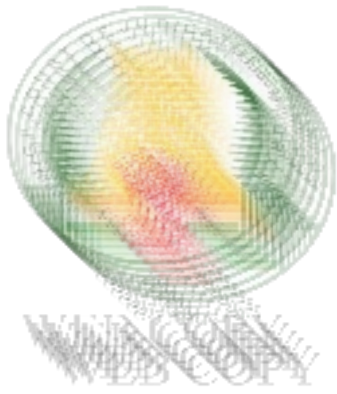




Application No.3856 of 2022
in C.S.No.390 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.07.2023

PRONOUNCED ON : 31.07.2023

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Application No.3856 of 2022
in C.S.No.390 of 2020

1.L.H.Krishnan
2.B.O.Parijatham
3.V.Baskar
4.T.R.Gayathri
5.L.V.Harish Babu
6.L.V.Hemantha Raju
7.L.V.Anuratha
8.S.R.Archana

... Applicants / Proposed Defendants

Vs.

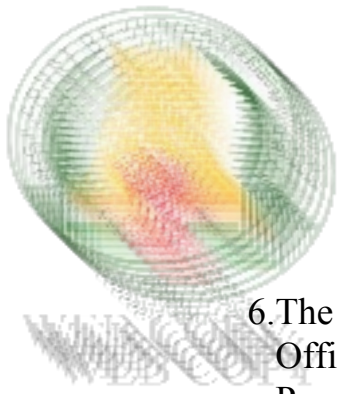
1.Singu R.Mangaleshkar

... 1st Respondent / Plaintiff

2.S.V.Ramamurthy
3.S.R.Bupeshkar

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

5.The Sub Registrar,
Office of S.R.O.,
Anna Nagar, Chennai – 600 040.



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6.The Sub Registrar,
Office of S.R.O.,
Purasawalkkam, Chennai – 600 007.

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

... Respondents 2 to 7 /
Defendants 1 to 6

PRAYER: Application filed under Order XIV Rule 8 of O.S. Rules read with Order 1 Rule 10(2) of CPC read with 151 CPC, praying to implead the applicants as necessary parties and arraigned as defendants 7 to 14 in C.S.No.390 of 2020.

For Applicants : Mr.V.Karunakar

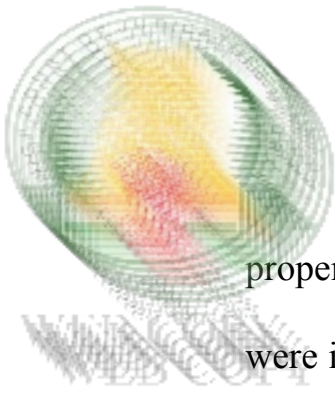
For Respondents : Mr.R.Ramesh
for M/s.Guru Brahma Law Associates

ORDER

This Application has been filed seeking to implead the applicants as necessary parties and arraigned as defendants 7 to 14 in C.S.No.390 of 2020.

2.The averments of the plaint in brief:

The applicants are the proposed defendants. The 1st respondent/plaintiff has filed a suit for partition of the suit properties left by his mother late Padmavathy. 'A' Schedule property was the self acquired

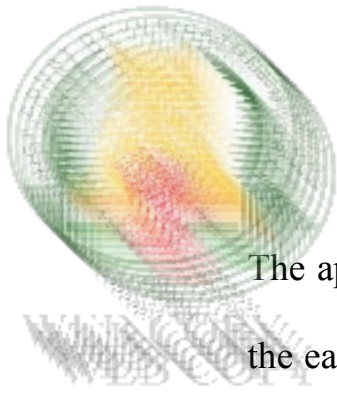


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in C.S.No.390 of 2020

property of the said Padmavathy and Schedule 'B' , 'C' and 'D' properties were inherited from her ancestors. The plaintiff has claimed 1/2 share out of her share inherited from her mother in respect of 'B' , 'C' and 'D' Schedule Properties; the applicants/ proposed defendants are also entitled to their respective shares in 'B' , 'C' and 'D' Schedule Properties. The said properties were the subject matter of C.S.No.522 of 1992, OSA.Nos.147 and 148 of 2002. The final decree has been passed on 06.12.2017 in CS.No.522 of 1992 based on the Memo of Compromise filed by all the parties.

2.1. The mother of the plaintiff late Padmavathy was also one of the legal heirs along with the applicants and she was allotted a share in the suit 'B' , 'C' and 'D' Schedule Properties. Though the plaintiff had stated that the 'B' , 'C' and 'D' Schedule Properties were the ancestral properties inherited by his late mother, he had not chosen to implead the applicants/ proposed defendants in the above suit. The plaintiff had also sought a relief of Permanent Injunction restraining the defendants from alienating 'A', 'B', 'C' and 'D' Schedule Properties without specially mentioning the respective shares inherited by his late mother.

2.2. The suit between the plaintiff and the defendants 1 and 2 cannot deprive the rights of the applicants to enjoy the property in any manner.

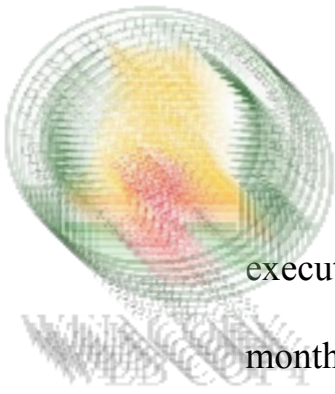


Application No.3856 of 2020
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The applicants are taking steps to sell the 'C' Schedule Property in terms of the earlier compromise. Now, in view of the suit filed by the 1st respondent /plaintiff, their rights are in jeopardy. Hence the application has been filed to implead the defendants 7 to 14 as parties to this suit.

