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**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

**Application No. 6078 of 2023
and
O.A. No. 1078 of 2023
and
T.O.S. No. 39 of 2023**

C.V.KARTHIKEYAN, J.

Both these applications have been filed by the plaintiff in a T.O.S. No. 39 of 2023 seeking appointment of a Receiver for the suit schedule properties with power to take control of the property and to render accounts and for a direction against the first respondent to render statement of rental income from August 2022 and to deposit such accrued rental income from the suit schedule properties to the credit of T.O.S. No. 39 of 2023.

2. It must be stated that originally O.P. No. 771 of 2022 had been filed by the petitioner, who is now termed plaintiff, seeking probate of a Will dated 22.03.2022 executed by A.Venkataraman, who died as a bachelor on 23.08.2022. The petitioner, viz., Hema Srinivasan and the three respondents, viz., A.Subramaniyan, A.Susheela and Padmini Rajaram, are all brother and sisters of the Testator, A.Venkataraman.



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

They are all sons and daughters of K.Arunachalam, who died intestate on 28.09.1972. He had purchased land measuring 2 grounds and 60 sq.ft. in Old No. 20, New No. 22, Porur Somasundara Mudali Street, T.Nagar, Chennai – 600017 by a sale deed dated 09.04.1947 registered as Document No. 253 of 1947 in the office of the Sub-Registrar, T.Nagar. He had also put up a construction in that land. Out of the total area of 4860 sq.ft., K.Arunachalam had sold 1640 sq.ft. to one Thangammal by a sale deed dated 02.06.1969 registered as Document No. 753 of 1969 in the office of the Sub-Registrar, T.Nagar and he retained 3220 sq.ft. of land. The said K.Arunachalam died intestate on 28.09.1972 leaving behind his wife A.Bhagyalakshmi and his sons and daughters, A.Venkataraman, Hema Srinivasan, A.Subramaniyan, A.Susheela and Padmini Rajaram as Class-I legal heirs. Subsequently, three of the legal heirs, viz., Padmini Rajaram, Hema Srinivasan and A.Susheela, who are the third respondent and petitioner and second respondent in the Original Petition had executed a release deed with respect to their undivided share by a document dated 18.08.1984 registered as document No. 800 of 1986 in the office of the Sub-Registrar, T.Nagar in favour of their mother



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

WEB COPY

A.Bhagyalakshmi and their brother A.Venkataraman and another brother A.Subramaniyan, the first respondent herein. Thereafter, it is contended that a deed of partition was entered into on 19.04.2006 registered as document No. 986 of 2006 in the office of the Sub-Registrar, T.Nagar among A.Bhagyalakshmi, A.Venkataraman, A.Subramaniyan. Subsequent to the partition, vacant land measuring 1620 sq.ft. in the said property was allotted to the share of deceased A.Venkataraman and the balance land of 1600 sq.ft. was allotted to A.Subramaniyan.

3. It is stated that A.Venkataraman had constructed an independent house in the year 2009 in the land measuring 1620 sq.ft. He had built-up a ground floor, a first floor and also a second floor. It is contended that such construction was put up out of his own money. He died on 23.08.2022 as a bachelor. It is stated that at the time of his death, there were no other Class-I legal heir and the petitioner and the respondents are the Class-II legal heirs. It is stated that his mother died subsequently on 22.09.2022. It is stated that he had executed a Will, probate of which was sought in the petition in O.P. No. 771 of 2022. It is therefore stated that the petitioner herein had been named as Executor



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

WEB COPY

and beneficiary under the Will. It is under those circumstances, the petition seeking probate had been filed.

4. Since caveat had been entered into in Caveat No. 6673 of 2022, O.P. No. 771 of 2022 had been converted into a Testamentary and Original Suit in T.O.S. No. 39 of 2023. The petitioner was categorized as plaintiff and three respondents were categorized as defendants in the suit. The said T.O.S. No. 39 of 2023 is pending. In the said T.O.S. No. 39 of 2023, the plaintiff had filed the present two applications seeking, as stated above, appointment of a Receiver to manage the properties, and to collect the rents, and for a direction against the first defendant, A.Subramaniyan to render accounts for collection of rents from August 2022 till date.

