



A.No.717 of 2023
in A.No.1465 of 2004

K.KUMARESH BABU,J.

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This instant application had been brought out by the applicant/ Estate to permit it to exchange its property in schedule 'B' herein with the property in schedule 'C' which belonging to one J.N.Ajeeth.

2.The brief facts leading to the application is as follows:-

2.1.One V.N.Deivyaanai Ammal had executed a Will dated 07.01.1954, which was duly probated in O.P.No.60 of 1955 by the then named executors. The present managing executor of the private estate was appointed by this Court in its Order dated 01.02.1983 made in Application No.4611 of 1982 made in the Original Petition.

3.The applicant now would submit that the property of the estate was not yielding any substantial income to perform the daily poojas and other kattalais that had been directed under the Will. Hence, an application had been made before this Court in Application No.1465 of 2004 for promotion and development of the said property, whom which permission was also granted by this



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lease agreement was entered with one M.A.Hameed Oli on 28.01.2005, who had agreed to evict the tenants at his cost and also agreed to put up a construction in the said property. As he failed to perform his part of the agreement, the same was rescinded and the property was mortgaged by way of a registered document bearing Document No.2763 of 2006, dated 13.03.2006.

4.The aforesaid mortgage had also been discharged vide receipt dated 11.07.2013 which was also registered as Document No.834 of 2013. Again M.A.Hameed Oli had approached the applicant and promised to fulfill his obligation and entered into a fresh agreement with the applicant on 22.06.2011, which was registered as Document No.775 of 2011. He had also undertook to evict the tenants and also pay a sum of Rs.1,60,00,000/- for clearing the aforesaid mortgage and also undertook to meet the day to day expenses to maintain the temple and perform the kumbabishekham, etc.,

5.Thereafter, M.A.Hameed Oli had filed an Application in A.No.2114 of 2016 seeking for a modification of the order dated 06.07.2004 for substitution of an intending promoter



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S.B.Uggamraj. The said S.B.Uggamraj died on 29.09.2016 and the said application had become infructuous. He would further submit that presently, the premises only fetches a rent of Rs.4000 which is not enough to perform the day to day poojas to the Pillayar as envisaged under the Will executed by V.N.Divyannai Ammal and that the temple had also become dilapidated and was also not put into use. The diety has been removed from the temple and had been kept in the residence of the managing executor.

6.Even though M.A.Hameed Oli had entered upon the aforesaid agreement, had failed to perform his part of the duties but have been insisting upon the estate to pay back the amount that has been paid to him. At that juncture, one J.N.Ajeeth had agreed to resolve the entire dispute by settling M.A.Hameed Oli of his dues and have also agreed to build the temple in a portion of the 'A' schedule property belonging to the estate. Further, he had also agreed to create a deposit of Rs.15,00,000/- as a permanent fund in the name of the estate so that the accrued interest there from could be utilised towards the maintenance of the temple and the diety. In view of his actions, he had wanted the estate to exchange 1240 sq.ft

in the 'A' Schedule property which has been described as 'B'



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Schedule property of the applicant for the property standing in his name which is more fully described in the 'C' Schedule property.

7.It is also submitted by the learned counsel appearing for the applicant, apart from the said proposal was not only beneficial for the estate, the 'C' schedule property would also generate a monthly rental of Rs.25,000/-. Hence, he would seek this Court's permission to permit the applicant to exchange 'B' schedule property with the 'C' schedule property as it could be beneficial to the interest of the estate. He would also further submit that pursuant to the undertaking given by the J.N.Ajeeth, he had already discharged the duties of M.A.Hameed Oli which has also been recorded by this Court in disposing the application filed by him.

8.I have considered the aforesaid proposal made by J.N.Ajeeth in favour of the applicant.

9.This Court has also recorded the payment of dues of M.A.Hameed Oli by J.N.Ajeeth while disposing of the application in A.No.1837 of 2023. I am satisfied with the proposal between the applicant and the said J.N.Ajeeth, as it resurrects the temple in 'A'



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Schedule property in an area of 530 sq.ft. and also of the fact that the said J.N.Ajeeth is also creating a permanent fund in the name of the applicant which will also bear interest and also that the 'C' schedule property shall earn a rental income, are all beneficial to the estate of the applicant. Hence, the above captioned application is ordered as prayed for.

10. With the above observations, the above captioned application is allowed. However, there shall be no order as to costs.

30.06.2023

gba

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