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OSA No. 179 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05-03-2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Original Side Appeal No. 179 of 2023

S. Shri Subitha

.. Appellant

Versus

1. Mrs. P. Mariammal
Wife of Late. N. Pitchaimani
B-15, Guhas Apartments
Thiruvalluvar Salai
Thiruvanmiyur
Chennai - 600 041
2. Mr. P. Sakthikumar
Son of Late. N. Pitchaimani
B-15, Guhas Apartments
Thiruvalluvar Salai
Thiruvanmiyur, Chennai - 600 041
3. Mrs. Adhi Lakshmi
Wife of Senthil
Flat No.71, Chaand Towers
L.B. Road, Thiruvanmiyur
Chennai - 600 041
4. Mrs. Vijayalakshmi
Wife of Balaji
Plot No.11, 1st Floor, Natco Colony
Kottivakkam, Thiruvanmiyur
Chennai - 600 041



OSA No. 179 of 2023

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5. Mr. A. Jeyaraman
Son of Alagarasamy
No.169/9, 11th Lane
Indira Nagar, Adyar
Chennai - 600 0209
6. Mr. A. Ganesa Pandiyan
Son of Alagarasamy
1/404, Vembuliamman Koil Street
Kottiwalkam
Chennai - 600 041
7. Mr. S. Alagarasamy
17, Kamaraj Nagar
Opp. BRIL Ink
Thiruvanmiyur
Chennai - 600 041
8. M/s. Ramaniyam Real Estates Private Limited
No.17/35, 2nd Main Road
Gandhi Nagar, Adyar
Chennai - 600 020
9. Jayanthi Jewellers
No.69, L.B. Road
(near Thiruvanmiyur Signal)
Thiruvanmiyur
Chennai - 600 041
10. Amirtha Ice Cream Company
No.69, L.B. Road
(near Thiruvanmiyur Signal)
Thiruvanmiyur
Chennai - 600 041
11. Jai Sports
No.69, L.B. Road
(near Thiruvanmiyur Signal)
Thiruvanmiyur
Chennai - 600 041



OSA No. 179 of 2023

WEB COPY

12. Gajendra Rubber Stamp Works
No.69, L.B. Road
(near Thiruvanmiyur Signal)
Thiruvanmiyur
Chennai - 600 041
13. Mercy Electronics
No.69, L.B. Road
(near Thiruvanmiyur Signal)
Thiruvanmiyur
Chennai - 600 041
14. Sai Ganesh Enterprises
No.69, L.B. Road
(near Thiruvanmiyur Signal)
Thiruvanmiyur
Chennai - 600 041
15. Mr. Muthu Kumar
No.69, L.B. Road
(near Thiruvanmiyur Signal)
Thiruvanmiyur
Chennai - 600 041
16. Konica Silver Color Lab
No.69, L.B. Road
(near Thiruvanmiyur Signal)
Thiruvanmiyur
Chennai - 600 041
17. Darshan Optics
No.69, L.B. Road
(near Thiruvanmiyur Signal)
Thiruvanmiyur
Chennai - 600 041
18. Indus Towers Ltd.,
No.5, ESSPEE IT Park
Jawaharlal Nehru Street



OSA No. 179 of 2023

WEB COPY

(Opp. Jaya TV)
Ekkatuthangal
Chennai - 600 032

19. Tummy Tickle
361, OMR ESCAPADE
Mahda Koil Street
Okkiam Thoraipakkam
Chennai - 600 096
20. CRICKET DROME
361, OMR ESCAPADE
Mahda Koil Street
Okkiam Thoraipakkam
Chennai - 600 096
21. Academy of Indian Music and Arts
361, OMR ESCAPADE
Mahda Koil Street
Okkiam Thoraipakkam
Chennai - 600 096
22. Kriyates Recreation Club
361, OMR ESCAPADE
Mahda Koil Street
Okkiam Thoraipakkam
Chennai - 600 096
23. MAS School
361, OMR ESCAPADE
Mahda Koil Street
Okkiam Thoraipakkam
Chennai - 600 096
24. Karate Training Centre
361, OMR ESCAPADE
Mahda Koil Street
Okkiam Thoraipakkam
Chennai - 600 096