3. The counter filed by the 1st respondent/plaintiff is in brief:

The 'A' Schedule Property was purchased by the mother of the plaintiff and Schedule 'B' , 'C' and 'D' are the ancestral properties acquired by her parents. The 1st respondent's mother got a share in the year 2017 and she was in exclusive possession and enjoyment of the same. After the death of his mother the respondents 2 and 3 colluded with each other and tried to get a major share and they took steps to sell away the entire property without the consent of the 1st respondent/plaintiff. In the plaint itself the 1st respondent / plaintiff has stated that he claims ½ share, in whatever the share the 1st and 3rd respondents have in Schedule 'B' , 'C' and 'D'. The applicants are not necessary parties to the suit. The 1st respondent/ plaintiff seeks respective shares of his mother's share only and he does not seek any relief in respect of the properties already sold; the applicants already got their share in respect of the Schedule 'B' , 'C' and 'D' properties and hence, they are entitled to file an execution petition before the Master Court to



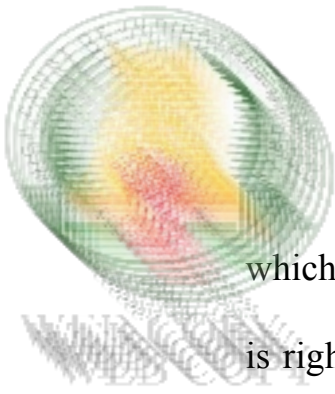
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execute the Compromise decree. The 2nd respondent is collecting the monthly rent of Rs.80,000/- in the 'A' Schedule Property without giving any share to the 1st respondent. The 3rd respondent is also collecting the rent from the 2nd respondent. The application has been filed only at the instigation of the respondents 2 and 3. Hence the petition should be dismissed.

4. Heard the submissions made by both sides learned counsels and perused the materials available on record.

5. The plaintiff does not deny the fact about the earlier suit in which the Compromise Decree has been passed, in respect of 'B', 'C' and 'D' Schedule Properties. It is admitted by the 1st respondent/ plaintiff that they are the ancestral properties of his deceased mother and those properties are also the subject matter of the suit in CS.No.552/1992.

6. Though it is stated by the 1st respondent/plaintiff in his counter that he is seeking a share in respect of the share of his mother, in the body of the plaint he has stated that the 1st respondent and his brother who is the 2nd defendant are having $\frac{1}{2}$ share in the 'B', 'C' and 'D' Schedule Properties. However in the property particulars, the 1st respondent/ plaintiff has stated very clearly that his claim for partition is only from and out of $\frac{1}{5}$ th share for

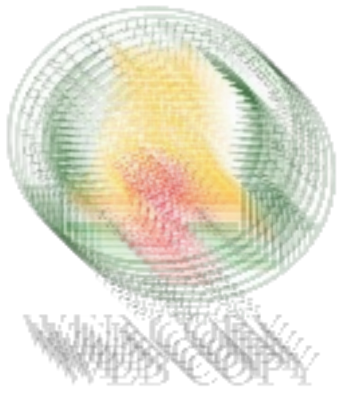


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which his mother was entitled too. Since in the schedule of the properties it is rightly mentioned that the plaintiff's relief is only in respect of the share of their mother in the suit property, there is no disagreement that in respect of 'B', 'C' and 'D' Schedule Properties the 1st respondent/ plaintiff's mother had got her share along with the applicants herein and the said properties is form part of the earlier suit in C.S.No.552/1992.

7. As rightly pointed out by the respondents/plaintiffs that the applicants are the proposed parties have to file execution petition to execute the compromise decree instead of claiming themselves as parties to the proceedings. By impleading themselves as party to the proceedings the applicants / proposed defendants just wish to reiterate their rights claimed in CS.No.552/1992. The applicants need not be allowed to re-agitate the same against the same parties.

8. Having contested the earlier suit in CS.NO.552/1992 and got the share of the mother of the 1st respondent in respect of the properties detailed under 'B', 'C' and 'D' Schedule and got their respective shares determined the plaintiffs have filed this suit only in respect of that share due to his mother. By impleading the proposed parties, the scope of the suit cannot be expected beyond the purpose for this suit has been filed.



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9. The rightful remedy open to the proposed parties/ proposed defendants 7 to 14 is to file the execution petition in terms of the compromise decree. Since the terms for compromise has been already decided the same cannot be taken up again in this suit by way of impleading the applicants as parties to the proceedings, hence the applicants / defendants are unnecessary parties to the proceedings.

In the result, this application stands **dismissed**.

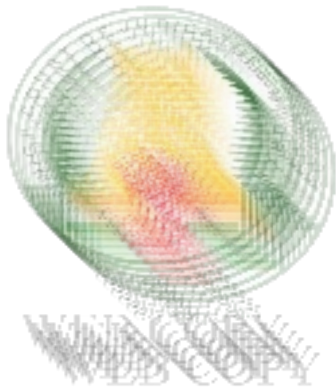
31.07.2023

Index : Yes/No
Speaking Order : Yes / No
Internet : Yes/No
Neutral : Yes/No

jrs

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 – 600 040.
- 3.The Sub Registrar,
Office of S.R.O.,
Purasawalkkam, Chennai – 600 007.
- 4.The Sub Registrar,
Office of S.R.O.,
Madhavaram, Chennai.



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R.N.MANJULA, J.,

jrs

Pre-Delivery Order made in
Application No.3856 of 2022
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31.07.2023