



WEB COPY



C.R.P.No.1216 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1216 of 2023
and C.M.P.No.8283 of 2023

1.P.Chakrapani
2.P.Chakraselvam
3.P.Jayabharathi
4.Bavani
5.C.Ganesh Karthi (Minor)
rep.by his mother Bavani ... Petitioners

-Vs-

P.Chakravarthy ... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 30.09.2022 in I.A No.1/2020 in OS No.5061/2019 on the file of the Honble XIX Addl City Civil Court, Chennai.

For Petitioners : Mr.B.Dinesh Kumar
For Respondent : Mr.N.Duraikannu
for Mr.P.Senthil Kumar

ORDER

This civil revision petition arises against the order passed by the learned XIX Additional City Civil Court, Chennai in I.A.No.1 of 2020 in O.S.No.5061 of 2019 dated 30.09.2022.



C.R.P.No.1216 of 2023

For the sake of convenience, the parties will be referred to as per their ranking in the suit.

3. The suit is one for partition and separate possession. The plaintiff claims that the property belonged to one Panchatcharam, who left behind his wife Rubiammal, and the plaintiff and defendants 1 to 3 and 5 as his legal heirs. The suit was originally presented before this Court as C.S.No.866 of 2014. Subsequently, on account of the enhancement of pecuniary jurisdiction of the City Civil Court, it stood transferred to the file of the learned XIX Additional City Civil Court and renumbered as O.S.No.5061 of 2019.

4. In this suit, there are three schedules of property. Insofar as 'A' schedule is concerned, it is the case of the plaintiff that the property has been purchased by Panchatcharam while working in the Police Department and it is the case of the defendants that the property stands in the name of Rubiammal and since the children were minor, it was purchased in the name of the minor children. Be that as it may. Insofar as 'B' schedule property is concerned, it stands in the name of Rubiammal and she had executed a settlement deed in favour of her children except the plaintiff. With respect to 'C' schedule mentioned property, the plaintiff claims that it is an exclusive property, whereas the defendants claim that also has to be subjected to partition.



C.R.P.No.1216 of 2023

5. Pending the suit, the plaintiff filed an application seeking for a direction that the defendants 1 and 2 should deposit a sum of Rs.29,500/- before the Court till the disposal of the suit. This was based on the conclusion that the income from 'A' schedule is Rs.10,500/- and income from 'B' schedule of property is Rs.19,000/-.

6. The defendants filed a counter to the said application stating that while all the parties have a right over the 'A' schedule, with respect to 'B' schedule, being an exclusive property of the defendants in common, the plaintiff cannot claim any right. Apart from that, they would also plead that the plaintiff is getting a sum of Rs.50,000/- from 'C' schedule property which he is not sharing with the defendants and that due to the counter claim filed by them as against the plaintiff, the plaintiff is not entitled to any sum.

7. The learned trial Judge, after consideration of the entire facts, directed the defendants 1, 2 and 5 to deposit 1/6th share of the rent to the credit of the suit. She came to the conclusion that the rentals payable are Rs.1070/- per month, Rs.135/- per month and Rs.285/- per month by each of the aforesaid parties. The arrears was directed to be deposited from the date of filing of the petition till October 2022 and to further deposit a same pending disposal of the suit. Aggrieved by the same, the present revision.



C.R.P.No.1216 of 2023

WEB COPY

8. Mr.Dinesh Kumar appearing for the defendants 1, 2 and 5 would plead that the plaintiff do not have a right at all with respect to the 'B' schedule property. He would contend that on account of the pandemic caused by Corona Virus, the tenants had stopped paying rents.

9. Mr.Duraikannu would submit that the mother Rubiammal was only a homemaker and she did not have funds on her own and it is Panchatcharam who had earned and purchased the properties in the name of Rubiammal. He would further contend that taking advantage of Rubiammal's ill health, the defendants have obtained settlement deed in their favour excluding the plaintiff. He would then state that 'C' schedule mentioned property is the exclusive property of the plaintiff, over which the defendants do not have a right.

10. On consideration of the arguments made by either side, I am able to perceive that, insofar as 'A' schedule mentioned property is concerned, there is no dispute that each of the parties to the suit has 1/6th share. But, the same situation does not prevail for 'B' and 'C' schedule. For the former, the defendants are claiming an exclusive right and for the latter, the plaintiff is claiming an exclusive right. Therefore, it might not be proper to give a direction with respect to 'B' schedule property as done by the learned trial Judge. Since there is no dispute on 'A' schedule property, I requested Mr.Dinesh to file an affidavit disclosing the rent



C.R.P.No.1216 of 2023

that is being paid by each of the tenants. He has filed a memo before this Court, which reflects a tabular column. It reads as under:

<i>S.No</i>	<i>Tenant</i>	<i>Monthly Rent</i>	<i>Arrears</i>	<i>Status</i>
1)	Sudhakaran	600	20 months	Live
2)	Chandra	1,000	25 months	Live
3)	Irudhaya Mary	600	12 months	Live
4)	Anthony Amma	600	20 months	Live
5)	V.Selvi	700	Vacated in the month of May 2020 with arrears of 15 months	Vacant
6)	Kumari	600	20 months	Live

11. A perusal of the tabular column shows that the plaintiff will be entitled to Rs.500/- per month calculating the admitted 1/6th share. Though he has claimed mesne profits in the suit, I feel a Civil Court has the power to direct the parties to deposit the amount or pay the amount by virtue of Section 94(e) of the Code of Civil Procedure.

12. In the light of the above discussion, I feel that the order of the learned trial Judge can be modified in the following terms:

(a)The plaintiff will be entitled to receive Rs.500/- per month from the defendants 1,2 and 5 from the date of the petition till the disposal of the suit.



C.R.P.No.1216 of 2023

WEB COPY

- (b) Going forward, the payment of Rs.500/- per month that will be paid by the defendants 1,2 and 5 shall be by way of a cheque in the name of the plaintiff and the cheque will be handed over by the learned counsel for the defendants to the learned counsel for the plaintiff on or before 5th of every month.
- (c) The arrears from April 2018 till June 2024 that is payable at the rate of Rs.500/- per month shall be cleared within a period of 12 weeks from the date of receipt of a copy of this order.
- (d) This payment being made pending the litigation, with respect to the undisputed portion of the amount that the plaintiff will be entitled to receive at the time of the decree, the same shall be adjusted as against the mesne profits for the 'A' schedule mentioned property.
- (e) In case, the plaintiff is able to prove that the defendants were/are receiving a larger sum than the amounts that were shown in the tabular column, he will be entitled to receive the same after deducting the amounts paid by the defendants to the plaintiff by virtue of this order.

13. With the above directions, the Civil Revision Petition is partly allowed.

The order of the learned Judge in directing the deposit of the rents insofar as the 'B'



C.R.P.No.1216 of 2023

schedule property shall stand set aside. The plaintiff in case he succeeds with respect to 'B' schedule property, shall work out his right at the time of final decree with respect to the accounts that have accrued to the defendants with respect to that portion. Similarly, in case the defendants are able to prove that they have a share in the 'C' schedule property, they can work out their rights at the time of mesne profits enquiry as against that portion. This order is confined only to 'A' schedule property. The parties being close relatives, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.08.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

XIX Additional Judge
City Civil Court, Chennai.



WEB COPY



C.R.P.No.1216 of 2023

V. LAKSHMINARAYANAN, J.

KST

C.R.P. No.1216 of 2023

02.08.2024