OSA No. 179 of 2023

25. Mr. Ranjith Baba
361, OMR ESCAPADE
Mahda Koil Street
Okkiam Thoraipakkam
Chennai - 600 096

26. RK Centring
5/534, Mahda Koil Street
Vivekananda Nagar
Okkiam Pettai
Thoraipakkam
Old Mahabalipuram Road
Chennai - 600 096

27. Mr. Karupiah
WARD 14, Veerammal Tea Shop
Kodaikanal Main Road
Dindigul District
Pannaikadu - 624 210

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 1 of Madras High Court Original Side Rules read with Clause 15 of Letters Patent against the Order dated 31.07.2023 passed by the learned Judge in Original Application No. 625 of 2023 in Civil Suit No. 682 of 2018.

For Appellant : Mrs. Karthikaa Ashok
for Mr. J. Ashok

For Respondents : Mr. K.V. Babu for RR1 and 2

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J)

The appellant is the plaintiff in CS No. 682 of 2018. Her application in OA No. 625 of 2023 in CS No. 682 of 2018 seeking appointment of an Advocate Receiver to collect the rents from the properties described as suit



schedule properties and to deposit the same together with statement of accounts in the suit, was dismissed by the learned Judge, by order dated 31.07.2023, which has given rise to the filing of this original side appeal.

2. For the purpose of disposal of this appeal, the averments made in the plaint are summarized as follows:

(i) The first defendant in the suit is the mother of the plaintiff and the second defendant is her brother. The defendants 3 and 4 are sisters of the plaintiff. The plaintiff and the defendants 2 to 4 are children born to one N.Pitchaimani since deceased and the first defendant. The 7th defendant is the husband of one of the sisters of the plaintiff. The fifth and sixth defendants are the children of the 7th defendant. The 8th defendant is the Joint Development Agreement Holder, who had entered into an agreement with the deceased Pitchaimani for development of the properties in Thoraipakkam Village. The defendants 9 to 27 are the tenants occupying various portions of the properties owned by the deceased Pitchaimani. The said Pitchaimani / father of the plaintiff and defendants 2 to 4, died intestate on 11.10.2015 leaving behind the plaintiff and defendants 2 to 4 as his legal heirs.

(ii) According to the plaintiff, all the properties described in the suit schedule have been purchased by her father late N.Pitchaimani, out of his own funds. The father of the plaintiff was a real estate baron and by engaging



himself in real estate business, he had purchased various properties in his name which are morefully set out in the suit schedule. It was further stated that her father had either purchased properties on outright basis from the real owners in his name or in the name of his wife, son or daughter. He had also held certain properties as an ostensible owner having Deed of power of attorney in his name executed by various land owners.

(iii) It was the plea of the plaintiff that the suit 'A' Schedule property is one of the properties purchased by her father in his own name. It consists of 19 items and in item No.17, there is a commercial complex named as “Pitchaimani Complex”, in which there are several shops and a lodge named as “Sakthi Guest House”. There are 25 rooms in the guest house. The commercial complex is situated in a bustling locality in Thiruvanmiyur, Chennai. There are 10 occupants in the nine shops and they are occupied by the defendants 9 to 18 in the suit as tenants. The 18th defendant is also having a mobile phone tower over the building. The tenants are paying rent in the range of Rs.20,000/- to Rs.30,000/- . The total rental income derived from the said properties would come around Rs.3,55,000/- per month. Similarly, the defendants 19 to 26 are carrying on business in the properties in Survey Nos. 351, 352, 361, 367, 368, 381, 382 and 385 situated in Okkiam Thoraipakkam Village and each tenant is paying separate amount as rent to the defendants 1 and 2. Though the plaintiff



is not aware of the exact quantum of rent payable by the defendants 19 to 26, the consolidated monthly rent paid by them would be Rs.2,25,000/- per month.

The 27th defendant is also a tenant in respect of Pannaikadu property and he is paying rent of Rs.4,000/- per month. Thus, the total rental amount works out to Rs.37,37,600/- from the above said properties and the plaintiff is entitled for 1/5 share out of it from the date of death of her father namely 11.10.2015. However, after the death of her father, the defendants 1 and 2 are receiving the entire rental income without apportioning it to the other legal heirs namely the plaintiff and the defendants 3 and 4.

