

O.A.No.351 of 2021
in
C.S.No.314 of 2019

V.PARTHIBAN, J.

The application is filed by the applicant, who is arrayed as a second defendant in the suit. The suit has been filed by the first respondent/plaintiff praying for judgment and decree of partition and separate possession of 1/4th share in the properties described in the schedule containing numerous items of properties of the estate of one Mr.P.S.Ulagarakshagan, the father of the plaintiff as well as the applicant herein. The first defendant is the wife of late P.S.Ulagarakshagan and the third defendant is the sister of the applicant herein and the plaintiff in the suit.

2. The applicant herein claims that his late father has settled the house property at Door No.4, Anusuya Street, Kodambakkam in his favour by executing a registered settlement deed dated 12.01.2016. According to him, that ever since the date of the settlement, the revenue records like patta,

property tax assessment, electricity service connection stood transferred in his name. The applicant came to be in absolute possession and enjoyment of the property and has been residing in the house for several years.

3. The applicant herein is the younger brother of the first respondent/plaintiff and due to estrangement in the family, he has been facing threat and harassment from him and several police complaints have been lodged on frivolous grounds by the plaintiff against the applicant, consequently disturbing his peaceful possession and enjoyment of the property. The applicant claims that the first respondent/plaintiff has been making desperate attempts to dispossess him from the house property and therefore, he has come forward with the present application injuncting him from interfering with his peaceful possession and enjoyment of the subject property, which is described at sub-item No.1 of item No.80 of the plaint 'A' schedule property.

4. On behalf of the first respondent/plaintiff, a counter affidavit has been filed.

5. In the counter affidavit, the averments filed in support of the application have been strongly refuted. In particular, it is stated in para-3 of the counter affidavit that the applicant is not living in the subject property as on date and he has relocated himself with his family to a bigger house at Anna Nagar, Chennai. The averments in the counter affidavit point to the fact that the house warming ceremony conducted in the new Anna Nagar house was attended by defendant-3 and her husband and the first defendant's mother also attended the birthday celebration of the applicant's son, which took place in the Anna Nagar residence on 07.05.2021.

6. Further, it is averred in the counter affidavit that the subject house which claims to be in exclusive possession of the applicant is factually not correct. According to the first respondent/plaintiff, that originally their

late father purchased the property at Door No.4, Anusuya Street in 1991 and built a house there. Subsequently, he purchased adjacent property at Door No.3 in 1994 and after a period of time, on obtaining proper building plan and approval, the house at Door No.4 was demolished and a large construction was put up in both Door Nos.3 and 4. The house still existed in both door numbers and new doors number is allotted. According to the plaintiff, all the family members have been living jointly in the large contiguous house in two door numbers and therefore no injunction could be granted in the face of the joint family living in the same property at the instance of an estranged joint family member. The plaintiff has also averred that only the watchman employed by the applicant herein is present in the property and in fact he has been creating a lot of problems for the peaceful existence of the family members. In such circumstances, the injunction as sought by the applicant may not be granted.

7. In the above backdrop of the averments of the applicant as well

as the first respondent/plaintiff, the matter was argued by Mr.T.Mohan for the applicant and Mr.M.S.Krishnan, senior counsel for the first respondent/plaintiff.

8. During the course of vehement oral submissions on behalf of the respective parties, a dispute arose as to the nature of occupation of the applicant in the subject address and the usage of the house property by the applicant and also the location of the first respondent/plaintiff in the same premises, which have been allotted different door numbers by the authority. Therefore, a suggestion emanated from the counsel for the plaintiff that an Advocate Commissioner to be appointed to ascertain the facts with reference to the occupation and usage of the subject property by the applicant herein as against the averments of the first respondent/plaintiff in the counter affidavit.

9. The Advocate Commissioner to be appointed is directed to visit the subject property in O.A.No.351 of 2021 and ascertain that whether the

property is in exclusive possession of the applicant and applicant alone. The Advocate Commissioner is also directed to ascertain whether the first respondent/plaintiff has any contiguous or overlapping interest in the subject property like common usage and rights with reference to the nature of the property and its actual usage by the occupants therein. On ascertaining the above, the Advocate Commissioner is directed to file a report after completion of his field visit before the next date of hearing.

10. This Court, in the circumstances, hereby appoints one Mr.K.V.Babu, Advocate of this Court, having mobile No.90030 44094, residing at F101, First Floor, Subiksha Prinity, No.9/14, 4th Street, Bakthavatchalam Nagar, Adyar, Chennai – 600 020 as Commissioner, to inspect the subject property as described in O.A.No.351 of 2021 in C.S.No.314 of 2019, on any convenient date, by issuing notices to all the parties in the suit and also to the Advocates representing the parties.

11. The Advocate Commissioner is directed to make a thorough inspection and also conduct a limited enquiry only to the extent and the purpose for which he is appointed by this Court in order to decide O.A.No.351 of 2021 one way or the other.

12. The initial remuneration payable to the Advocate Commissioner is fixed at Rs.1,00,000/- (Rupees one lakh only) to be equally shared by both the applicant herein and the first respondent/plaintiff. The parties are directed to make the initial payment forthwith when they receive the notice from the Advocate Commissioner.

13. The parties are directed to extend their utmost cooperation to the Advocate Commissioner for discharging his assignment on behalf of this Court. The Advocate Commissioner, on completion of the task, shall file a report before the next date of hearing.

