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A.No.3400 of 2022

A.Nos.3400, 3402, 3403, 5537
& 5538 of 2022
A.No.821 of 2023
in
C.S.No.83 of 2018

Reserved on 19.06.2023	Delivered on 10.07.2023
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K.KUMARESH BABU,J.

These applications arise out of a Suit seeking for various relief predominantly, a relief of partition of the Suit Schedule Property.

2.The case of the plaintiff in the Suit is that her father had been allotted schedule item Nos.1&2 properties by the Tamil Nadu Housing Board and that he had been in possession and enjoyment of the same. Further case is that since there was a bar for allotment of two plots in the name of the same individual, he had nominated the father of the fourth defendant herein for an allotment of item No.2 of the suit schedule property, but however, all the payments were made by the father of the plaintiff and therefore, she had sought for partition of an 1/4th share in all the suit schedule properties. The same is being disputed by the first respondent and the fourth respondent by contending that the item No.2



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of the suit schedule property is not the property belonging to the father of the plaintiff and the claim of the plaintiff is totally false. The present applications have been filed both by the plaintiff and also the first defendant for various reliefs.

3. In view of the nature of the Suit and multiple applications having been filed by both the plaintiffs and the first defendant, I shall refer to them in this order as per the rank in the plaint and not in the applications.

4. Originally the first defendant herein had filed three applications for the following reliefs :-

a) to direct the plaintiff to render due and proper accounts for the entire amount received by them from the 10th defendant, who is a tenant in respect of Item No.1 of the suit schedule property;

b) to direct the 10th defendant to render due and proper accounts for the entire amount paid by him towards the monthly rents in respect of the item No.1 of the suit schedule property; and

c) to direct the 10th defendant to deposit the amount towards the



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monthly rents as admitted by him in respect of Item No.1 of the suit schedule property.

5.The plaintiff had also taken out three applications for the following reliefs:-

a) to direct the first defendant to render due and proper accounts for the entire amount received by utilising an extent of 4 grounds in Item Nos.1 & 2 of the suit schedule properties

b) to direct the fourth defendant to deposit a sum of Rs.5,00,000/- as monthly rent towards utilising the Item Nos.1&2 of the Suit schedule properties.

c) to direct the 4th and 5th defendants to furnish the documents i.e., allotment order dated 31.10.1969, a provisional allotment letter for the item No.2, approved plan and completion certificate in respect of the suit schedule property by the fifth defendant.

6.Mr.T.M.Naidu, learned counsel appearing for the plaintiff would submit that the fourth defendant is in possession and enjoyment of a portion of item No.1 of the suit schedule property and he is in entire possession and enjoyment of the item No.2. He would submit that



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father of the plaintiff was an IAS officer and he had purchased both the item Nos 1 & 2 properties put together measuring about 4 grounds and 1700 sq. ft., and has been divided into three parts. The first part measuring an extent of about 2000 sq.ft., bears door No.A-48 and in the second part an office in the name and style of M/s.Annamalai Logistics is being run by the 4th defendant and the third part consist of residence of the first defendant herein. During 2005, the father of the plaintiff had fallen ill and became immobile and that he died on 26.12.2007. During his life time, the first part of the property was leased out to one Saraswathi Proprietor of M/s.PIXEL Studios, by way of a lease agreement dated 28.10.2006 and thereafter, the same had been rented to one Kamal Sundaramoorthy, Proprietor of SK Engineering, who is the 10th defendant in the Suit. The mother of the plaintiff had also passed away on 13.12.2015. Thereafter, the 4th defendant has been persuading the 10th defendant to vacate the property and hand over the vacant possession to him, which had prompted the 10th defendant herein to file C.S.No.865 of 2016. The 4th defendant is claiming the entire property in Item nos.1 & 2 of the Suit Schedule properties. He would further submit that both the item Nos.1 &2, of the suit schedule properties were



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originally allotted to the father of the plaintiff and taking advantage of the ill health of the father, he was influenced to issue a no objection certificate to the Tamil Nadu Housing Board to register the sale deed in respect of item No.2 of the suit schedule property in favour of the 4th defendant. Hence, he would submit that the sale deed executed in favour of the fourth defendant by the TNHB is a sham and nominal document. He would submit that item Nos.1 & 2, of the suit schedule properties have always been jointly possessed and enjoyed by the father of the plaintiff during his lifetime and thereafter by her mother. Taking advantage of death of the father of the plaintiff, the 4th defendant, who is also the brother-in-law of the plaintiff has been trying to usurp the property left behind by the father. He would submit that the plaintiff is entitled to 1/4th share in all the suit schedule properties.