(iv) While so, after the death of her father Pitchaimani, the plaintiff had obtained encumbrance certificate of the properties standing in the name of her father and was shocked to note that there are several settlement deeds, including the one on 09.10.2015 executed in the name of the second defendant. Further, there was also a Will dated 29.09.2015 said to have been executed by her father which was registered as document No. 24 of 2015 on the file of Sub Registrar, Neelankarai. The first defendant / mother also executed settlement deeds in favour of the second defendant whereby the plaintiff and the defendants 3 and 4 were deprived of her legitimate share.

(v) It was vehemently contended by the plaintiff that her father was admitted in the Intensive Care Unit of Fortis Malar Hospital, Adyar and was in



OSA No. 179 of 2023

life support from 27.09.2015. During such hospitalisation, he was totally unconscious. He was also in coma stage and subsequently, admitted in Apollo Hospital, Chennai, for further treatment. In spite of treatment given, his health deteriorated and he suffered cardio respiratory arrest on 11.10.2015 and declared as dead at 11.23 pm. Therefore, it was impossible for her father to have executed the settlement deeds on 11.09.2015 in favour of the second defendant/brother. The plaintiff further stated that the second defendant as well as the then Sub Registrar, Neelangarai, Mr. M.G. Dhamu, actively colluded by identifying a witness Arumugam to execute the settlement deeds fraudulently. Further, Dr. S. Radhakrishnan of Coimbatore, who is none else than the father-in-law of the second defendant, has been instrumental in giving a certificate to the effect that the deceased Pitchaimani was in a sound and disposing state of mind and health as on 08.10.2015. When her father was in the verge of death, it was not known as to how such a certificate dated 08.10.2015 could be issued. In any event, based on such certificate, settlement deeds as well as a Will dated 29.09.2015 were made to be executed in favour of the second defendant. The Plaintiff reliably learnt that the settlement deeds as well as the Will have been registered on 09.10.2015 and they were executed by the deceased at No.3/3B, Sivasami Avenue, Dr. M.R.G. Road, Palavakkam, Chennai - 600 041. However, her father never resided in the said address and



the address given in the documents was fictitious. On the contrary, the father of the plaintiff resided in item No.19 of suit 'A' Schedule property namely No.B-15, Guhass Apartments, No.37, Thiruvalluvar Salai, Thiruvannamiyur, Chennai, along with his family members. While so, it is not known as to how the Sub Registrar could have visited the property at Palavakkam, where the settlement deeds and Will could have been registered in the name of the second defendant. When the father of the plaintiff never resided at Palavakkam, it is clear that the settlement deeds and Will have been fabricated and they are ranked forgery.

(vi) The Plaintiff further submitted that since there was a deep rooted conspiracy whereby huge properties earned by her father have been alienated by the second defendant much to her chagrin and to deprive her legitimate share, she has given a complaint dated 30.06.2016 with the Central Crime Branch, Chennai, but the same has not been acted upon. Therefore, the plaintiff filed Crl.OP No. 16584 of 2016, in which, an order dated 08.08.2016 came to be passed and based on the same, a case in Crime No. 374 of 2016 was registered on 29.11.2016. Upon registration of the case, the first defendant obtained anticipatory bail, while the second defendant and others, including the then Sub Registrar, Neelangarai, were arrested and later, released on bail. The plaintiff, upon unearthing various other misdeeds and involvement of several



others in this case, has given further complaints on 18.03.2017, 22.04.2017 and 21.11.2017, which are pending for investigation. After coming out on bail, the second defendant filed Crl.OP No. 35 of 2017 to quash the FIR in Crime No. 374 of 2016, however, he withdrew it.

