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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No. 445 of 2022

&

C.M.P.No.3198 of 2022

V.Ganapathy

...Appellant

Vs

V.Vadivelan

... Respondent

Prayer:

Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of CPC against the fair and decreetal order passed by the XXIII Additional City Civil Court, Allikulam, Chennai - 3, dated 12.01.2022 in I.A.No.1 of 2020 in O.S.No.2043 of 2020.

For Appellant : Mr.A.Palaniappan

For Respondent : Mr.K.Perumal

JUDGEMENT

The above Civil Miscellaneous Appeal is filed challenging the order passed by the learned XXIII Additional City Civil Court, at Allikulam, Chennai in I.A.No.1 of 2020 in O.S.No.2043 of 2020. Aggrieved defendant is the appellant before this Court. The brief facts which has preceeded the filing of the Civil Miscellaneous Appeal are as follows.

2. The plaintiff / respondent has filed the suit O.S.No.2043 of 2020 on the file of the XXIII Additional City Civil Court, at Allikulam, Chennai seeking partition and separate possession of his 75% share in the suit schedule property.

3. The suit schedule property is described as Door No.35, Paripoorana Vinayagar Koil St., Mylapore, Chennai, measuring an extent of 2331 Sq.ft. of land and building. The building consists of Ground + 2 Floors totalling 4,200 Sq.ft., having 4 houses in each floors together with all common facilities.

4. The plaintiff's case is that the defendant is his



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brother and they had jointly purchased the property with the plaintiff contributing 75% of the amount and the defendant contributing 25% of the amount. The plaintiff's case is that originally the apartments were fetching minimum rents and the same was collected by the plaintiff and was handed over to the father for the purpose of contesting the eviction case against the tenants. The tenants have been evicted and the new tenants have been inducted. The building is fetching a sum of Rs.1,20,000/- per month with each unit earning a monthly rental of Rs.10,000/-. Now the defendant collects the rents and has also received the refundable advance from the tenants. Since the family relationship has become strained, the defendant is not giving the plaintiff's share to him from September 2019.

5. The plaintiff had sent a notice dated 12.02.2022 demanding his share of the rent, for which reply dated 15.02.2020 was received, wherein, the defendant had taken the stand that the property was purchased with each of them contributing an equal share for the purchase. The plaintiff had sent a reply notice dated 25.02.2020 clarifying the said point. However, since it was no longer possible to remain joint, the suit came to be filed.

6. Along with the suit, the plaintiff had taken out an application in I.A.No.1 of 2020, seeking to have the Receiver appointed to collect the rents and deposit the same into the Court. The reason for seeking appointment of the Receiver has been set out in paragraph No.17 of the affidavit filed in support of the said petition, wherein, the plaintiff had stated that the appointment of Receiver will not be prejudicial to the parties and that from the reply of the defendant, it is seen that the rent received was being mismanaged and no amounts were paid to the plaintiff. This is the sum and substance to the contentions made in the affidavit filed in support of the said petition, apart from narrating the contents of the plaint.

7. The defendant / appellant on entering appearance had filed a counter, in which he has denied the various allegations set out in the plaint as well as in the affidavit filed in support of the impugned petition. The defendant had submitted that it is their father who has contributed and purchased the number of properties. The defendant further submits that there is a lot of rancour between their father and the plaintiff.

8. The defendant would also state that the suit property was purchased jointly on 50 / 50 basis. The defendant had been collecting the rents and the plaintiff used to receive 50% of income after deducting the expenses. However, contrary to the actual facts, the plaintiff has issued a notice on 12.02.2020 claiming $\frac{3}{4}$ th share in the property, which was suitably replied by



the defendant.

9. The defendant would submit that though the property stood in the name of the plaintiff and defendant, the actual running and management of these were done by their father A.G.Velayutham. He would further submit that the property was purchased out of the family funds in the name of the plaintiff and the defendant and the amounts had come in only from the joint family income. No amounts have been contributed by the plaintiff, except for a sum of Rs.2,40,000/- for the registration. The tenants in the premises were evicted only by the father of the plaintiff and the defendant and both the brothers have not contributed to the same. The defendant would submit that he is ready to divide the property on 50 / 50 ratio. The defendant / appellant would also submit that no case for appointing the Receiver has been made out.

10. A rejoinder has been filed by the plaintiff / respondent denying the various statements made in the reply notice and considering the limited scope, I do not intend traversing in very great detail into the rejoinder.

11. The learned XXIII Additional Judge, City Civil Court, Allikulam, Chennai after hearing parties, by her order dated 12.01.2022 has proceeded to appoint the Receiver and had directed the Receiver to collect the rents from tenants in the suit schedule property on or before the 5th day of every month and deposit the same into Court on or before the 10th day of every month to the credit of the suit. The Receiver was to be paid a sum of Rs.5,000/- towards his remuneration. The tenants were also directed to adhere to the above direction.

