



WEB COPY

A.No.54 of 2020 in
C.S.No.504 of 2018

R.N.MANJULA,J.

On 13.09.2023, this Court has passed the following order:

"When the matter is taken up today, the learned Advocate Commissioner is present and the learned counsel for both sides have made an unanimous suggestion that the theatre which is in the midst of the suit property should be demolished in order to allot the properties in accordance with the mode suggested by the Commissioner as seen in page No. 37 of his report.

2. The sixth defendant's suggestion to allot some other portion which is meant as the portion allotted to the first defendant was not agreeable to the plaintiffs. Hence the property can be divided by metes and bounds only if the construction that is standing in the schedule mentioned property is demolished. In order to enable the same, the learned Advocate Commissioner is permitted to get the demolition order and do the needful. The expenses towards getting an order of demolition and connected expenses should be borne by the parties among themselves in accordance with their respective shares.

3. At this juncture, the learned counsel for the fifth defendant submitted that the lessee to whom the theatre was leased out, has not vacated the premises though he is not running the theatre as of today.



4. Since the lessee is said to be in possession he should also be informed about the demolition before it is carried out.

5. For the appearance of the seventh respondent in A.No.54 and 55 of 2022 in C.S.No.504 of 2018, the matter is ordered to be listed on 19.09.2023."

2. When the matter is taken up today, the 7th respondent in A.No.54 of 2020 is not present. A.No.54 of 2020 has been filed to direct the respondents 2 to 4 and 7 to deposit a sum of Rs.74,000/- each month into Court to the credit of the above suit, being the applicants share of rental income from the suit 'A' Schedule property.

3. In the order dated 13.09.2023, the parties to the partition have suggested to demolish 'A' schedule property which is a Theatre and divide the property according to the modality suggested by the learned Advocate Commissioner. The problem in carrying out the said suggestion is the existence of the tenancy in favour of the 7th respondent. The 7th respondent is said to be occupying the property even though it is not utilised. In view of the same, this application has been filed seeking direction to deposit the rent of Rs.74,000/- into Court.



4. It is alleged by the applicants / plaintiffs that the rent is being collected by the respondents 2 to 4 and hence they have also been arrayed as the parties in the above application.

5. The learned counsel for the respondents 2 to 4 deny the fact that the rent is being received by the respondents 2 to 4.

6. Despite the 7th respondent has received the notice, he did not make his appearance before this Court. It is submitted by the learned counsels for both sides that the 7th respondent made his appearance before the Mediation during the earlier hearing and accepted to vacate the suit property by receiving the advance amount. The property in 'A' schedule can be demolished only after the 7th respondent is vacated from the suit property and his advance amount is paid. Even if the 7th respondent accepted to vacate the property as submitted by the learned counsel for both sides, his advance amount has to be settled before any further action is taken in respect of 'A' schedule property. The 7th respondent cannot dilate the time without depositing the rent, despite he keeps the possession of the Theatre with him. In such circumstances, I



feel it is appropriate to pass an order against the 7th respondent to deposit the rent into Court.

7. Even though the learned counsel for the applicants has submitted that the respondents 2 to 4 had been receiving the rent so far, it is submitted by the learned counsel for the respondents 2 to 4 that the 7th respondent has not paid any rent to them. In such circumstances, it is appropriate to allow the application in A.No.54 of 2020 to extent of directing the 7th respondent to pay the rent before the Court.

8. In the result, the application in A.No.54 of 2020 is allowed and the 7th respondent is directed to deposit the rent of Rs.74,000/- into Court to the credit of the above suit for each month without fail.

19.09.2023

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