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C.S.No.119 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:14.03.2024

Coram:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Civil Suit No.119 of 2023

R.Raman

.. Plaintiff

/versus/

1.R.Nanthagopal

2.R.lakshmanan

.. Defendants

Prayer: Civil Suit has been filed under Order VII, Rule 1 of C.P.C., read with Order IV, Rule 1 of Original Side Rules, praying to pass a judgment and decree against the defendant:-

(a)granting a decree for partition dividing the schedule mentioned property into three shares in terms of the Will dated 19.12.2011 and allot a separate share as provided under the Will, which is more particularly described in schedule 'B' hereunder to the plaintiff;

(b)to award cost of the suit.

For Plaintiff :Mr.R. Manickavel

For D1 & D2 :Mr.K.Lavan

J U D G M E N T

This Court, by an order dated 15.11.2023, has appointed an Advocate Commissioner and he inspected the suit property and filed a report suggesting the mode of division.



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2. It is suggested in the Advocate Commissioner's report that the parties are not disputing with regard to the share as per the Will and the plaintiff is residing in the entire first floor of the building. The defendants 1 and 2 agreed to take their share together without making any division, so that, there cannot be any division in respect of their shares. Since the plaintiff been residing in the entire first floor, his portion also fall on the shares of the defendants 1 and 2. It is the suggestion of the learned Advocate Commissioner to the effect that if the dividing wall was put up in the portion shown in the plan namely, DEC, the plaintiff can conveniently enjoy the portion of his share and the division can stay forever. It is also pointed out by the learned Advocate Commissioner that, already that portion was divided by pucca concrete wall previously. However, the said wall has been removed for convenient enjoyment of the entire first floor. Hence, it is suggested by the learned Advocate Commissioner that if the wall has been put up, the plaintiff can enjoy his share, as per the Will, as shown in the plan annexed in the report Page No.7.

3. The only grievance of the learned counsel appearing for the



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plaintiff before this Court is that since the building is old, putting up a retaining wall as extra wall may not be feasible. Therefore, according to him, the building should be demolished and sold.

4. The learned counsel appearing for the defendants submits that as far as the share of the defendants shown by the learned Advocate Commissioner, they enjoy their shares together. There is no objection for division of the property as suggested by the learned Advocate Commissioner. Since the entire area which is the subject matter of the dispute is around one ground, wherein the building has been put up. The very intention of the testator allowing all the children living in the same place should be respected.

5. When the building is capable of division, even after allotting the respective shares, this Court is of the view that the intention of the testator has to be respected, though it is the suit for partition, shares and the area have not been disputed by none of the parties. The only dispute raised by the plaintiff is with regard to the erection of the dividing wall in the same place (i.e) in the first floor.



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6. Therefore, this Court is of the view that the contention of the plaintiff cannot be given much importance. This Court can infer why such objection is made by the plaintiff. It is to be noted that the plaintiff is all along in possession of the entire first floor including the portion which is allotable for the defendants. If the dividing wall as suggested by the learned Advocate Commissioner is put up, he may not be in a position to enjoy the entire first floor. That may be the reason for raising objection for putting up the dividing wall.

7. This Court is of the view that such objection cannot be a legal ground. When there was already a pucca concrete wall, which has been removed by the parties, erecting new wall, even without any concrete and also by a new method using less weight materials is nowadays possible to avoid overweight to the existing building.

8. In such view of the matter, a Final Decree is passed in terms of the report of the learned Advocate Commissioner particularly plan annexed in the Commissioner Report. It is made clear that the plaintiff



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shall construct a dividing wall within a period of one month, if the same has not been done by the plaintiff, liberty is granted to the defendants to put up the dividing wall in the same area shown in the plan.

9. As far as the mense profits is concerned, except the small betel shop is running, no other shops let to any other tenants. Further, the area where the betel shop is running also fell in the share of the plaintiff.

10. In such view of the matter that the contention of the defendants that the plaintiff has collected huge rent, has no legs to stand. Further, merely because one of the co-owners was in occupation of small portion of the property, it cannot be said that he has collected any benefit thereon. Hence, this Court is of the view that the defendants are not entitled to collect the rent and damages. However, it is made clear that after passing the final decree still the plaintiff is occupying the portion of the defendants, the plaintiff shall pay damages at the rate of Rs.5000/- per day to the defendants. Both the parties shall deposit Non Judicial Papers of concerned value to the Registry to enable the Registry to engross the final Decree on the Non-Judicial Papers. One month time is granted to



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erect the dividing wall in the first floor and the ground floor. At present, bore well is situated in different portion, the parties are entitled to use the drainage and bore well for a period of six months. Within a period of six months, each of the parties shall apply for the new connection (i.e) water connection, electricity connection, drainage/septic, sump, water-tank from the concerned local authorities. The plaintiff and the defendants shall pay a sum of Rs.50,000/- as additional remuneration to the learned Advocate Commissioner within a period of two weeks from today.

14.03.2024

Index:yes/no
Speaking order:Non speaking order
Neutral citation:yes/no
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N. SATHISH KUMAR,J.

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