O.A.No.738 of 2020
in
C.S.No.390 of 2020

KRISHNAN RAMASAMY.J.,

This Original Application has been filed for appointment of a Receiver by this Court in respect Schedule A mentioned property and to collect the rent on monthly basis and deposit the same before this Court.

2. It is the case of the applicant/plaintiff that his mother, Late L.H.Padmavathy, wife of the first respondent, purchased the Schedule A property situated at House No.14, Andal Nagar Extension, R.S.No.603 of No.137, Velachery, Chennai, and constructed apartments therein and for the purpose of construction of the apartments, the plaintiff's money was also utilized by her mother.

3. The first respondent/defendant is the father and the second respondent is the brother of the applicant/plaintiff, born to second wife of the first respondent. According to the applicant/plaintiff, the first respondent father married his mother's sister, while his mother was carrying second

pregnancy.

4. The above suit was filed for partition. The first respondent/defendant is collecting the rents in respect of Schedule A property, about Rs.80,000/- approximately, per month. Since the suit A schedule property stands in the name of plaintiff's mother, the applicant being her son, is also entitled for share in the amounts collecting towards rents. Therefore, he filed the present application for appointment of Receiver.

5. Per contra, the first respondent/defendant, who is a practising lawyer appeared in person and stated that the Schedule A property was purchased in the year 1997 in the name of his wife Mrs.L.H.Padmavathy. Further, he submitted that he has substantially contributed his money for the purpose of purchasing Schedule A property and for construction of the building as well. According to him, his wife worked in a reputed School and her entire salary was being deposited as savings, while all his earnings were being spent for maintenance of the family. Even during life time of his wife

Mrs.L.H.Padmavathy, the entire rental income had been deposited in her account and she allowed him to operate her accounts having regard to the fact that the first respondent spent considerable amounts for the development of the properties and also to meet out the entire family expenditure.

6. Further, the learned counsel for the 1st respondent would submit that whatever the rental income which he is collecting, in fact, is not sufficient to meet out his expenses as he is suffering from age old ailments and the applicant/plaintiff has settled down in UK and earning good salary, but he is not contributing any amount despite the first respondent requested to pay for his maintenance as the rental income is not sufficient to meet out his livelihood and medical expenses, whereas, his second son, the second respondent herein is contributing his income to the family. Therefore, since Schedule A property was exclusively purchased from and out of the income of his wife and the 1st respondent also contributed his income substantially and thereby, he is entitled to get the rental income for his maintenance. That apart, even if the rental income is not sufficient to meet out his expenses and

unable to lookafter himself, the applicant/plaintiff, being his son, is under obligation to afford and provide his necessities by making sufficient monthly payment to him. But unfortunately, despite the first respondent requested, the applicant/plaintiff is not obliging the same, but on the other hand, he is demanding share in the rental income, which is the only source of income for the 1st respondent to maintain himself and his family. Thus, he prays for dismissal of the application.

7. Heard the learned counsel appearing for the applicant/plaintiff and the second respondent/defendant and the first respondent/party-in-person and carefully perused the materials available on records and given due consideration for the submissions made by the respective parties.

8. The applicant is the plaintiff and he filed the above suit for partition. He is the first son of the second respondent and his mother L.H.Padmavathy. The second respondent is the second son of the first respondent born to his second wife L.H.Premavathy. According to the applicant, his mother worked in a reputed School and purchased the

Schedule A property out of her earnings and at present, the first respondent is collecting the rents derived from the said property. The present application was filed by the applicant, seeking for appointment of Receiver to collect the rents on monthly basis in respect of Schedule A property and deposit the same before this Court.

9. It is the case of the applicant/plaintiff that the Schedule A property was purchased by her mother in her name by investing her earnings as well as his earnings. While so, it is the case of the first respondent that though the Schedule A property was purchased in the name of his wife, but he also contributed substantially for purchase and its development. He is the income tax assessee and the income returns would show his income. Right from the date of purchase, the first respondent has been continuously maintaining the property. Therefore, the first respondent claims that though the property stands in the name of his wife, since he contributed his earnings for maintenance of the family while the earnings of his wife were used to be deposited as savings and for this reason only, even during her life, she allowed the first respondent to lookafter her accounts including the

management of the property. The applicant/plaintiff being the son, claims share in the property, stating that since the property stands in the name of his mother, he is entitled to the share in the rents collected from the suit property by the first respondent.

10. It is not the case of the applicant/plaintiff that the first respondent has not at all contributed any of his earnings towards the family and its maintenance. Generally, in a family, if both wife and husband are earning members, one spouse's earnings used to be spent towards the maintenance of the family while the other spouse's earnings used to be deposited as savings for the welfare of the family, which had taken place in the present case. From the and out of earnings, the suit property was purchased and thereby, it stood in the name of the wife of the first respondent. Merely the property standing in the name of one of the spouses, it cannot be ignored or brushed aside unless contrary is proved, that there was no contribution towards purchase of the property. Therefore, when a spouse has indirectly contributed substantially in purchase of the property in the name of other spouse, by spending his earnings towards maintenance of the family, his

right and interest over the property will automatically be accrued in his favour. Presuming for a moment, if there was no contribution by the first respondent in maintenance of the family, certainly, the wife of the first respondent who is the mother of the applicant/plaintiff would not have been in a position to save her earnings and purchase the property. It is common belief between the couple who is running the marital life peacefully to sort out the family issues and in such circumstances, the first respondent might have not objected to purchase the property in the name of his wife, but unfortunately, he has been sued by his son, claiming share in the property and pending the suit, he seeks appointment of the Receiver to collect rents and deposit the same before this Court.

11. Further, it is the case of the first respondent that all along he has been maintaining the suit property and also maintaining himself only by the rental income deriving from the suit property and though the applicant/plaintiff well settled in life and earning sufficient income and despite the same, though the first respondent requested to make monthly payment for his maintenance since the rental income is not sufficient to

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meet out his day today and medical expenses, the applicant/plaintiff being son, is under obligation to maintain his aged father, not contributing anything, but claiming share in the suit property and rental income.

12. In the light of the above, this Court is of the *prima facie* view that the applicant/plaintiff has not made out a case for grant of the relief as sought for in the present application. Accordingly, the present Application is dismissed.

20.07.2022

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