7.He would further submit that 4th defendant is enjoying the fruits of the properties and therefore the present applications have been filed directing him to deposit a sum of Rs.5,00,000/- towards use and occupation of item Nos.1 & 2 of the suit schedule properties and also for a direction to direct him to render true and proper accounts in respect of



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the same. Further, he would submit that it is the claim of the 4th defendant that an allotment order has been issued in respect of item No.2 of the suit schedule property by the TNHB and after demise of father, the TNHB has executed the sale deed in his favour. When the plaintiff had sought for information under the Right to Information Act as regards to the order of allotment claimed by the 4th defendant, a reply had been received by the plaintiff indicating that there was no such allotment order issued in favour of father of the 4th defendant. Therefore, a further application had been taken by him seeking for a direction to produce the order of allotment, provisional allotment, approve plan and completion certificate issued in respect of item No.2 of the suit schedule property. He would further submit that the applications filed by the first defendant as against the plaintiff and the 10th defendant are all without merits. He would further submit that in fact the 4th defendant had been instigating the 10th defendant to vacate the premises and hand over possession to him. He would submit that the 10th defendant had been inducted to as a tenant during the life time of the father of the plaintiff herein and has been in occupation and enjoyment by paying the rents. He would further submit that the first



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defendant's application is wholly misconceived as the first defendant along with her husband, the 4th defendant has been in possession and enjoyment of the major portion of both the item nos.1 & 2 of the suit schedule properties. Since they have been in possession and enjoyment of the suit schedule properties, the plaintiff being entitled to 1/4th share in the entire property is entitled to be compensated for the use and occupation of the property in their possession. Therefore, he would submit that the first defendant and the 4th defendant should be directed to deposit for a sum of Rs.5,00,000/- per month to the Court for their use and occupation of the major portion of the item Nos.1 & 2 of the suit schedule proceedings of the first defendant in her application should be rejected.

8.Countering his arguments, Mr.U.M.Ravichandran, the learned counsel appearing for the first and 4th defendants would submit that the entire case of the plaintiff has been truncated to suit her. He would submit that plaintiff, first defendant and second defendant are sisters and the third defendant is the brother, they being the children of one Mr.Vaithiyalingam. He would further submit that item No.1 of the suit



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schedule property was allotted to Mr.Vaithiyalingam, their father. Item No.2 of the suit schedule properties had been allotted in favour of one Mr.M.Rajaraman, who is father of the 4th defendant. The first defendant had married the 4th defendant. Mr.Vaithiyalingam and Mr.M.Rajaraman had been good friends and they had applied for an allotment of the property from the Tamil Nadu Housing Board and they had been allotted adjacent plots. He would submit that the order of allotment and order of provisional allotment had been issued in favour of the 4th defendant's father by the TNHB on 18.11.1968, 13.12.1968 and 31.10.1969 respectively.

9.He would take me through the typed set of papers filed by him of the orders passed by the TNHB on that aspect. He would further submit that the defendants 1 to 3 along with the plaintiff are entitled to 1/4th share in the property in item No.1 of the suit schedule property in particular and apart from item Nos.3 & 4 of the suit schedule properties, as they were purchased and owned by their father Vaithiyalingam, who had died intestate. He would further submit that as regards to the item No.2 of the suit schedule property, the land has been allotted to the



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father of the 4th defendant and after his demise, the TNHB had executed the sale deed in favour of the 4th defendant. He would submit that since the plaintiff is admittedly receiving the rents for item No.1 of the suit schedule property, the plaintiff should be directed to furnish the account for the period atleast from the date of death of their mother being the wife of Mr.Vaithiyalingam. Since admittedly the plaintiff had only claimed 1/4th share of the suit schedule property, the first defendant along with defendants 2 & 3 are entitled to 3/4th rent that has been received by the plaintiff from the 10th defendant. Therefore, he seek for a prayer to direct the plaintiff as well as the 10th defendant, to submit their accounts for the receipt towards rents of the item No.1 of the suit schedule property and also to direct the 10th defendant to deposit the rental received by the first defendant into Court as she is alone enjoying the entire rents received from the 10th defendant excluding the defendants 1 to 3. He would further submit that there was no necessity for the 4th defendant to pay a sum of Rs.5,00,000/-, as he is in possession and enjoyment of item No.2 of the suit schedule property, upon the allotment in favour of his father and the sale deed executed by the TNHB in his favour. He would further submit that the 4th defendant has



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all documents required by the plaintiff and the same would be filed during the course of trial and therefore, there is no necessity to allow the application filed by the plaintiff seeking production of the said documents. Since the 4th defendant is in possession of item No.2 of the suit schedule property in his own rights, there is no necessity for him to produce the accounts as prayed for by the plaintiff.