(vii) The Plaint also proceeds to state that the settlement deeds have been forged and fabricated by the second defendant, whereby, the plaintiff's legitimate share in the properties earned by her father have been snatched away. As one of the legal heirs, the plaintiff is entitled for 1/5th share in the suit schedule properties. Therefore, the present suit came to be filed for the following reliefs:

“(a) a preliminary decree for partition declaring the share of the plaintiff as 1/5th in the suit properties described in Schedule A to J and divide the same by metes and bounds and put the plaintiff in separate possession of her 1/5th share

(b) Directing the defendnats 1 and 2 to pay to the plaintiff a sum of Rs.37,37,600/- towards past profits from 11.10.2015 to 11.06.2018, the date of plaint, being the 1/5th share of the plaintiff

(c) Directing an enquiry in to future profits under Order 20 Rule 12 CPC from 11.06.2018, the date of plaint, till the date of handing over of possession of the properties divided by metes and bounds

(d) Declaring that the Settlement deed dated 09.10.2015 registered as document No. 103 of 2016, SRO, Neelankarai as null and void

(e) Declaring that the Settlement deed dated 26.05.2016 registered as document No. 3825 of 2016, SRO, Neelankarai as null and void

(f) Declaring that the Settlement deed dated 26.05.2016 registered as document No. 4212 of 2016, SRO, Neelankarai as null and void.”

3.(i) On notice, the second defendant filed a written statement in which



inasmuch as several items of the properties described in the suit are situated outside the jurisdiction of this Court. It was also stated that the suit has not been properly valued and the value of the properties have been under-valued to file the suit. According to the second defendant, when the plaintiff is not in possession of any portion of the property, then, the court fee has to be determined on the basis of the market value of the properties as contemplated under Section 37(1) of the Tamil Nadu Court Fee and Valuation Act. Therefore, the second defendant prayed for considering the defence so raised by him as preliminary objection and to try it before taking up the suit for trial.

(ii) Regarding the claim of the plaintiff for partition, it was stated by the second defendant that the suit properties are not standing in the name of the deceased Pitchaimani and therefore, the plaintiff is estopped from seeking the relief of partition. According to the second defendant, his father educated him well and that he pursued his higher education in United Kingdom and after completion of his studies, he fully and actively involved in the real estate business along with his father. In fact, the second defendant is the one who had taken key decisions in relation to investment of amount in various properties. The business run by his father cannot therefore be characterised as a family business by the plaintiff. The second defendant also reiterated that his father had settled certain properties through the settlement deeds dated 09.10.2015



which were duly registered before the competent Sub Registrar. It was further stated that the said settlement deed was executed, while his father was in a sound and disposing state of mind. Above all, the settlement deeds have been executed by his father towards his natural love and affection he had with the second defendant as his son. While so, the plaintiff and her husband Saravanan, who is also a Doctor, has given false complaint to usurp the properties lawfully earned by the second defendant.

(iii) As regards the ailment suffered by the deceased Pitchaimani, the second defendant stated that his father was admitted in the hospital on 27.09.2015, but he was conscious enough to interact with him and to execute the settlement deeds as well. The plaintiff, who has never visited the deceased in the hospital has influenced the officials of the hospital and created false records to make it as if the second defendant had fabricated settlement deeds. The second defendant therefore submitted that the documents in his possession will abundantly prove that the settlement deeds have been executed while the deceased was in a sound and disposing state of mind and the claim of the plaintiff will be disproved during the course of trial. The plaintiff is not entitled for any share in the properties described in the suit. Stating so, the second defendant prayed for dismissal of the suit.



OSA No. 179 of 2023

4. Pending suit, the plaintiff has filed A.No. 7789 of 2018 seeking to appoint an Advocate Receiver or an officer of court as Receiver to take possession of the properties described in Schedule A to J in the plaint and manage the said properties including receipt of income by way of rental or otherwise and deposit such income into court to the credit of the suit and also submit accounts periodically pending disposal of the suit. By order dated 27.03.2019, the learned Judge disposed of the said application by directing the defendants 1 and 2 to file half yearly accounts of rent collection into court. The said order of the learned Judge was also affirmed by this court vide judgment dated 28.11.2019.

5. Thereafter, the plaintiff has taken out an original application in OA No. 625 of 2023 in CS No. 682 of 2018, seeking to appoint an Advocate Receiver to collect the rents from the suit schedule properties and deposit the same with appropriate statement of accounts in the suit. By order dated 31.07.2023, the learned Judge disposed of the said original application, with the following observations:

“5. It is seen that the matter is ripened for trial. When the application filed for seeking the same relief was rejected, it is ideal for the parties to subject themselves for trial and cooperate for early finishing of recording of evidence.”