12. Challenging the said order, the defendant / appellant is before this Court.

13. The sum and substance of the counter as well as arguments of the defendant / appellant was that no grounds had been made out for the appointment of the Receiver, particularly when there is nothing in the affidavit to state that the defendant has not been making the payments. On the contrary it is the case of the plaintiff that he had been initially receiving rents and the entire amount was paid to his father and thereafter, once the tenants were evicted and the property was allotted to the new parties, the defendant had been collecting the rents.

14. The allegation is that, only from the month of September 2019, the plaintiff's share of the rents had not been paid. The suit has come to be filed in the month of March 2020. The learned counsel would further submit that there was no



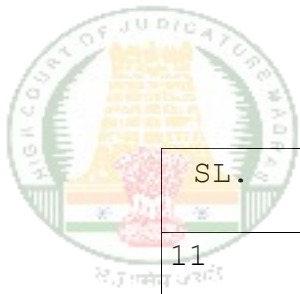
necessity to have third party entering and taking a decision on the management of the property, where in the portions of the premises the defendant / appellant is residing. He would further submit that there is nothing on record to show that the defendant / appellant was frittering away the assets which has constrained the filing of the above application.

15. The learned counsel appearing for the plaintiff / respondent would submit that the defendant / appellant had entered possession of the property only after the suit had been initiated. It is his contention that this is deliberately done to deprive the plaintiff of his rightful share.

16. After hearing the parties, this Court had felt that the matter can be resolved if an affidavit was received from the defendant giving details of the property that had been tenanted, the names of the tenant along with the details, rents received by him and that the rents received should be kept in deposit to the credit of the suit, till the disposal of the suit.

17. In pursuance to the above direction, the defendant and his father, A.G.Velayutham, have filed a Joint Affidavit dated 05.03.2022, wherein, they have given the details of the tenants in a tabular column, which is extracted herein below:

SL.	Name of the tenant	Portion occupied in the property	Amount paid as rent
1	V.Ganapathy	Ground floor (A 2)	Occupied by the petitioner / defendant.
2	V.Ganapathy	Ground floor (A 3)	Occupied by the petitioner / defendant.
3	Mrs.Sarala	Ground floor (A 4)	Rs.10,000/-
4	Vacant portion	Ground Floor (A 1)	Vacated this month
5	Vacant portion	1 st Floor (B 1)	Vacant for 5 months.
6	Vaidyanathan (default in payment of rent 4 months)	1 st floor (B 2)	Rs.10,000/-
7	Elangovan	1 st Floor (B 3)	Rs.10,000/-
8	Logesh	1 st Floor (B 4)	Rs.10,000/-
9	Vacant portion	2 nd Floor (C 1)	Vacated this month
10	Prakash	2 nd Floor (C 2)	Rs.10,000/-



SL.	Name of the tenant	Portion occupied in the property	Amount paid as rent
11	Vacant portion	2 nd Floor (C 3)	Vacant for 5 months.
12	Vacant portion	2 nd Floor (C 4)	Vacant for 6 months.

They have also undertaken that the rents in respect of the suit property would be deposited to the credit of the suit.

18. It is needless to state that, the appointment of the Receiver should be one of the last modes that should be adopted by the Courts and when the parties are ready to protect their interest and the property, it would be advisable to keep away the third party Receivers from the property. As already stated, the affidavit filed in support of the petition does not spell out the reason as to why the plaintiff had sought for the appointment of the Receiver.

19. Be that as it may, this Court is of the view that the interest of both the parties would be protected if the Joint Affidavit filed by the plaintiff and the defendant dated 05.03.2022 is taken on file and recorded with the following directions:

(a) The rents received from the tenants as given herein supra shall be deposited to the credit of the suit O.S.No.2043 of 2022 on the file of the XXIII Additional City Civil Court, Allikulam, Chennai.

(b) Neither the defendant nor the plaintiff shall induct any new tenant without the leave of the Court and the induction of new tenants shall be done only after giving details of the rent at which the property was sought to be let out as also the advance amount that has been agreed to receive by them from the prospective tenant. It is also noticed that 5 portions are now lying vacant bearing, Door No.A1, B1, C1, C3 and C4.

(c) It is informed that the pleadings are complete in the above suit and the matter is posted for framing issues. Therefore, the learned XXIII Additional Judge, City Civil Court, Allikulam, Chennai is directed to dispose of the suit within a period of 6 months from the date of receipt of a copy of this order.



20. With the above directions, the Civil Miscellaneous Appeal is disposed of. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To,

The XXIII Additional City Civil Judge,
Allikulam,
Chennai.

+1cc to Mr.A.Palaniappan, Advocate, S.R.No.15445
+1cc to Mr.K.Perumal, Advocate, S.R.No.15271

C.M.A.No. 445 of 2022

GSM(CO)
CT 20/04/2022