5. In the affidavit filed in support of the applications, it had been stated there are three tenants in the suit schedule properties and that the second defendant had also shifted her residence to one portion of that property. It had also been alleged that there were attempts to remove the movables from the suit schedule properties, which necessitated issuance of a legal notice. It is also stated that the rents are being collected by the



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

WEB COPY

first defendant or by the second defendant and therefore, since the plaintiff is put to disadvantage owing to not being able to enjoy even a fraction of the rent, it is only required that an Administrator is appointed to manage the property, to collect the rent and to pay out statutory dues and to maintain accounts.

6. It is also contended that the first defendant is collecting the rents, therefore, the application has been filed seeking direction against him to render the accounts. It had been contended in the affidavit that the monthly rent is about 28,000/- from the ground-floor, Rs. 15,000/- from the first-floor, studio house, and Rs. 15,000/- from the second-floor, bedroom house. It is contended that the total rental amount of Rs. 58,000/- is collected by the defendants to the disadvantage of the plaintiff. It is also stated that notional rental value for the ground floor would be about Rs.30,000/- and it is therefore contended that the defendants are enjoying a total sum of Rs. 88,000/- every month. The plaintiff is put up to loss owing to not being able to enjoy that particular rental income. It is also pointed out that the plaintiff has a right to have the rental amount consequent to the fact that the deceased A.Venkataraman, had executed a



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

WEB COPY

Will dated 22.03.2022 bequeathing the entire property to her and therefore, it is stated that she has every right to seek appointment of Receiver so that the defendants are not put to any disadvantage and also to maintain accounts and a direction to maintain accounts. It is under those circumstances, these two applications have been filed.

7. A common counter affidavit has been filed by the first defendant, A.Subramaniyan on his behalf and also on behalf of all the other defendants. It had been contended that A.Venkataraman had actually died intestate. The execution of the Will was disputed. It is stated that since according to them, he died intestate, on his death, his mother was the only surviving Class-I legal heir, as he had died a bachelor. She survived him and died later in September 2022. It is stated that on her death, the plaintiff and the three defendants inherited the property in equal shares. It is therefore contended that the second defendant is in lawful possession of the property. It is contended that the rents are being collected as they have got permission to collect the rents and it is held out that accounts would be submitted as directed by this Court. It is also contended from and out of the amounts collected, the



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

WEB COPY

property tax and other statutory dues are being paid by the defendants.

8. It has been very specifically stated that the plaintiff cannot claim any exclusive right over movable or immovable properties of A.Venkataraman. It is stated that the second defendant had moved into the said property, after the death of her husband, and she had been staying there even during the life time of A.Venkataraman. It had been stated that no ground had been made out for appointment of a Receiver, particularly, as the property is not put to waste and there is no danger of the property being put to waste. It had been held out that the books, which had been mentioned in the affidavit of the plaintiff, would not be touched and the property would be maintained till the disposal of the suit and that proper accounts would be rendered for the rents collected.

9. A rejoinder has been filed on behalf of the plaintiff with respect to the averments made in the counter affidavit. It had been stated that the second defendant had been permitted to reside at the request of the first defendant. It had been stated that the first defendant had removed all the movables in the first-floor portion of the suit schedule property. It had also been stated that the first-floor portion is rented out



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

to the third parties.

10. It had been denied that the first and the second defendants were alone taking care of A.Venkataraman. It had been stated that even the plaintiff was providing for him. It had also been stated that the Testator has been providing a supplementary stipend to his sister of Rs. 10,000/- every month. It had been stated that contrary statements had been made in the counter-affidavit as to who actually was collecting the rent, whether it is the first defendant or the second defendant.