OSA No. 179 of 2023

Challenging the above said order dated 31.07.2023 passed by the learned Judge, the plaintiff is before this Court with this intra-court appeal.

6.(i) Mrs. Karthikaa Ashok, learned counsel for the appellant submitted that given the fact that the father of the appellant / plaintiff had left behind him a huge extent of land and building, appointment of an Advocate Receiver is necessary for better administration of the rental income. Therefore, the appellant earlier filed Application No. 7789 of 2018 praying for appointment of an Advocate Receiver, which was not considered and the appeal filed against the said order, also ended in dismissal *vide* judgment dated 28.11.2019 in OSA No. 175 of 2019. However, in the order passed in Application No. 7789 of 2018 as well as O.S.A. No. 175 of 2019, in order to protect the interest of the plaintiff, the defendants 1 and 2 were directed to file half yearly accounts of rent collection into court.

(ii) It is further submitted by the learned counsel that the second defendant filed a memo indicating the rental income received. According to the same, a sum of Rs.18,00,000/- to Rs.30,00,000/- has been received as rent from 2019 to 2023. However, this memo is far from truth as it does not take into account several other properties for which rental income is being received by the second defendant. Even assuming that the amount indicated in the



memo is admitted to be true, the rent received in respect of some of the properties could have been accumulated to crores and crores of rupees. The second defendant has not filed any accounts as to how he utilised those properties, whether in the form of investment, deposit etc.

(iii) The learned counsel for the appellant also submitted that the property namely Sakthi Guest House is not maintained properly by the second defendant. The interiors of the property are unclean, the display of the hoardings weakened and the stability of the building is deteriorating. In view of such poor maintenance, the prime property is receiving a meager rent per month, which is much lower than the reasonable market value.

(iv) It is further pointed out by the learned counsel for the appellant that the second defendant has filed false statement of receipts of rents and attempts to grab the share of the plaintiff and other legal heirs of the father. The statement relating to receipts of rental income must be clear as to the receipts, expenses, balance, net profits, investments made, out of the income etc., whereas the memo filed by the second defendant fails to indicate the said details.

(v) The learned counsel for the appellant also invited the attention of this Court to the order dated 04.05.2021 passed by the Tamil Nadu Medical



OSA No. 179 of 2023

Council imposing the punishment of removal of name of Dr. Radhakrishnan, father-in-law of the second defendant. Challenging the order of punishment dated 04.05.2021, Dr. Radhakrishnan filed WP No. 11983 of 2021 and it was dismissed by the writ court on 19.01.2021. The writ appeal No. 517 of 2021 filed against the said order was also dismissed by the Division Bench of this Court on 16.08.2022. Further, the first and second defendants filed CrI.OP Nos. 29269 and 31122 of 2019 to quash the Criminal Proceedings in C.C. No. 169 of 2019 in Crime No. 374 of 2016 on the file of the learned Judicial Magistrate, Alandur. By a common order dated 21.01.2022, this Court, while dismissing the Criminal Original Petitions, directed the learned Judicial Magistrate, Alandur to expedite the trial in C.C. No. 169 of 2019. The learned counsel also invited the attention of this Court to the judgment dated 28.11.2019 passed by the Division Bench of this Court in O.S.A. No. 175 of 2019, pursuant to which the fraudulent settlement deed dated 09.10.2015 and the Will dated 29.09.2015 were cancelled by order dated 23.03.2023 passed by the Registration Department. By virtue of the cancellation of those documents executed in favour of the second defendant, the properties get the status of *intes tate* succession of the deceased and all the legal heirs are entitled for their respective share over the properties described in the suit schedule. It is the apprehension of the appellant that if the second defendant is permitted to



collect rent, he would misappropriate the amount and may not truly and properly disclose the receipt of the rental income. Further, the cancellation of the settlement deed and Will executed in favour of the second defendant, is no longer in force and consequently, the second defendant has no authority to collect the rent in respect of the properties covered in those instruments. Therefore, the appointment of an advocate receiver is essential in the present case so that the interest of the appellant will be protected until the disposal of the suit.

