

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A. No.511 of 2020 and
C.M.P. No.3126 of 2020

P.Shankar

... Appellant

vs.

1.P.Uma

2.P.Ganeshini

... Respondents

Civil Miscellaneous Appeal filed under Order 43 Rule 1(s) of Civil Procedure Code, to set aside the fair and decretal order of the XVIII Additional City Civil Court at Chennai dated 22.01.2020 passed in I.A. No.2 of 2019 in O.S. No.6738 of 2019.

For Appellant : Mr.G.RM.Palaniappan

For Respondents: Mr.R.Kumaravel for R1
Mr.T.Arunkumar for R2

N.Gomathi
Advocate Commissioner

J U D G M E N T

The present appeal has been preferred challenging the fair and decretal order dated 22.1.2020 made in I.A. No.2 of 2019 in O.S. No.6738 of 2019, appointing a Receiver, to manage and receive monthly rents of the schedule property in question. The main suit is for division of properties mentioned in Schedules 1 to 3, in equal shares, apart from share in mesne profit from the Schedule of properties 1 and 2.

2. The case of the appellant is that the properties have been vested with him, by means of a verbal partition and that shares have already been allotted to the sisters, who are the respondents herein.

3. The factum that there were shares in the properties that have been allotted, has been refuted and that there is no verbal partition and that the entire properties are tried to be usurped by the appellant herein, without giving a share in the schedule of properties mentioned in the plaint.

4. As the properties in question have been rented out, the benefits of the rent have been enjoyed only by the appellant and that as the respondents having equal shares in the schedule of properties, sought for appointment of a Receiver in I.A. No.2 of 2019. The learned XVIII Additional Judge, Chennai vide order dated 22.01.2020, appointed a Receiver on payment of Rs.1,000/- per month, to manage and receive monthly rents pertaining to the schedule of properties. The Advocate-Receiver has also appeared before this court and produced a Memo requesting money with regard to schedule of properties and the expenses that have got to be incurred, as some of the amounts are still unpaid to the builder.

5. The learned counsel appearing for the respondents would submit that, even though the appellant has stated that one of the sisters can receive the amount and deposit into the court, he got instructions to state that the respondents have no objection and that instead of one of the sisters who is aged, travelling from Tiruvannamalai to the court to deposit the amount, the Advocate Receiver may be continued and that they will bear the expenses ordered by the court.

6. In response, the learned counsel appearing for the appellant submitted that there is no need to spend any money towards payment of receiver and that he is willing to collect the entire amount and deposit the same before the court. It is further stated that the appellant is enjoying the property and that the respondents have no right in any of the schedule mentioned properties.

7. Heard both parties and perused the materials available on record.

8. The issue is with regard to I.A. No.2 of 2019 in O.S. No.6738 of 2019 and the relief sought for in the said IA is to appoint a receiver or joint receiver among the parties to the suit to manage the suit rented property.

9. Whether the respondents are entitled to a share in the properties or not? need to be decided in the main suit. In order to safeguard the interest of all the parties, lower forum has appointed an Advocate-Receiver to manage and receive monthly rents of the schedule mentioned properties in the suit. The appellant is entitled to a share in the property to an extent of 1/3, in case an adverse order is passed against the appellant. Since the property is enjoyed by the appellant even as stated by the respondents and not even a pie has been paid, I find, the lower court was perfectly right in appointing a Receiver and directing payment of Rs.1,000/- towards fees payable by the appellant herein.

10. The learned counsel appearing for the respondents would submit that, as the respondents agreed to the suggestion

made by the appellant that one of the sisters can receive the amount and deposit the same before the court, he has no objection for the Receiver being continued and that the sisters will bear the Receiver's fee so that the entire amount collected, is deposited before the lower forum.

11. As there is a dispute with regard to the division of the properties and that in case of any adverse order, the appellant would be entitled to only 1/3rd of the share and the remaining 2/3rd of the shares will go to the respondents, this court is of the view that the properties have also got to be managed and that there will be maintenance of the properties and for payment of property and water charges/taxes, apart from any other incidental expenses, this court modifies the order, without interfering with the appointment of Advocate-Receiver, who shall be paid a sum of Rs.1,000/- per month by the respondents herein, as the respondents have agreed to meet the required charges, the appellant would be entitled to take 1/4th rent collected and deposited. Half of the amount shall be lying in deposit till the disposal of the original suit. Remaining 1/4th will be used for the purpose of payment of property taxes, water charges/taxes, apart from other incidental/maintenance expenses, for which, necessary application will have to be filed before the lower forum and necessary orders are obtained. The 1/4th amount shall be directly paid by the receiver to the appellant herein. The account schedule shall be maintained and produced with regard to the 1/4th of the amount, which is meant for contingency expenses, once in three months.