11. It had been stated that the Testator, A.Venkataraman was the sole owner of the property and therefore, had every right to execute the Will and had executed the Will and the Will is the subject matter of the Testamentary and Original Suit. It is again reiterated that there are various movables in the property and there is every danger of them being utilized or wasted away to the disadvantage of the plaintiff and therefore, it is contended that the appointment of the Receiver is absolutely essential to administer and maintain the property.

12. Heard arguments advanced by Mr. Shiva Kumar, learned counsel for the plaintiff and Mrs. Chitra Sampath, learned Senior Counsel



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

appearing on behalf of the defendants.

13. It is the contention of Mr.Shiva Kumar that the Testator, A.Venkataraman, brother of the plaintiff, had died as a bachelor and had executed a Will dated 22.03.2022. He had died on 23.08.2022. He had bequeathed the property to which he was entitled situated at Old No. 20, New No. 22, Porur Somasundara Mudali Street, T.Nagar, Chennai – 600017 to and in favour of the plaintiff, his own sister. It is also contended that there are certain movable items also mentioned in the Will. To prove the Will in proper form, an Original Petition had been filed in O.P. No. 771 of 2022 seeking probate of the said Will. Since the defendants had entered caveat, the Original Petition had been converted into a Testamentary and Original Suit. It is contended that the plaintiff is not residing in the suit schedule property. It is contended that the second defendant had moved into the ground floor portion of the property since she lost her husband and she was permitted to collect the rents. However, it is also contended that the first defendant is collecting the rent from the first-floor portion and also from the second floor portion, which rental income amounts to Rs. 58,000/-.



WEB COPY



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

14. The learned counsel pointed out the counter-affidavit, wherein, in one portion, it is stated that the first respondent is collecting the rent and in another portion, it is stated that second defendant is collecting the rent. At any rate, it is contended that it is the defendants, who are collecting the rent and the plaintiff is not paid even a small share of the rental income, which is being collected. Even the accounts are not being produced before the Court. It is stated that there was an attempt to move the books away from the house, which necessitated issuance of a legal notice. It is contended that arguments advanced relating to the veracity of the Will would be the subject matter of the suit and therefore, the same cannot be taken into consideration at this juncture by the Court.

15. The learned counsel stated that since there is a danger to the property being wasted and there is also a danger that the rental amounts may be utilized to the disadvantage of the plaintiff, and it is only appropriate that a Receiver is appointed to collect the rents and manage the property.

16. The learned counsel placed reliance under Section 247 of



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

WEB COPY

Indian Succession Act, 1925, which provides for appointment of an Administrator pending examination of a Testamentary and Original Suit or of probate and Letters of Administration.

17. The learned counsel therefore stated that in the circumstances stated that it is only appropriate that an administrator is appointed to collect the rents and render accounts before the Court.

18. Learned Senior Counsel, Mrs. Chitra Sampath appearing on behalf of the defendants however pointed out the circumstances surrounding the execution of Will and also the Will as a document in itself and stated that there are suspicious circumstances surrounding the said document.

19. Let me not enter into any discussion on the same since the Will has to be proved in the manner known to law and adequate opportunity will be given to prove the will and at the same time, opportunity will also be given to the defendants to put forth their submissions relating the circumstances surrounding the execution of the Will.

20. Learned Senior Counsel contended that the defendants are



Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023

WEB COPY

in lawful possession. It is the contention of the defendants that A.Venkataraman died intestate and that on his death, his only surviving Class-I legal heir was his mother A.Bhagyalakshmi and on her death, all the children, viz., the plaintiff and the defendants had inherited an equal undivided 1/4th share in the property with right to enjoy the same.

21. The learned Senior Counsel also contended that the pleadings are not sufficient for appointment of a Receiver and stated that unless the estate is a large estate with many Creditors and Debtors, from whom, amounts will have to be received and to whom amounts will have to be paid, appointment of a Receiver is not generally encouraged. It is also contended that the property will also not go to waste and an assurance is held out that the property would be maintained pending disposal of the Testamentary and Original Suit. The learned Senior Counsel also stated that accounts would also be produced.