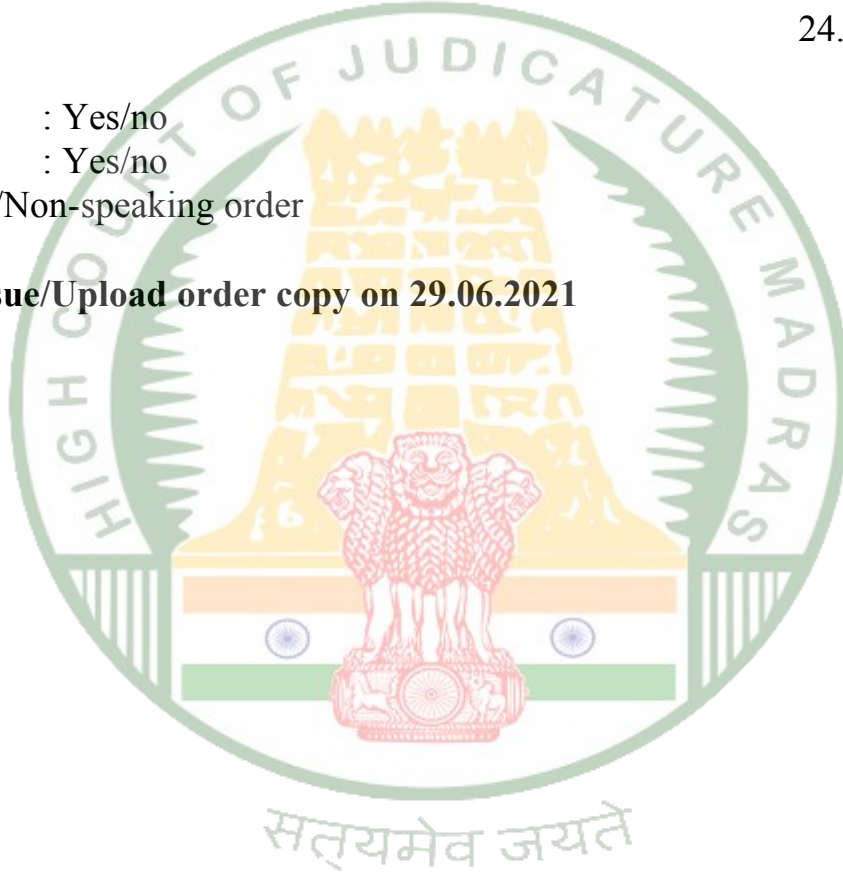
14. Post the matter for further hearing and filing of the report of the Advocate Commissioner on 09.07.2021.

mra

24.06.2021

Index : Yes/no
Internet : Yes/no
Speaking/Non-speaking order

Note : Issue/Upload order copy on 29.06.2021

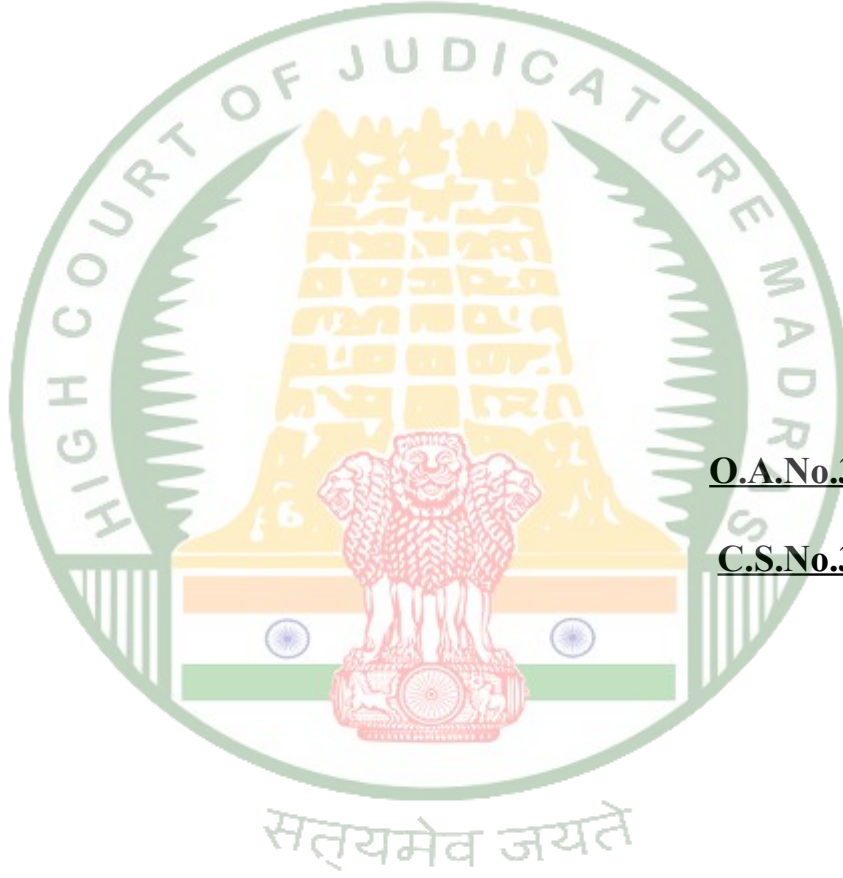


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