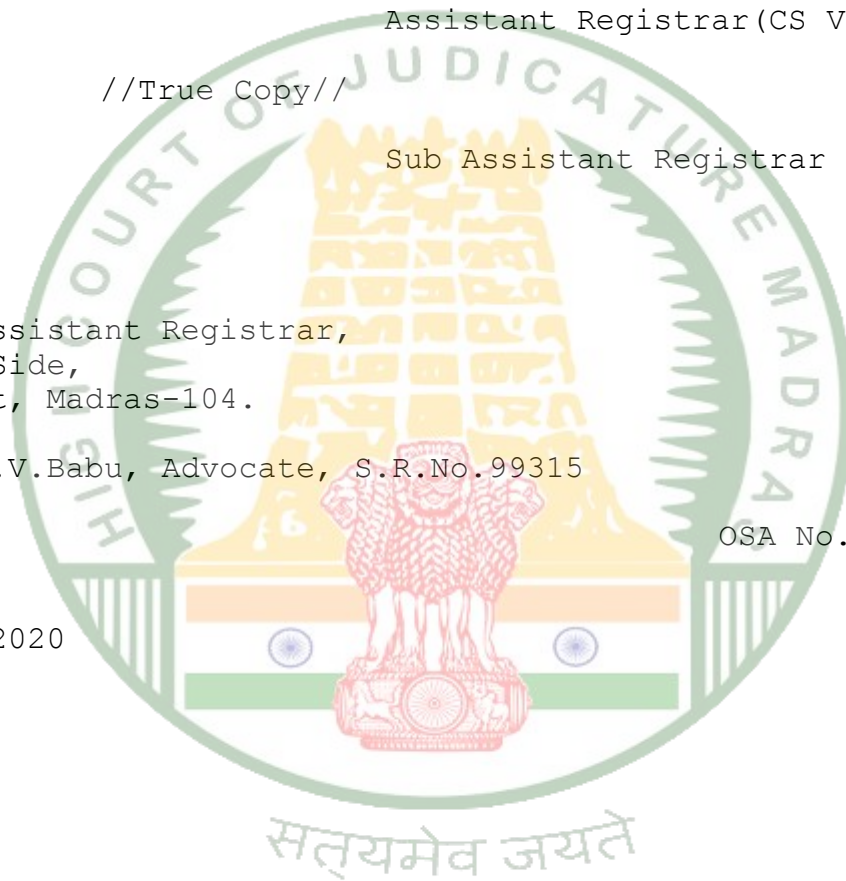
To

The Sub Assistant Registrar,
Original Side,
High Court, Madras-104.

+1cc to K.V.Babu, Advocate, S.R.No.99315

OSA No.175 of 2019

VD(CO)
CS/22/01/2020



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