22. One judgment, which lays down circumstances for appointment of a Receiver is ***T.Krishnaswamy Chetty -vs- C.Thangavelu Chetty*** [AIR 1955 Madras 430], wherein a learned Single Judge of this Court had, in paragraph No. 17 given out various situations



Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023

under which a Receiver could be appointed for an estate. Paragraph 17 is extracted in entirety:-

“17. *The five principles which can be described as the ‘panch sadachar’ of our Courts exercising equity jurisdiction in appointing receivers are as follows:*

(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding: — ‘Mathusri v. Mathusri,’ 19 Mad 120 (PC) (Z5); — ‘Sivagnanathammal v. Arunachallam Pillai’, 21 Mad LJ 821 (Z6); — ‘Habibullah v. Abtiakallah’, AIR 1918 Cal 882 (Z7); — ‘Tirath Singh v. Shromani Gurudvvara Prabandhak Committee’, AIR 1931 Lah 688 (Z8); — ‘Ghanasham v. Moraba’, 18 Bom 474 (Z9); — ‘Jagat Tarini Dasi v. Nabagopal Chaki’, 34 Cal 305 (Z10); — ‘Sivaji Raja Sahib v. Aiswariyanandaji’, AIR



Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023

WEB COPY

1915 Mad 926 (Z11); — **'Prasanno Moyi Devi v. Beni Madhab Rai'**, 5 All 556 (Z12); — **'Sidheswari Dabi v. Abhayeswari Dabi'**, 15 Cal 818 (Z13); — **'Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das'**, AIR 1925 Lah 349 (Z14); — **'Bhupendra Nath v. Manohar Mukerjee'**, AIR 1924 Cal 456 (Z15).

(2) *The Court should not appoint a receiver except upon proof by the plaintiff that prima facie; he has very excellent chance of succeeding in the S. suit.* — **'Dhumi v. Nawab Sajjad Ali Khan'**, AIR 1923 Lah 623 (Z16); — **'Firm of Raghubir Singh Jaswant v. Narinjan Singh'**, AIR 1923 Lah 48 (Z17); — **'Siaram Das v. Mohabir Das'**, 27 Cal 279 (Z18); — **'Muhammad Kasim v. Nagaraja Moopanar'**, AIR 1928 Mad 813 (Z19); — **'Banwarilal Chowdhury v. Motilal'**, AIR 1922 Pat 493 (Z20).

(3) *Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important*



Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023

WEB COPY

consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. — ‘Manghanmal Tarachand v. Mikanbai’, AIR 1933 Sind 231 (Z21); — ‘Bidurramji v. Keshoramji’, AIR 1939 Oudh 61 (Z22); — ‘Sheoambar Ban v. Mohan Ban’, AIR 1941 Oudh 328 (Z23).

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a ‘de facto’ possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be ‘in medio’, that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can



Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023

WEB COPY

be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver. — 'Nilambar Das v. Mabal Behari', AIR 1927 Pat 220 (Z24); — 'Alkama Bibi v. Syed Istak Hussain', AIR 1925 Cal 970 (Z25); — 'Mathuria Debya v. Shibdayal Singh', 14 Cal WN 252 (Z26); — 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be appointed in supersession of a bone fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.

(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc."

23. The learned Senior Counsel pointed out that sound judicial



Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023

discretion will have to be exercised before appointment of a Receiver and that the plaintiff must show adverse and conflicting claims to the property and that the plaintiff must establish that he has an excellent chance of succeeding in the suit. A Receiver will not be appointed when it has the effect of depriving a defendants of 'de facto' possession. The conduct of parties will have to be examined before taking a decision for appointment of a Receiver. It was finally contended that the applications must be advanced

24. I carefully given my anxious consideration for the arguments advanced and perused the materials placed on record.

25. With respect to the appointment of an Administrator pending testamentary proceedings, the provision of law is Section 247 of the Indian Succession Act, 1925, which is as follows:-

“247. Administration pendente lite.—Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than



Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023

WEB COPY

*the right of distributing such estate, and every suet.
administrator shall be subject to the immediate control of
the Court and shall act under its direction.”*