(vi) The learned counsel for the appellant specifically contended that after the judgment dated 28.11.2019 passed by this Court in OSA No. 175 of 2019, the Registration Department through the proceedings in Na.Ka.No.19060/E2/2022 dated 23.03.2023, cancelled the Settlement Deed dated 09.10.2015 and Will dated 29.09.2015 in favour of the second defendant as fraudulent documents. According to the plaintiff, in respect of the properties covered in those instruments, the second defendant has no right to collect rent. Therefore, the appellant is constrained to file the present Original Application No. 625 of 2023 in Civil Suit No. 682 of 2018 for the same relief of appointment of an Advocate Receiver and it is maintainable in view of the change of circumstances existing. Without properly appreciating the same, the



learned Judge has dismissed the application by the order impugned herein, which will have to be set aside.

7. Per contra, Mr. K.V. Babu, learned counsel appearing for the respondents 1 and 2 would submit that the suit was filed in the year 2018. Now, the suit is ripened for trial. Pointing out the same, the learned Judge has rightly dismissed the application for appointment of an advocate receiver. The plaintiff, instead of filing the present appeal, could have participated in the trial and extended her co-operation for completing it. On the other hand, by filing the present appeal, she is dragging on the trial of the proceedings.

8. We have heard the learned counsel for the appellant as well as the counsel for the contesting second respondent and also perused the materials placed.

9. In the suit filed by the appellant / plaintiff, she has set out the details of the properties purchased by her father viz., schedule A - J properties. The suit 'A' Schedule property consists of 19 items, the suit 'B' and 'C' schedule properties contain 20 and 38 items respectively. In suit 'D' Schedule, there are 40 items of properties. The suit 'E' Schedule property consists of 3 items. The



OSA No. 179 of 2023

suit 'F' Schedule property has 2 items. The suit 'G' Schedule property consists of 13 items. The suit 'H' and 'I' schedule properties contain one item each. The suit 'J' schedule consists of 3 items of properties.

10. During the pendency of the suit, the appellant / plaintiff sought for the relief of appointment of an Advocate Receiver to collect the rents from the suit schedule properties and deposit the same with statement of accounts in the suit. The application viz., A.No.7789 of 2018 filed by the appellant in this regard, earlier was not directly considered by the learned Judge. However, in order to protect the interest of the appellant, the defendants 1 and 2 were directed to file half yearly accounts of rent collection into court. The said order of the learned Judge was affirmed by this Court *vide* judgment dated 28.11.2019 passed in O.S.A.No.175 of 2019.

11. Pursuant to the aforesaid Judgment dated 28.11.2019 passed in O.S.A. No. 175 of 2019, the second defendant has filed a memo indicating the rental income received. However, according to the appellant / plaintiff, the memo filed by the second defendant did not contain the correct details of the income received. That apart, based on the order passed by this Court, the settlement deed dated 09.10.2015 and the Will dated 29.09.2015 executed in



OSA No. 179 of 2023

favour of the second defendant were cancelled by order dated 23.03.2023 passed by the Registration Department and therefore, the second defendant can no longer assert any right over those properties. Notwithstanding the same, still, rent is being paid by the tenants to the second defendant unmindful of the order dated 23.03.2023 passed by the Registration Department. Pointing out the said change in circumstances, the appellant has once again taken out the application in Original Application No. 625 of 2023 in Civil Suit No. 682 of 2018 for the same relief of appointment of an Advocate Receiver. However, by the order impugned in this appeal, the learned Judge dismissed the said application on the premise that the matter is ripe for trial.

