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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 25TH DAY OF MARCH 2022

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

A.No. 5988 of 2013

in

C.S.No.763 of 2013

1.Mrs.S.Bhanumathi,  
W/o.(Late) R.Saravanan

2.Mrs.S.Indumathi, 28 years,  
W/o.S.Ingersol Swamidoss

both residing at  
No. G-42, Madura Garden, No.15, PH Road,  
Maduravoyal, Chennai-600 095.

... Plaintiffs

Vs

1. Mrs.S.Krishnaveni(69 years)(**Deceased**)  
W/o.(Late) R.Saravanan

2.Mr.S.Karthikeyan 38 years  
S/o.(Late) Mr.R.Saravanan

both are residing at  
No.15, EVK Sampath Salai,  
Vepery, Chennai-600 007.

3.Mrs.T.Usha Rani, 48 years,  
W/o.Dr.K.N.Thirunavukarasu,  
No.19, Barnaby Road,  
Kilpauk, Chennai – 600 010.

**(defendants 2 and 3 all ready on record and recorded as Legal heirs of the deceased 1<sup>st</sup> defendant as per order dt 29.07.2021 on Memo dt**



**16.07.2021 in C.S.No. 763/2013)**

... Defendants

**A.No. 5988 of 2013:-**

1.Mrs.S.Bhanumathi,  
W/o.(Late) R.Saravanan

2.Mrs.S.Indumathi, 28 years,  
W/o.S.Ingersol Swamidoss

both residing at  
No. G-42, Madura Garden, No.15, PH Road,  
Maduravoyal, Chennai-600 095.

... Applicants

Vs

1. Mrs.S.Krishnaveni(69 years)  
W/o.(Late) R.Saravanan

2.Mr.S.Karthikeyan 38 years  
S/o.(Late) Mr.R.Saravanan

both are residing at  
No.15, EVK Sampath Salai,  
Vepery, Chennai-600 007.

3.Mrs.T.Usha Rani, 48 years,  
W/o.Dr.K.N.Thirunavukarasu,  
No.19, Barnaby Road,Kilpauk,  
Chennai – 600 010.

4.Spencer Daily, Vepery Branch,  
No.15, EVK Sampath Salai,  
Ground Floor,  
Chennai – 600 007.

5.Kalakruthi Garments  
No.15, First Floor,  
EVK Sampath Salai,  
Chennai – 600 007.



6.Kamdar Exports  
First Floor,  
No.15,EVK Sampath Salai,  
Chennai – 600 007.

7.Ram Pharmacy  
Ground Floor,  
No.15,EVK Sampath Salai,  
Chennai – 600 007.

8.AXIS Bank A.T.M,  
rep. By Head Office  
EVK Sampath Salai,  
Vepery, Chennai – 600 007.

... Respondents

Application praying that this Hon'ble Court be pleased to issue an order of attachment to the garnishees by way of a pro order viz., D4 to D8 directing them to pay the rents into Court.

This Application coming on this day before this court for hearing, the court made the following order:-

This application has been filed to issue an order of attachment to the Garnishees, namely, the defendants 4 to 8, by way of a pro-order, directing them to pay the rent.

2. The case of the applicants/plaintiffs is that they have filed the suit for partition of three items of schedule mentioned properties, namely, A, B and C. The 2nd defendant has leased out the properties to Spencers Daily in the ground floor, Kalakruti Garments and to Kamdar Exports in the first floor on monthly rental amounting to a total sum of Rs.3,00,000/-. The 2nd plaintiff is entitled to 1/4th share from the date of death of her father.



Neither the 2nd defendant nor other defendants have accounted for it so far.

A small portion in the ground floor (about 100 sqft.) is let out to one Ram Pharmacy. They are not aware of the rent for the portion leased out by the defendants. Hence, they seek for furnishing the rental income to this Court. When they were demanding for partition, the 2nd defendant came forward with the deed of release, releasing her right and offered Rs.20,000/- per month by way of monthly payment. It is highly unfair on the part of the 2nd defendant. When they have right to get equal share of 1/4th in the suit properties, the defendants offered and sent a deed of release for meagre amount. Hence, the plaintiffs have filed the suit for partition and to render accounts of the entire rental income of Rs.3,00,000/- as the defendants are enjoying the property without paying their share. Therefore, the present application is filed to issue an order of attachment to the Garnishees by way of pro order, namely, defendants 4 to 7 directing them to pay the rents.

3. Counter affidavit has been filed by the second respondent wherein, it has been stated that through the WILL, in Doc.No.88 of 2000 on the file of the Sub Registrar Office, Tiruppur, his father had bequeathed his share of 50% out of the property being all that piece and parcel of land measuring an extent of 2 grounds 327 sqft. as per extract from the permanent land Register, dated 26.01.1974 together with the building and out-house erected



Road, Veppery, Madras-600 007, bearing Municipal Door No.25-C, New No.33, Old No.15, as per the records of Chennai Corporation and comprised in Collector's Certificate No.NFB.4485, Old Survey No.55, Re-Survey No.688 and now re-surveyed as Re-Survey No.688/3, bounded on the North by Plot No.2, bearing R.S.No.688/9; on the South by Breithpt Road; on the East by Plot No.4 bearing R.S.No.688/4 and on the West by Rundalls road; situate within the Registration Sub District of Periamet and Registration District of Madras and containing building to an extent of 3070 sqft., in the ground floor, 3388 sqft., in the first floor and two residential units, totalling about 2308 sqft. and comprised within the Zone VII of Corporation of Chennai in GRS No.H-103/00714 and new assessment No.HQ-A-63 to and in his favour. Therefore, the question of the plaintiff being entitled for partition is not correct and there is no need for him to ask the applicants/plaintiffs for release of their share in the entire property.