26. Both these applications have been filed seeking appointment of a Receiver to administer the property which is the subject matter of T.O.S. No. 39 of 2023. The fact that the property originally belonged to A.Venkataraman is not in dispute. He died a bachelor on 23.08.2022. It is the case of the plaintiff that he had executed a Will on 22.03.2022. It is the case of the defendants that there are various circumstances surrounding the execution of the Will, which requires further examination during the course of trial. At any rate, he left behind property at Old No. 20, New No. 22, Porur Somasundara Mudali Street, T.Nagar, Chennai – 600017. He had put up ground floor, first floor and second floor in the said property. The plaintiff is one of the sisters and first and second and third defendants are brother and two other sisters. The first defendant is residing in the adjacent portion. The second defendant is residing in the ground floor of the suit schedule property. She had moved there on permission being granted after the death of her



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

husband. At that time, the mother was also alive. But after the death of A.Venkataraman, the mother subsequently died on 22.09.2022.

27. The case of the plaintiff is that the plaintiff succeeded to the estate consequent to a Will executed by A.Venkataraman. The case of the defendant is that the said A.Venkataraman died intestate and on his death, his property devolved on the only surviving Class-I legal heir, his mother, and on the death of the mother, who died intestate the property devolved on all her four children, viz., the plaintiff and three defendants. The relationship among the parties are not in dispute.

28. The only aspect is enjoyment of the property. The plaintiff is not in enjoyment. The plaintiff is not in possession. The plaintiff is not able to collect the rents. An attempt was made by the son of the plaintiff calling upon the tenants to pay the rents to him but that attempt did not fructify.

29. There is a dispute as to whether the first defendant is collecting the rents or the second defendant is collecting the rents.

30. The fact is that the property is now under the occupation of the second defendant in the ground-floor and from the first-floor, from



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

WEB COPY

two separate tenants and from the tenants in the second-floor rents are collected and the total rent which is collected comes to Rs. 58,000/-.

There is no specific denial about that particular amount by the defendants. There is also no specific statement made by the defendants that from the rents collected, the plaintiff had been given her share. There is also no specific statement given by the defendants that from the amounts so collected and the amounts, which are retained, after the spending towards taxes and other aspects, the balance is being retained in liquid form. There is also no statement made that a separate account would be opened exclusively for the deposit of the rental income and expenses being met out from the rental income. However, the amounts are being utilized towards medical expenses of the second defendant.

31. The learned Senior Counsel appearing on behalf of the defendants asserted that the second defendant is collecting the rents. But in the counter-affidavit filed by the first defendant, he had alternatively stated that he is collecting the rent and the second defendant is also collecting the rent. At any rate, even if the extreme case is to be taken into consideration, the plaintiff is entitled to have her share in the



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

WEB COPY

property and the defendants also claim that they have a right in the property, over looking the Will said to have been executed by A.Venkataraman. The same right which the defendants today claim, over looking the Will claiming that as children of their mother, they are entitled to an undivided 1/4th share each would also equally apply to the plaintiff, who is also entitled to an undivided 1/4th share. However, such share, atleast of the rental income had not been voluntarily given by any of the defendants to the plaintiff.

32. It is contended that in one of the documents, the second defendant was permitted to collect the rent. Permission might have been granted since the second defendant was in physical possession of the property and therefore, it would be easy for the said defendant to collect the rent from the first-floor and the second-floor occupants/ tenants. But that would not indicate permission had also been given not to render accounts for the rental amounts so collected and not account for the balance amount, which remains after deducting necessary expenses. Even along with the counter-affidavit, the statement of accounts have not been



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

filed. Mere expression that the defendants are prepared to file statement of accounts will not be sufficient. They should have shown bonafide by producing the statement of accounts atleast from August 2022 with respect to how they have utilized the 1/4th share, which according to them would fall to the share of the plaintiff. There is no explanation given. There cannot be any presumption that the 1/4th share could be retained till whenever the Testamentary and Original Suit is disposed of. It would take years to be decided. Till such time, it would not be proper to expect the plaintiff to remain in a disadvantageous position without enjoying the rents. It is therefore only appropriate that the defendants deposit into the Court atleast the share of the plaintiff from August, 2022. Had they maintained accounts, then they would now know what is the share of the plaintiff.

