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C.M.A.No.696 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.696 of 2021

- 1.P.Shanthi
- 2.P.Vinothkumar
- 3.P.Jagannathan
- 4.V.Hemalatha

.. Appellants

Versus

1. K.Vijaya
2. R.Narayanan @ Rose
3. Usha
4. Sasikala
5. P.Vennila
6. P.Thiyagu
7. P.Jayakumar
8. P.Jayabharathi
9. P.Jayashri
10. P.Varun

[Respondents 9 And 10 are minors represented
by their mother and natural Guardian Mrs.P.Vennila.]

11. C.Ravi
12. G.M.Raveendiran
13. Uma
14. Minor Jashwant
15. Minor Samyuktha

... Respondents

[R13, W/o. Late. Mahesh and R14 & R15 are
represented by their mother and natural Guardian Mrs. Uma.]

Civil Miscellaneous Appeal filed under Order XLI Rule 1 of Civil

<https://www.mhc.tn.gov.in/judis>



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Procedure Code, 1908, to set aside the fair and decreetal order dated 20.01.2021 in I.A.No.68 of 2014 in O.S.No.63 of 2014 on the file of the IV-Additional District Court, Tiruvallur, at Ponneri.

For Appellants : Mr. Ravikumar Paul, Senior Counsel,
for M/s. Paul & Paul.

For Respondents : Mr. K. S. Gnanasambandan, (for R1)
for Mr. T. Dilip Chandar.

: No Appearance (for R2 to R10)

: Notice dispensed with. (for R11 & R13 to R15)

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the fair and decreetal order dated 20.01.2021 passed in I.A.No.68 of 2014 in O.S. No. 63 of 2014 by the learned IV-Additional District Judge, Tiruvallur at Ponneri.

2. The first respondent herein is the plaintiff in O.S.No.63 of 2014. The appellants are the defendants 4 to 7 and the respondents 2 to 12 are the defendants 1 to 3 & 8 to 15 in the suit. The respondents 13 to 15 are newly impleaded parties.

3. The brief facts of the case is that the first respondent herein is the plaintiff in O.S. No.63 of 2014. The rest of the appellants and the respondents



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are the defendants in the suit. The suit in O.S. No.63 of 2014 was filed by the first respondent/plaintiff, for declaration and other consequential reliefs. Pending suit, an interlocutory application in I.A. No.68 of 2014 was filed by the plaintiff seeking to appoint an Advocate Receiver and directing him to manage the suit schedule mentioned properties and to collect rents from the tenants as *mense* profit and deposit the same before the Court as *custodia legis* till the final decree is passed. The Trial Court allowed the petition, by appointing an Advocate as a Receiver to manage and collect the rents and deposit the same before the trial Court till the disposal of the suit. Aggrieved by the same, the appellants/defendants 4 to 7 have filed the present appeal before this Court.

4. Since the respondents 13 to 15 are not agitating their case, notice to the unserved respondents 13 to 15 is hereby dispensed with.

5. The learned Senior Counsel for the appellants would submit that the first respondent/plaintiff is claiming 1/5th share in the suit scheduled properties. Unless the plaintiff succeed in the suit, the plaintiff is not entitled to the revenue generated through the suit properties. The order passed by the trial Court appointing Receiver to manage the suit scheduled properties will



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adversely affect the right of the defendants/appellants. In any event, even if the suit is decreed, the plaintiff can get only 1/5th of share in the suit properties.

While so, appointing an Advocate Receiver to maintain the entire property and to collect the rent wholly is legally not sustainable. The learned Senior counsel for the appellants-defendants 4 to 7 further submitted that unless the trial is completed, the relief of appointing an advocate Receiver ought not to have been considered by the trial Court. He therefore prayed this Court to set aside the order passed by the trial Court by allowing this Civil Miscellaneous Appeal.

6. Per contra, the learned counsel appearing for the first respondent/plaintiff would submit that there are more than 15 items of the properties, including the plaintiff's claiming 1/5th share in the suit scheduled properties. The rent received from those properties are enjoyed by the appellants-defendants as a whole, without giving any share to the first respondent-plaintiff. The trial in the suit may take longer time and if the appellants are permitted to receive the rent till a final decree is passed, the first respondent/plaintiff will find it difficult to recover the *mense* profit by way of rent and that may be collected by the appellants/defendants till the final disposal of the suit. Therefore, the trial Court is right in appointing the



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Advocate Receiver. The first respondent-plaintiff or the defendants can get back the amount from the Advocate Receiver depending upon the outcome of the suit. As on date, the defendants-appellants are in receipt of more than Rs.5 lakhs as *mense* profits and if it is managed by an Advocate Receiver, till the disposal of the suit, no prejudice will be caused to them. On the other hand, if the entire amount received towards *mense* profits are spent by the appellants-defendants, nothing will be available to the first respondent/plaintiff and in such event, the first respondent-plaintiff will be highly prejudiced. Therefore, in order to strike a balance, the trial Court has rightly appointed the Receiver over which interference of this Court is not warranted.

7. Heard learned Senior counsel for the appellants and the learned counsel appearing for the respondents and perused the materials available on record.

8. The first respondent/plaintiff is the daughter of one Dabbu Radhakrishnan Naidu @ Radha Naidu. The appellants and first respondent are the legal heirs of the said Dabbu Radha Naidu. The first respondent/plaintiff, as one of the legal heirs is claiming 1/5th of share in the suit schedule properties. According to the first respondent/plaintiff, she is also having a



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right to claim 1/5th share in the plaint described properties and she cannot be deprived of the *mense* profits till the disposal of the suit. Therefore, she has filed the suit for partition and separate possession. Pending suit, at the instant of first respondent/plaintiff an advocate Receiver was appointed by taking note of the fact that the appellants are in receipt of more than Rs.5 Lakhs towards *mense* profit. It is to be noted that for completion of the suit proceedings, it will take considerable time. Therefore, the trial court, in order to find a just solution with respect to the sharing of *mense* profit, till the conclusion of the suit proceedings, has appointed an Advocate Commissioner to manage and receive the rent and to deposit it before the trial Court. This Court does not find any reason to such a course adopted by the trial Court. At the same time, directing the Advocate Receiver to deposit the entire amount received by way of rent into the Court is not necessary. Admittedly, even if the plaintiff succeed in the suit, she is entitled to only 1/5th of share and therefore, this Court is inclined to direct the appellants herein to deposit a sum of Rs.30,000/- per month to the credit of O.S. No.63 of 2014 without prejudice their rights and contention before the Trial Court. After disposal of the suit, the Trial Court shall decide the apportionment of the amount deposited by the appellants and pass appropriate orders accordingly. As this Court directs the appellants themselves to deposit Rs.30,000/- per month to the credit of the suit,



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appointment of an Advocate Receiver is unnecessary. Accordingly, the order passed by the trial Court, appointing the Advocate Receiver is hereby set aside.

9. With the above terms, the Civil Miscellaneous Appeal is allowed. No costs.

09.12.2024

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

klt

To

1. The IV-Additional District Court, Thiruvallur @ Ponneri.
2. The Section Officer, V.R. Section, High Court, Madras.



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M.DHANDAPANI, J.,

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