4. It is further stated in the counter affidavit that after the demise of 2nd defendant's father, the 2<sup>nd</sup> defendant has paid a sum of Rs.10,000/- to the first plaintiff every month and he has paid a sum of Rs.80,000/- as cash initially to the first plaintiff and subsequently from October 2011 onwards, he has regularly made bank transfer to the first plaintiff. Till date, a sum of Rs.4,20,000/- has been paid to the first plaintiff by the second respondent in



the file of the Sub Registrar Office, Tiruppur. By virtue of the registered WILL in Doc.No.88 of 2000, his father bequeathed the property in question in his favour and hence, the 2nd plaintiff is not entitled to any share in the property and in the rental income of the property. The applicants/plaintiffs have no cause of action to file the suit in C.S.No.763 of 2013. Hence, they shall not pray this Court for an order of attachment to the Garnishees by way of a pro order, namely, the defendants 4 to 7 directing them to pay the rent before this Court. No prejudice would be caused to the applicants/plaintiffs if the present application is dismissed.

5. Heard both sides and perused the materials placed on record.

6. On a perusal of the records, it is seen that the suit has been filed by the plaintiffs for partition. There are three items of properties, in which, "A" schedule property was purchased by Saravanan and his brother, which implies that Saravanan had 50% share which he had bequeathed to the 2nd defendant as per the WILL, dated 20.03.2000 which came to be probated in O.P.No. 368 of 2012 on 19.07.2019. The plaint does not state anywhere that there was partition between the said Saravanan and the co-owner, who is concerned with "A" schedule property. "B" schedule property has two items of properties. The plaintiffs themselves stated that they were purchased by their grandfather. The learned counsel for the defendants



schedule property item one and they should also be parties to the proceedings. So far as "B" schedule property item 2 is concerned, it is the self acquired property of Saravanan, which he bequeathed wholly to his second wife Banumathi and his daughter Indhumathi, and they are the plaintiffs in this case.

7. This suit for partition was filed in the year 2013 and the plaintiffs maintain the suit by their own statement of accounts since all the parties who are entitled to the share, are not before this Court. If the averments given in the plaint are taken on its face value and also the facts placed to that extent, the statement made by the learned counsel for the defendants were to be accepted, the irresponsibility of the plaintiffs is too large the way the case is prosecuted and the co-shares and co-owners were not impleaded in the suit for partition. This Court has already observed that litigation is pending for more than 8 years and only it has to offer for all the default acts of the omniscience by the litigation and it is this level of irresponsibility that this Court alone had been made the scapegoat to explain the judicial delay.

8. Subsequently, after 9 years, on 21.12.2009, the 1st defendant had executed a settlement deed in favour of the plaintiffs. He does not claim any right over item 2 of "B" schedule property. This implies that there is no dispute over item 2 of "B" schedule property and therefore, it is not even



necessary to indicate in the schedule to the property in the plaint. So far as

"C" schedule property is concerned, it is stated to be a business, which according to Karthikeyan, the second defendant, born to Saravanan through his first wife, was a trading concern and was closed even during the period of Saravanan. The learned counsel for the defendants further informed the Court that Saravanan's WILL came to be probated in O.P.No.368 of 2012, vide judgment of this Court, dated 19.07.2019. Even assuming that the plaintiffs would succeed in having the probate set aside or revoked, yet, the claim may pertain only to "A" schedule property, and "C" schedule item property. Whether "C" schedule is available for partition, is truly a matter for trial.

9. It is also seen that the second defendant is the son of the deceased while the respondents 1 and 3 are the wife and daughter. The plaintiffs have been impleaded on the ground that they claim to be the second wife and daughter through the second wife of late.R.Saravanan. The second defendant has examined himself as PW1 and he has filed the proof affidavit reiterating the submissions contained in the application. The Death Certificate of the deceased R.Saravanan has been marked as Ex.P1. The certified copy of the registered WILL has been marked as Ex.P2. It is stated that the original is misplaced. Ex.P3 is the original Legal-heirship

Certificate. The consent affidavit given by the respondents 1 and 3 herein



expressing their no objection for grant of Letters of Administration, have been marked as Ex.P4 and Ex.P5. Though the respondents 1 and 3 entered appearance through counsel, they have not filed any caveat opposing the grant. The Vakalath of the counsel has also been returned. The 2nd defendant has examined one K.Chinnasamy as PW2. He has spoken about the execution of the WILL by the Testator and its attestation by himself and one S.Kandasamy. Hence, the Original Petition for probate of the WILL was allowed in favour of the second defendant on 19.07.2019. Therefore, the plaintiffs have not shown any other material to prove that the property has been bequeathed under the WILL. "A" schedule property has been bequeathed to the 2nd defendant and no appeal has been filed by the plaintiffs against the pro-order dated 19.07.2019. The plaintiffs herein and the second defendant, claimed right over the property and if they are entitled to get share through their case, they can obtain an order of the partition and they can proceed further in this matter. At this juncture, the plaintiffs have not proved their case and the second defendant has produced the pro order, from which, it is clear that he is entitled as Administrator of the said WILL. As per the WILL, "A" schedule property has been given to various parties equally and the son of the second plaintiff cannot claim the same now and it is only at the time of trial evidence has to be let-in to prove their right over the said property.



10. From the evidence, it is clear that the second defendant has proved the WILL in the manner known to law and is entitled to grant of Letters of Administration with a copy of the WILL annexed. Hence the Letters of Administration with a copy of the WILL is annexed in favour of the 2nd defendant.

11. Accordingly, this application is dismissed. No costs.

Sd./-VBSJ.

25/03/2022

//Certified to be true copy//

Dated at Madras this the                      day of                      2022.

COURT OFFICER(O.S.)

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EVK 09/06/2022