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A.No.4650 of 2022

A.No.4650 of 2022
in C.S.No.826 of 2016
and O.A.No.983 of 2016 &
TOS.No.34 of 2018

S.SOUNTHAR,J.

The applicant herein filed a suit for partition against the respondents. The first respondent/first defendant is the brother of the applicant/plaintiff and the second defendant is the mother of the applicant. The third defendant is the subsequent purchaser of the item No.4 of the suit properties. According to the applicant, during pendente lite, the first respondent had put up the construction in item Nos.2 & 3 of the suit property and he developed two shops and the same has been rented out some third parties.

2. It is the case of the applicant that the first respondent receives a sum of Rs.60,000/- per month as rent by letting out the shops to the third parties. He further stated that the applicant is entitled to $\frac{1}{2}$ share in the suit property and therefore, he is entitled to proportionate share in the rent received by the first respondent. Therefore, applicant has filed this application seeking direction to first respondent to deposit monthly rent received by him along with advance amount to



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the credit of the suit.

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3. The learned counsel for the applicant vehemently contended that if the suit ultimately is decreed infavour of the applicant/plaintiff, he may not be in a position to get his share of profits from the first respondent.

4. The contesting first respondent as well as the second respondent also filed their respective counter.

5. The contesting first respondent in his counter has stated that suit properties are the self acquired properties of his father Late.Anantha Subramania Nadar and he acquired the suit properties while he was working as Joint Secretary, Law Department, Government of Tamil Nadu. According to the first respondent, his father bequeathed the suit properties in his favour absolutely by creating prior life interest to the deceased second defendant/mother. Hence, the first respondent is claiming absolutely right over the suit property after the death of his mother/second respondent. Therefore, the learned counsel for the first respondent vehemently



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opposed this application on the ground that the first respondent is the absolute owner of the suit property and he developed item Nos.2 & 3 and consequently this application is vexatious one.

6. Heard the submissions made by both the parties. The suit is for partition and applicant herein is claiming $\frac{1}{2}$ share in the suit properties. Even according to the averments of the applicant in his affidavit, item Nos.2 & 3 were developed by the first respondent by spending his own funds. The respondent is reaping the benefits of his own development.

7. In case, the applicant succeeds in the partition suit, in order to recover his share of the profits, it is always open to him to proceed in accordance with law. Even according to the applicant, the applicant is entitled for only half share in the suit property and the other other half share belongs to the first respondent. In the event of applicant's success in the suit, it is always open to applicant to proceed against other half share of first respondent for recovery of profits, if any, in accordance with law. Hence, there is no balance of convenience in favour of applicant to consider his prayer. Therefore, I do not find any merit in this application.



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dna

8. Accordingly, this application is dismissed.

dna

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