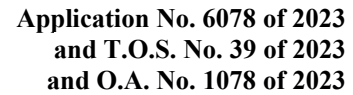
33. Let me not enter into any discussion about the validity of the Will, since that would have to be examined only during the course of trial. But taking into consideration the least and minimum share of the plaintiff, she is today entitled to definitely an undivided 1/4th share. She



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

WEB COPY

has been denied that particular share from August 2022 when A.Venkataraman died. This would certainly not indicate that the Court has placed its stamp of approval on the case of the defendants that there is no Will executed by A.Venkataraman. If the plaintiff proves the execution of the Will in the manner known to law then, the plaintiff's right over the property would become absolute. But the defendants are under an obligation to deposit 1/4th share of the rental amounts. This would necessitate producing statements of accounts giving details about the medical expenses incurred and taxes paid and the amount retained towards maintenance of the building and expenses incurred towards such maintenance. No accounts had been produced by the defendants. There is no reason given as to why they have refused to produce the accounts. It is only stated that the second defendant had been permitted to collect the rent. That permission does not give a right to enjoy the rent to the disadvantage of the plaintiff. The first defendant is the brother of the plaintiff. He had filed the counter affidavit and he had stated in one paragraph that he is collecting the rent and in another paragraph, the



34. Let me not enter into that controversy, but take into consideration the statement made by the learned Senior Counsel that it is the second defendant who is actually collecting the rents. Then the second defendant is under obligation to provide accounts for the rental income collected from August 2022 onwards. Let that statement be first filed in the Court. Once that is filed, then the share which is to be paid to the plaintiff, could be determined. That amount, if deposited in the Court, could be withdrawn by the plaintiff.

35. The issue could have been much simpler, if the defendants had forwarded the 1/4th undivided share to the plaintiff or had deposited the rents in a separate bank account and acted in a transparent manner. But for some reason, there seems to be extreme hostility between defendants and the plaintiff.

36. I would not appoint any Receiver for the property, but put the burden on the second defendant to collect the rent, account for the same and deposit from the month of August 2024 onwards, the share of the plaintiff month after month into the court. The accounts has to be



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

produced from August 2022 till July 2024 and the amount which had accrued to the share of the plaintiff which is $\frac{1}{4}$ th share, again without expressing any opinion on the veracity of the Will, should be deposited in the Court, and the plaintiff is at liberty to withdraw the same.

37. The accounts from August 2022 till July 2024 to be submitted within a period of three(3) from weeks this date and according to the said accounts, the amounts which they accrued to the share of the plaintiff ($\frac{1}{4}$) to be deposited into the Court. The plaintiff has every right to withdraw the same. From the month of August 2024 onwards, every month, statement would have to be presented before this Court and simultaneously, while filing the statement the amount payable to the plaintiff, after defraying the expenses must also be deposited. The plaintiff is at liberty to withdraw the same. This arrangement is to continue till the disposal of the suit.

38. The defendants could have avoided this arrangement and could have been more transparent in admitting the actual rent received and the actual amounts expended towards medical expenses of the second defendant and towards the taxes. Having taken an opaque stand,



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

they have to suffer this order.

39. For reporting compliance, list on 23.08.2024 by which date, the statements as aforementioned should be filed in Court and the share of the plaintiff for the rent should be deposited in the Court.

40. List on 23.08.2024.

30.07.2024

Maya



WEB COPY



**Application No. 6078 of 2023
and T.O.S. No. 39 of 2023
and O.A. No. 1078 of 2023**

C.V.KARTHIKEYAN,J.

Maya

**Application No. 6078 of 2023
and O.A. No. 1078 of 2023
and T.O.S. No. 39 of 2023**

Dated : 30.07.2024