



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)

FRIDAY, THE 29TH DAY OF APRIL 2022

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

A.No.1553 of 2022
in
T.O.S.No.33 of 2016

In the matter of the Indian Succession
Act XXXIX of 1925
and
In the matter of the Last Will and
Testament of Mr.M.Sampath Naidu-
Deceased

1. MR.B.BHARATH KUMAR
S/o.Mr.Balakrishnan,
Old No.189, New No.149,
Paada Salai Street, Manali,
Chennai-600 068.

2. B.YAMINI
D/o.Mr.Balakrishnan,
Old No.189, New No.149,
Paada Salai Street, Manali,
Chennai-600 068.

..Petitioners/Plaintiffs

-Vs-

MR.S.DEENADHAYALAN
S/o.Late Mr.Sampath Naidu,
No.27/10, Thangavel Pillai Thottam,
1st Street, Korukkupet,
Chennai-600 021.

..Caveator/Defendant



A.No.1553/2022:

WEB COPY

1. MR.B.BHARATH KUMAR,
S/o.Mr.Balakrishnan,
Old No.189, New No.149,
Paada Salai Street,
Manali, Chennai-600 068.

2. B.YAMINI
D/o.Mr.Balakrishnan,
Old No.189, New No.149,
Paadasalai Street,
Chennai-600 068

..Applicants/Petitioners

-Vs-

MR.S.DEENADHAYALAN
S/o.Late Mr.Sampath Naidu,
No.27/10, Thangavel Pillai Thottam,
1st Street, Korukkupet,
Chennai - 600 021

..Respondent/Respondent

This application praying that this Hon'ble court be pleased to appoint an Advocate-Receiver to receive all the rental proceeds from and out of the schedule mentioned property.

This application coming on this day before this court for hearing the court made the following order:

This application has been filed to appoint an Advocate Receiver to receive all the rental proceeds from and out of the schedule mentioned property.

2. The case of the applicants is that originally Mr.M.Sampath Naidu,



was the owner of the propert bearing Door No.3/5, Mannappa Mudali Street, Thanvalelu Pillai Thottam (Street), Korrukupet, Chennai - 600 021, measuring an extent of 2835 sqft., or thereabouts and morefully described in the schedule. Subsequently, he had executed a WILL dated 06.02.1976 and the same was registered by way of Doc.No.20 of 1976 on the file of the Sub Registrar Office, Madras-North Chennai. However, the applicants herein are the absolute beneficiaries of the schedule mentioned property as per the WILL dated 06.02.1976. There are eight portions, in which, the second respondent is residing in one portion and other seven portions are let-out for rent for a sum of Rs.31,500/-. Even though the applicants are the absolute owners of the schedule mentioned property, the second respondent is receiving a sum of Rs.4,500/- for each portion as a rental amount [a total sum of Rs.31,500/-], which has to be actually handed over to the applicants herein. Hence, this application is filed for appointment of Advocate Receiver to receive all the rental amounts from and out of the schedule mentioned property.

3. Counter affidavit has been filed by the second respondent, wherein, it has been stated that the second respondent has filed a detailed written statement in TOS.No.33 of 2016 and the applicants are the absolute beneficiaries, is specifically denied and the WILL had not been acted upon



after the lifetime of the Testator. However, the applicants herein had attained majority long back and they have not chosen to probate the WILL.

It is true that the second respondent is residing in one portion and it is denied that remaining seven portions are let out for a sum of Rs.31,500/-. However, four portions are empty and only three portions have been occupied by tenants and the rental income of the three portions is only Rs.9,000/-. Hence, the second respondent is only the Class-I legal heir of the Testator and the WILL has been executed prior to his birth and the same is not binding on the second respondent. The conduct of the Testator in including the name of the second respondent in his service record, clearly shows that the Testator would not have executed such a WILL and creates a serious doubt on the contents of the WILL. Therefore, this application for the appointment of Advocate Receiver to receive the rental proceeds is mischievous and misleading. Hence the second respondent prays to dismiss the above application.

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

5. On a perusal of the records, it is seen that there are eight portions in the schedule mentioned property and the first two portions only are occupied by the applicants herein and another two portions are occupied by



the second respondent. Subsequently, another three portions are occupied by the tenants which are required for their possession and two portions are in the front areas and two portions are back side areas, wherein, it was situated, and two portions in the four portions, were under occupation by the respondents 1 and 2 and the respondents 1 and 2 are having right over the property. The applicants are the children of the Testator.

6. The first applicant occupied two portions in the rear portions, and they are let out by the second respondent and they will pay the rent to the first applicant herein. Both the parties are hereby directed to maintain peace and to allow the applicants herein to have free egress and ingress and they shall not disturb them at any cost.

7. The learned counsel for the respondents had given undertaking to the learned counsel for the plaintiffs with regard to subject property and not to disturb the same. Further, the applicants herein shall not disturb the second respondent's possession of front two portions and rear two portions. The tenants shall respectively have all the rearing portions.

8. If these conditions are violated by both the parties, they would go to concerned Police Station. There is only one EB meter only one EB meter



for eight portions of the schedule mentioned property. The electricity bill amount, tax and water charges are to be paid by the parties and thereafter, both the parties shall divide their shares equally in respect of amount in all the portions. After five days from the date of receipt of the amounts, the same may be taken as the amount paid to the second respondent.

9. Accordingly, this application is disposed of. No costs.

Sd/.V.B.S.J.
29.04.2022

//Certified to be a true copy//

Dated at Madras this the day of 2022.

SU./09.06.2022

COURT OFFICER(O.S.)

From 25.09.2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.