



O.A. No.141/2022 & A.No.979/2022
in C.S. NO.193/1998

O.A.No.141 of 2022 & A.No.979 of 2022
in C.S. No.193 of 1998

R.N.MANJULA, J.

The Original Application in O.A.No.141 of 2022 has been filed to pass an order of interim injunction restraining the plaintiffs herein and anyone claiming under them from in any way collecting the rents from two tenants in the suit schedule mentioned property with effect from 01.04.2022 and consequently permit the applicant / defendant to collect the rent from the two tenants in the suit schedule mentioned property with effect from 01.04.2022 and deposit 50% of the rent in separate bank account till further orders of this Court.

The Application in A.No.979 of 2022 has been filed to pass an order in the nature of final decree, directing the plaintiffs herein to pay the applicant / defendant 50% of the profits / rents from the 2 tenants in the suit schedule mentioned property together with interest at the rate of 18% per annum from the date of plaint (i.e.) 19.07.1995 till the date of realisation, after receiving the Advocate Commissioner's report under Order XX Rule 18 CPC adjusting / adjudicating the equities between the parties and allot the suit property to the applicant / defendant and if necessary, fix any ovality if found necessary.



O.A. No.141/2022 & A.No.979/2022
in C.S. NO.193/1998

2. The suit in C.S. No.193/1998 is a suit for partition in which a preliminary decree has been passed on 23.04.2007 on the admission made by the respondent that the suit property can be divided between the plaintiffs and the defendant in equal shares. Subsequently the plaintiffs have filed an application to appoint an advocate commissioner to inspect the suit properties and divide it into two equal shares. However it is seen that the Commissioner application has been filed without an application for final decree.

3. Another application in A.No.648/2008 has been filed by the plaintiff to permit him to purchase half share of the property. However in due course a final decree application in A.No.4553/2006 has also been filed by the applicant. Subsequently the plaintiff died and hence the application in A.No.4327/2022 has been filed to implead the legal representatives of the deceased plaintiff and it is allowed. Thereafter the newly added legal heirs of the deceased plaintiff have filed applications in A.Nos.4328 & 4329/2022 to bring the property for sale and also seeking permission to purchase half share of the property as per Section 2 and 3 of The Partition Act.



O.A. No.141/2022 & A.No.979/2022
in C.S. NO.193/1998

4. The defendant had also filed applications in A.Nos.976 to 978/2022.

WEB COPY

i) A.No.976/2022 has been filed to direct the plaintiffs to carry out necessary repairs in the portion in their occupation in 1st floor of the suit schedule mentioned property (measuring about 660.09 sq.ft.) by replacing the wooden rafters of Madras Terrace removed by the fourth plaintiff and to replace the rafters and to make those portion safe and secure at their cost within a time fixed by this Court.

ii) A.No.977/2022 has been filed to issue a direction by way of preliminary decree directing the plaintiffs to render true and proper accounts with regard to the rents collected from the suit schedule mentioned property by the deceased plaintiff and after him by his legal heirs namely the present plaintiffs before this Court from the date of plaint i.e.19/07/1995 till the date of passing of final decree and pay the applicant / defendant, his half share of the rents/profits from the suit property together with interest at the rate of 18% per annum within a time frame fixed by this Court.

iii) A.No.978/2022 has been filed to appoint an advocate commissioner to visit and inspect the suit property with the help of an Engineer to note down the physical features and stability of the suit property and to ascertain the market price of the suit property taking into all the aspects relating to the



O.A. No.141/2022 & A.No.979/2022
in C.S. NO.193/1998

suit property and to file a report within a time fixed by this Court along with sketch and other particulars and Engineer's report.

5. An another application in A.No.980/2022 has also been filed to implead the tenants in the suit property as respondents 5 and 6 and that has been allowed.

6. Even though a preliminary decree has been passed on the submission of the defendant that the defendant has filed the application in O.A. No.141 of 2022 for seeking interim injunction restraining the plaintiffs to collect the rent from two tenants in the suit property.

7. On perusal of the records it is seen that there is a single suit property which consists of ground + three floors. It is seen from the report of the Commissioner that the ground floor measures 1470 sq.ft, the first floor measures 1470 sq.ft + 82 sq.ft, the second floor measures 1470 sq.ft. and the third floor measures 561.58 sq.ft. The overall constructed area would come to an extent of 4971.58 sq.ft and out of which the plaintiff is in occupation of 1167.67 sq.ft and the defendant is in possession of 3803.91 sq.ft. On these



O.A. No.141/2022 & A.No.979/2022
in C.S. NO.193/1998

aspects there is no quarrel.

WEB COPY

8. However the learned counsel for the respondents / plaintiffs submitted that the respondents were originally residing in the said 1167.67 sq.ft and later the said area has been rented out to the tenants. It is already recorded that the tenants have also been impleaded as parties.

9. In view of the preliminary decree passed there cannot be any conflict between the parties with regard to their respective entitlement as to 50% share in the suit property. In fact the Commissioner had distinctly recorded the portion where the plaintiffs and the defendant is presently in occupation of the property. Even though there is no dispute as to the half share of the suit property and the plaintiffs are in possession of less than half share, as of now the defendant has filed these applications that the plaintiffs should not collect rent in which they are presently in possession and the defendant should be allowed to collect rent and consume 50% of the same.

10. The applicant / defendant did not deny the fact that he is in enjoyment of 3803.91 sq.ft., however for his own enjoyment and not for



O.A. No.141/2022 & A.No.979/2022
in C.S. NO.193/1998

renting out to anyone. When the plaintiffs are in possession of lesser share than what is actually entitled to them, in terms of the preliminary decree, the defendant cannot prevent the plaintiffs from enjoying their share either by being in occupation by themselves or by letting it to any third parties.

11. The contention of the learned counsel for the applicant/defendant is that there is a connecting suit filed in C.S.No.506/1994 for partition for at least 18 more properties and the plaintiffs are collecting rent in all the 18 properties and hence there is justification in granting the relief to the defendant as prayed by the him in O.A. No. 141/2022.

12. Even though the parties to this suit are also parties to the other suit in C.S.No.506/1994, the stage of that suit is different and in the present suit, in which the preliminary decree has been passed and hence there is no dispute as to the share of parties. So the applicant / defendant who ought to have raised his objection in the other suit cannot seek a prayer in this suit by restraining the plaintiffs from collecting rent.



O.A. No.141/2022 & A.No.979/2022
in C.S. NO.193/1998

13. Further it is strange to hear the submission of the learned counsel for the applicant / defendant that it would be alright for the defendant, if the plaintiffs chooses to live in the said 1167.67 sq.ft. without opting to rent it to anyone. Such an unreasonable argument cannot be countenanced in view of the fact that the respondents / plaintiffs are in enjoyment of a portion below than half share for which they are entitled to. The claim of the parties in respect of some other properties involved in C.S. No.509/1994 cannot be the cause of hindrance for the further proceedings of this case. In fact other suit in C.S. No.509/1994 has already been de-linked, as the trial in that suit is pending before Additional Master-I and an observation to that effect has already been made on 24.01.2023. So it would be ideal for the party to extend cooperation to dispose other applications that have been filed only in respect of the suit property and not in respect of any other property.

13. In view of the above stated reasons, I find no merits in these applications and both these applications are dismissed.

05.04.2023

bkn



WEB COPY



O.A. No.141/2022 & A.No.979/2022
in C.S. NO.193/1998

R.N.MANJULA, J.

bkn

O.A.No.141 of 2022 & A.No.979 of 2022
in C.S. No.193 of 1998

05.04.2023