10.The learned counsel appearing for the 10th defendant would submit that he had been inducted by the original land owner in a portion of item No.1 of the suit schedule property and that presently he is paying a rent of Rs.1,00,000/- for the demised premises in his favour. He would submit that after the death of the mother of the plaintiff and defendants 1 to 3, he had been remitting the rents to the son of the plaintiff on the instruction of the plaintiff. None of the parties particularly the plaintiff, defendants 1 to 3 have not raised any objections to the same. He would further submit that in a portion of item No.1 of the suit schedule property, the 4th defendant is in possession of the car park and 300 sq.ft., of the office area. He would submit that he had filed an affidavit explaining the factual circumstances



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of the case as directed by this Court.

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11.I have heard the rival submissions made on either side and perused the materials placed on record.

12.This Court while dealing with pre-trial applications cannot decide the rights of the respective parties and could only go by the admitted pleadings. The suit is primarily for partition of the suit schedule properties in 1/4th share of the plaintiff, defendants 1 to 3. As regards to the item No.2 of the suit schedule property, the 4th defendant claims title pursuant to a sale deed executed by the TNHB based upon the order of allotment in favour of his father and the same is being disputed by the plaintiff and she had also sought for a declaration to declare the sale deed as a sham and nominal document.

13.It is pertinent to note that the 4th defendant had taken out an application to delete the item No.2 of the suit schedule property, which had been rejected by this Court by its order dated 20.02.2019, in A.No.8491 of 2018, holding that the said issue cannot be decided



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without any evidence being let in. I do not propose to take a different view as regards to the claim made by the plaintiff in the present application filed by her seeking for a direction to direct the 4th defendant to render true and proper accounts and for payment of Rs.5,00,000/-, as damages towards use and occupation. Since the 4th defendant claims title to the property, which is based upon the sale deed executed by the TNHB, which is also subject matter of the relief of declaration to declare the sale deed is null and void, till such declaration issued by this Court, the 4th defendant could not be directed to the reliefs as claimed for by the plaintiff in her application. The further application of the plaintiff is to direct the 4th & 5th defendants to produce the allotment order, provisional allotment order and approved plan for the building and the completion certificate in item No.2 of the suit schedule property. The 4th defendant claims such document to be in his possession and to substantiate his claim he would definitely rely upon the documents during his course of evidence to substantiate his claim. In such circumstances, I am of the view that the present application at the present stage need not be ordered. Dismissal of the said application will not preclude the right of the plaintiff to call for such documents from the



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TNHB, who has been impleaded as a 5th defendant in the suit, even in the 4th defendant fails to produce those documents during the course of trial.

14.As regards to the reliefs sought for by the first defendant in her application, the 10th defendant had filed an affidavit disclosing the details that he had been depositing the monthly rent into the account of one Mr.Prasanth Tamilvannan, who is the son of the plaintiff and that the defendants 1 to 2 have objected to the same, but however, the 10th defendant, at paragraph 12 of the affidavit, had averred that after August 2021, he had been paying the rent of Rs.1,00,000/- per month to the plaintiff.

15.As already noted that the plaintiff had filed a Suit towards 1/4th of her share in item Nos.1 to 4 of the suit schedule properties, which would mean that the plaintiff is only restricting her claim to 1/4th of the share even in the first item of the suit schedule property. That would mean she would be entitled only to 1/4th of the rental income from item No.1 of the suit schedule property. It is also to be noted that the 10th



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defendant in his affidavit has averred that the 4th defendant is in possession of the car park and an area measuring about 300 sq ft., in the building. The said statement had not been controverted to by the 4th defendant.

16. In view of the aforesaid facts, I am of the view that the plaintiff is enjoying the rental income from item No.1 of the suit schedule property in its entirety while according to her she is only entitled to 1/4th share of the property. This is detrimental to the interest of the admitted share holders to the property. The payment of the rental amount has also not been controverted to by the plaintiff. In view of the specific uncontroverted affidavit of the 10th defendant giving detailed accounts of payments of his rent from the date he took possession of the property, there is no necessity to direct either 10th defendant or the plaintiff to produce the accounts in respect of the demised portion in item No.1 of the suit schedule property, but however considering the fact that the plaintiff has been enjoying the entire rent detrimental to the interest of the defendants 1 to 3, I direct the 10th defendant to deposit the monthly rents to the account of the suit. This order is also necessitated



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for the reason that the 4th defendant is also in an occupation of a portion of the property and he is also enjoying the car parks for which he would be liable to pay for the damages for the use and occupation of the property, since he had not claimed any title or interest in item No.1 of the suit schedule property. If the damages is quantified and the same could be deducted from the share of the 1st defendant as she is the wife of 4th defendant.

17.In fine, Applications in A.No.3400, 3402, 5537 & 5538 of 2022 and 821 of 2023 are dismissed and A.No.3403 of 2022 is allowed by directing the 10th defendant to deposit the monthly rent from the month of July 2023 to the credit of the Suit. However no order as to costs.

10.07.2023

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Index :Yes/No

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Pre-delivery Judgment in

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