

A.No.3781 of 2019
in
C.S.No.186 of 2019

SENTHILKUMAR RAMAMOORTHY, J

This application is filed to direct the third respondent to pay the unpaid rent/use and occupation charges retained by it as on date jointly to the applicant/plaintiff and the second respondent/second defendant subject to the result of the suit.

2. I heard the learned Senior Counsel, Mr.T.R.Rajagopalan, for the applicant/plaintiff and the learned Senior Counsel, Mr.S.Parthasarathy, for the first respondent.

3. The learned Senior Counsel for the applicant submitted that there is no dispute whatsoever with regard to the 50% entitlement of the second respondent/second defendant as regards the rent payable by the third respondent. Therefore, he submits that the present application is taken out so as to enable the second respondent to receive 50% of the rental dues from the third respondent. In this connection, he referred to a note wherein the

relevant details are set out. In particular, he pointed out that a sum of Rs.3,08,432/- is payable excluding service tax by way of rent for the property in question. This sum was paid to the plaintiff's son viz., late T.N.Subramaniam, up to July 2018. After July 2018, no rent was paid to the second respondent.

4. On the other hand, one half of the rent for the period from September 2018 to March 2019 was paid to the first respondent. As regards the period commencing from March 2019, 1/3rd of the rent was paid to the first respondent whereas the second respondent did not receive any amount by way of rent.

5. After referring to the above mentioned admitted factual position, the learned Senior Counsel submitted that the second respondent is entitled to 50% of the said rental arrears because the first respondent has admitted the entitlement of the second respondent to the said 50%. As regards the first respondent, he submitted that the entitlement of the first respondent is the subject matter of the suit and that, therefore, it is a disputed entitlement. As an interim arrangement by way of consent order, he submitted that the first respondent was permitted to receive 1/3rd of the rent.

6. On the above basis, he submitted that the first respondent cannot have any objection for the payment of 50% of the rent to the second respondent.

7. In reply, the learned Senior Counsel for the first respondent submitted that the first respondent is also entitled to 50% of the rent on the basis of the settlement deed executed by her late husband. Therefore, he submits that the second respondent should not be paid 50% because the second respondent also claims the said 50% by virtue of the settlement deed.

8. I considered the submissions of the learned Senior Counsel for the respective parties and also examined the relevant records.

9. On perusal of the plaint, it is evident that the plaintiff has prayed for setting aside the registered settlement deed dated 09.02.2017 and for consequential orders, such as delivery of possession and payment of damages. Therefore, it is clear that the settlement deed, by virtue of which both the first and second respondents claim rights of inheritance by intestate succession in respect of the property in question, is under challenge at the instance of the plaintiff. If the said settlement deed is held to be valid by rejecting the suit,

both the respondents 1 and 2 would be entitled to 50% each of the property and its usufruct. On the other hand, if the plaintiff succeeds in the suit, neither the first nor the second defendant would be entitled. It is a different matter that the plaintiff may make arrangement to pay the second defendant from and out of his entitlement in such event. However, it does not change the legal position that the entitlement of both the defendants flows from the settlement deed.

10. In view of the above position, I am of the view that for interlocutory purposes, the interest of justice would be served if both the first and second defendants, who admittedly trace their title to the property and usufruct from and out of the registered settlement deed dated 09.02.2017 are paid 1/3rd pending disposal of the suit. I am also informed that the mediation proceedings are underway and it is possible that the dispute may be settled. Keeping all these factors in mind, I dispose of this application by directing the third respondent to pay 1/3rd of the rental arrears for the period from July 2018 till date and 1/3rd of the rent for future months to the second respondent pending disposal of the suit.

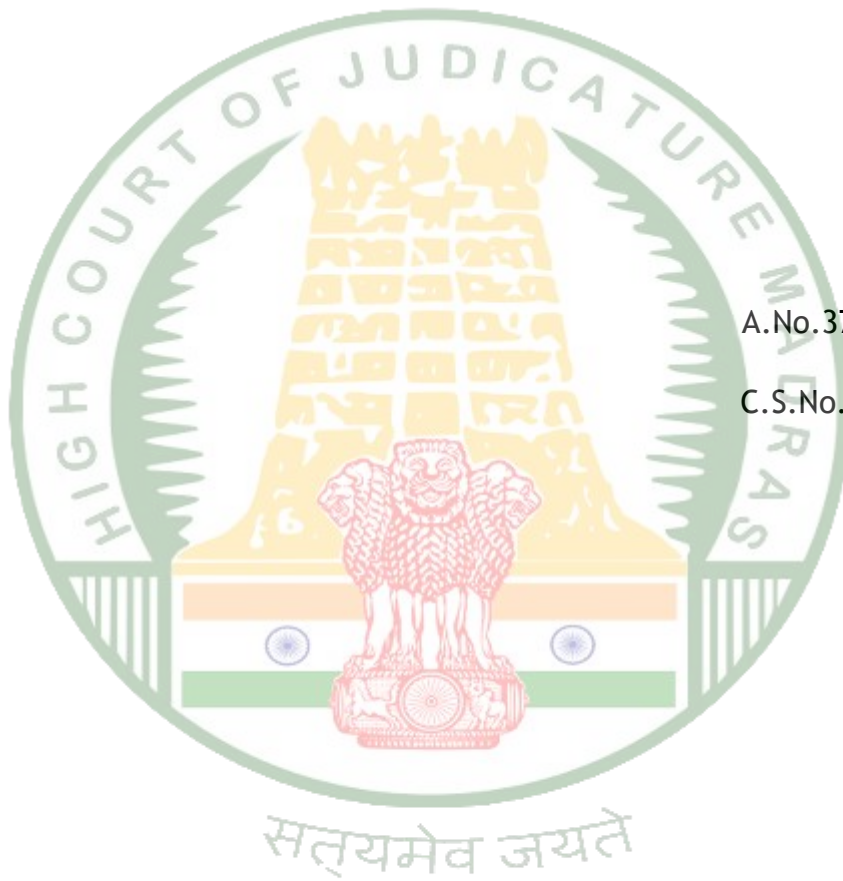
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