



WEB COPY

A.No.6019 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 15.04.2025	PRONOUNCED ON 30.04.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.1332 of 2024

in

C.S.No.84 of 2023

Mr.N.Abul Fazal

... Applicant/Plaintiff

vs.

1.Mrs.P.A.Fariah Faizal

2.Ms.Fazeela Zennath

3.Ms.Fahmida Zulfa

4.Mr.Naleem Fahdi

5.Mr.N.Afzal

6.Mrs.N.Benazir

... Respondents/Defendants

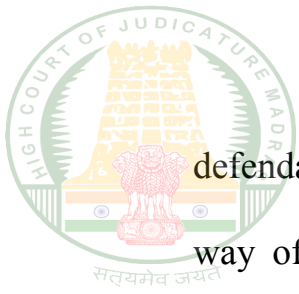
For Applicant : Mr.M.A.Abdul Wahab

For Respondent : Mr.J.Chandran Sundar Sashikumar for RR1-5

No Appearance for R6

ORDER

This instant application has been filed to direct the first respondent/1st



defendant to deposit the income derived from the Suit Schedule Property by way of monthly rental income from 12.05.2022 along with the advance of Rs.1,30,000/- till the date of order and continue to deposit the monthly rental income from the date of order to the credit of the above suit in C.S.No.84 of 2023, pending disposal of the above suit.

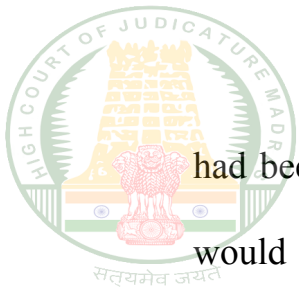
2) Heard Mr.M.A.Abdul Wahab, learned counsel appearing for the Applicant and Mr.J.Chandran Sundar Sashikumar learned counsel appearing for the respondents 1 to 5.

3) The learned counsel appearing for the applicant would submit that the Suit Schedule Property belongs to one P.S.Bathurnishna, mother of the applicant, fifth and sixth respondents. The other Respondents are the legal heirs of N.Fazial, the deceased son of Mrs.P.S.Bathurnishna. The Suit mentioned property was purchased by Mrs.P.S.Bathurnishna by registered document bearing document No.1735 of 1996, dated 28.03.1996 and therefore, all of them are entitled to the property. However, in defiance to the rights of the applicant, the respondents 1 to 5 herein are only enjoying the property. He had also been staying in a portion of the property and when he had gone out, they had locked and sealed the portion and had not permitted the applicant to enter



into the property. Hence, he had filed a Suit for partition. He would also submit that the Suit Schedule Property had been leased to a third party M/s.Eeshu Delicacies Private Limited, from whom they have collected the security deposit of Rs.1,30,000/- and are in receipt of monthly rent of Rs.20,000/- per month. Such a lease agreement had been executed without the consent of the co-owners namely the applicant and the sixth respondent. He would submit that in the event of partition being effected, the applicant would be entitled to a share in the income derived from the suit property which is the rental income. Therefore, he would pray this Court to allow the application as prayed for.

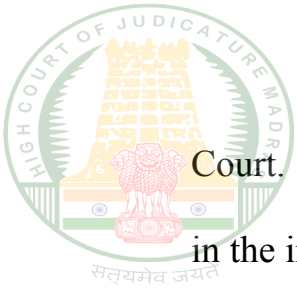
4) Mr.J.Chandran Sundar Sashikumar, learned counsel appearing for the respondents 1 to 5 would submit that it is true that the property belongs to the mother P.S.Bathurnishna. A valid Hiba was made in respect of the property in favour of her two sons namely N.Faizal who is being represented by his legal heirs, the respondents 1 to 4 and fifth respondent and therefore, they are in possession and enjoyment of the property in their own rights. The applicant was well aware of the said Hiba, but suppressing the same, he had filed the instant Suit and filing a written statement, he had also sought for an amendment which had been allowed by this Court magnanimously. The Hiba



had been made and the acceptance had been made by the donees which itself would indicate that the Hiba has been acted upon in the presence of the witnesses. Therefore, he would contend that the applicant do not have any right in the property much less to seek for an order of deposit of the rental. Therefore, he prays this Court to dismiss the Application.

5) I have heard the rival submissions made by the learned counsels appearing on either side and perused the materials placed on record.

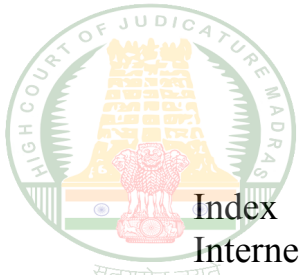
6) The Applicant had filed the present application seeking to direct the respondents 1 to 5, who are in receipt of the rental income of the Suit schedule property from a third party to deposit the same to the credit of the suit till the disposal of the suit. It is the claim of the applicant that the property belongs to his mother. Since, his mother having died intestate, he has a share in the property. But on the other hand, it is the claim of the respondents 1 to 5 that the said P.S.Bathurnishna had executed a Hiba in favour of two sons namely, predecessors in interest of the respondents 1 to 4 and fifth respondent herein. According to them, the said Hiba had been acted upon and they are in possession of the property. The said Hiba has also been now challenged by the applicant by way of an amendment to the plaint which has been ordered by this



Court. The claim of the applicant is that he would also be entitled for a share in the income and if the respondents 1 to 5 are allowed to appropriate the same, it would be disadvantageous to the applicant and therefore, he has filed this present Application. The applicant is aware of the rents paid by the third party tenant and also the security deposit paid by the tenant with the respondents 1 to 5. If the applicant succeeds in the Suit, it is always open for him to claim for the mesne profits which the property had realised atleast during the pendency of the Suit. The respondents 1 to 5 claimed independent title on them based upon the Hiba. If they are unable to substantiate the Hiba still they would be entitled for a major portion of the property and also the rents that had accrued from the property. Even if the applicant succeeds, such accruals can always be deducted from the share of the parties, who had benefitted from the income of the properties.

7) For the said findings and reasoning, I do not find any compelling reason to allow the Application.

8) In fine the Application in A.No.1332 of 2024 stands dismissed. However, there shall be no order as to costs.



Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU.J.,

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Pre-Delivery Order in
A.No.1332 of 2024
in
C.S.No.84 of 2023

30.04.2025