12. During the course of hearing, the learned counsel for the appellant invited our attention to voluminous typed set of papers containing (i) the medical records of the deceased Pitchaimani; (ii) the various orders passed by this Court in the Writ Petition No. 11983 of 2021 filed by Dr. Radhakrishnan on 19.01.2021, the appeal filed thereagainst in W.A. No. 517 of 2021, the order dated 21.01.2022 passed in Criminal Original Petition No. 29269 of 2019 and the order passed in writ petition No. 15543 of 2023; (iii) statement of accounts filed by the contesting second respondent; (iv) property tax details along with property tax receipts, water tax and charges receipts; and (v) details



OSA No. 179 of 2023

of year-wise rental income received for the periods from 2008 to 2023. These documents have been filed to show that the rental income received by the second defendant have been inflated or it does not reflect the actual rental income received. The counsel for the appellant also submitted that there is no concrete document to show as to how the amount received by the second defendant has been spent, whether in the form of investment, purchase of property etc. Therefore, it is vehemently contended by the counsel for the appellant that when the accounts have not been submitted properly and details of huge amount of rental income received have been withheld by the second defendant without any right, this Court has to appoint an Advocate Receiver to receive the rental income and furnish a correct statement of accounts indicating the rental amount received and the amount spent for maintenance of the vast extent of properties till the disposal of the suit. It is also submitted by the learned counsel for the appellant that if an Advocate Receiver is not appointed, the appellant will be highly prejudiced and if she succeeds in the suit, she will not be in a position to recover the rental income received by the second defendant from the suit schedule properties.

13. We find force in the submissions advanced by the learned counsel for the appellant. Admittedly, there is no dispute with regard to the relationship



between the plaintiff and the second defendant with the deceased Pitchaimani.

The properties mentioned in the suit schedule are of vast extent and the rental income derived from them is also huge. The second defendant has been receiving the rental income of the properties described in the suit schedule, by asserting an exclusive right over the same. He claims his exclusive right on the basis of the Settlement Deed dated 09.10.2015 and Will dated 29.09.2015 said to have been executed by the deceased Pitchaimani in his favour. But, these documents were cancelled by the Registration Department *vide* proceedings in Na.Ka.No.19060/E2/2022 dated 23.03.2023. Therefore, the second defendant is no longer entitled to receive the rent and appropriate it for himself. In such circumstances, there is a reasonable apprehension as projected by the appellant that the properties mentioned in the suit schedule and the income derived therefrom are in danger of being injured, misused or dissipated at the hands of the second defendant.

14. In the given factual scenario, in order to protect the interest of all the parties to the *lis* and to their benefit as a whole, this court deems it fit and appropriate to appoint an Advocate Receiver who is a *custodia legis*, for the purpose of receiving the rental income derived from the properties described in the suit schedule and maintain the same, till the disposal of the suit. Needless



OSA No. 179 of 2023

to mention that such appointment shall be made to safeguard and preserve the properties in dispute, so as to effectively manage the same through the Advocate Receiver.

15. Accordingly, the order dated 31.07.2023 passed by the learned Judge in Original Application No. 625 of 2023 in Civil Suit No. 682 of 2018 is set aside and this Original Side Appeal is disposed of in the following terms:

(i) Mr.K.Prabakar, Advocate, Enrol No.1486/1999 having office at 'Malhothra' House, 2nd Floor, No.294, Thambu Chetty Street, Chennai - 600 001, Mobile No.94441 23430 is appointed as an Advocate Receiver, who shall collect the rents from the tenants occupying the properties described in the suit schedule and the details annexed with the application and render a true and proper account for the same to this court, once in three months, till the disposal of the suit.

(ii) The rent and income derived from the properties, after deducting the expenditure incurred for maintenance of the properties, be deposited in an interest bearing account to the credit of the suit, which shall be renewed periodically, till the disposal of the suit

(iii) The expenditure towards maintenance of the properties and for payment of taxes etc, shall be meted out from the rental amount and other



OSA No. 179 of 2023

income collected from the suit properties.

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(iv) The Advocate Receiver shall take all necessary steps to maintain the properties

(v) The Advocate Receiver is entitled for a sum of Rs.75,000/- per month towards his remuneration and for incidental expenses.

(vi) The Advocate Receiver shall inform this order to all the parties including the respondents herein, so as to strictly comply with the same.

No costs.

Post the matter after three months “for reporting compliance”.

(R.M.D., J) (M.S.Q., J)

05.03.2024

Index : Yes / No

Neutral Citation : Yes / No

Speaking / Non-Speaking Order

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WEB COPY



OSA No. 179 of 2023

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

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OSA No. 179 of 2023

05.03.2024