



O.S.A.No.285 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice D.BHARATHA CHAKRAVARTHY

O.S.A.No.285 of 2022

Mr.Singu R.Mangaleshkar,
Residing at 39b, Spilsby Road,
Boston PE 21 9NX,
United Kingdom and permanent Indian address:
No.3, Flat B, 5th Cross Street,
Andal Nagar, Velachery,
Chennai – 600 042.

.. Appellant

VS

1.S.V.Ramamurthy

2.Bhupeshkar
10245, Little Brick House,
Ellicott City, Maryland USA,
Permanent Address
No.3, Flat B, 5th Street, Andal Nagar,
Velachery, Chennai – 600 042.

3.The Sub Registrar,
Office of S.R.O.,
Velachery,
Chennai – 600 042.

4.The Sub Registrar,
Office of S.R.O.,
Anna Nagar,
Chennai – 600 017.



O.S.A.No.285 of 2022

5.The Sub Registrar,
Office of S.R.O.,
Purasaiwakkam,
Chennai – 600 007.

6.The Sub Registrar,
Office of S.R.O.,
Madhavaram,
Chennai.

.. Respondents

Appeal filed under Order XXXVI Rule 9 of O.S. Rules read with Clause 15 of Letters Patent against order 20.07.2022 made in O.A.No.738 of 2020 in C.S.No.390 of 2020.

For Appellant : Mr.M.G.Ranava Charan

For Respondents : Mr.S.V.Ramamurthy
appearing in-person
for R1

JUDGMENT

(Delivered by PARESH UPADHYAY.,J)

1. Challenge in this appeal is made to the order dated 20.07.2022 recorded on O.A.No.738 of 2020 in C.S.No.390 of 2020. This appeal is by the plaintiff / applicant. The suit is for partition. The first and the second defendants are father and brother respectively of the plaintiff.



O.S.A.No.285 of 2022

2. The suit is for partition and in the said suit, an application was filed for appointment of receiver. Learned Single Judge has dismissed the said application, which is challenged in this appeal.

3. Learned advocate for the appellant has submitted that, the impugned order is erroneous on more than one counts:- Firstly, there is factual error, the order is passed on mis-representation on the part of the first defendant and is also against the settled position of law. Reliance is placed on the decision of this Court in the case of *T.Krishnaswamy Chetty v C.Thangavelyu Chetty and others reported in AIR 1955 Mad 430*. It is noted that, learned advocate for the appellant has also taken this Court through the details of the Schedules of the property which is the subject matter of the suit. It is submitted that this appeal be entertained.

4. The first respondent / defendant has also appeared before this Court and has addressed the Court to the extent necessary. According to him, the very institution of the suit is mis-conceived and even an application under Order 7 Rule 11 of the CPC was filed, the proceedings arising therefrom is pending before the Supreme Court. It is submitted that this appeal be dismissed.



O.S.A.No.285 of 2022

WEB COPY

5. Having heard learned advocate for the appellant and the first respondent / defendant, this Court finds as under:-

5.1 The plaintiff resides at the United Kingdom.

5.2 The second defendant resides at the United States of America.

5.3 The mother of the plaintiff has died. The second defendant is the father who is aged about 80 years.

6. We have considered the pleadings, inter-se relationship of the parties and the tenor of the pleadings. We find that, the first defendant / father need not be put to any further difficulties by the orders of this Court. The second defendant (brother) has left the first defendant (father) to face the miseries, taken out by the plaintiff (brother). The social issues need not be gone into by this Court, however suffice it to note that, we find prima facie that the very institution of the suit itself by the plaintiff, against the first defendant is with less substance, however since the adjudication of the suit is not to



O.S.A.No.285 of 2022

be gone into at this stage, we do not express any further opinion in that regard.

7. We have considered the reasons recorded by learned Single Judge. We find that, any interference in the order passed by learned Single Judge will only add to the miseries of the first defendant, which need not be done. The decision relied by learned advocate for the appellant, in the facts of the case, will not take the case of the appellant any further. Though we find prima facie that, even costs need to be imposed, since this appeal is not entertained, we are not imposing any costs.

8. In view of above, this appeal is dismissed. No costs.

(P.U., J) (D.B.C., J)
04.11.2022

Index:No
ssm/4



O.S.A.No.285 of 2022

WEB COPY

To

- 1.The Sub Registrar,
Office of S.R.O.,
Velachery,
Chennai – 600 042.
- 2.The Sub Registrar,
Office of S.R.O.,
Anna Nagar,
Chennai – 600 017.
- 3.The Sub Registrar,
Office of S.R.O.,
Purasaiwakkam,
Chennai – 600 007.
- 4.The Sub Registrar,
Office of S.R.O.,
Madhavaram,
Chennai.
- 5.The Sub-Assistant Registrar,
Original Side,
High Court, Madras.



WEB COPY



O.S.A.No.285 of 2022

PARESH UPADHYAY, J.
and
D.BHARATHA CHAKRAVARTHY, J.

ssm

O.S.A.No.285 of 2022

04.11.2022