12. This court also makes it very clear that the electricity charges will have to be paid directly by the tenants to the Electricity Board and for non-payment of electricity charges, neither the appellant nor the respondents, will be responsible. Any disconnection and any penal action by the Electricity Board, the appellant herein or the respondents will not be responsible. The Advocate-Receiver charges shall be paid by the respondents herein instead of appellant and the Receiver is expected to carry out the directions of the lower forum, as per the order, which is impugned in this CMA.

13. The discussions/reference to the facts mentioned supra are only for the disposal of the civil miscellaneous appeal and any observation touching the merits of the matter, has no bearing on the merits of the matter, when the XVIII Additional City Civil Court takes up the matter and decide the same and the trial court is expected to take up the matter preferably without adjourning the matter beyond three weeks at any point of time and expected to dispose of the same, as expeditiously as possible, not later than a period of one year from the date of receipt of a copy of this order.

With the above observations and modification, the civil miscellaneous appeal is disposed of. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

Asr

To

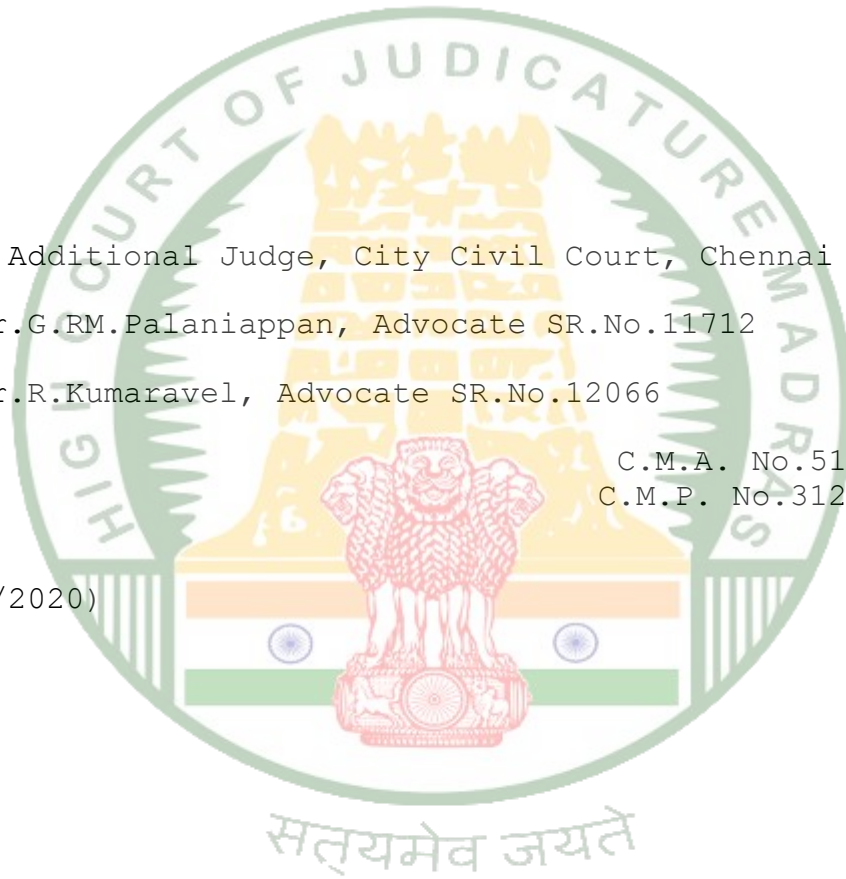
The XVIII Additional Judge, City Civil Court, Chennai

+1cc to Mr.G.RM.Palaniappan, Advocate SR.No.11712

+1cc to Mr.R.Kumaravel, Advocate SR.No.12066

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SPD (CO)
GMY (23/03/2020)



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