



A NO. 5049 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-04-2025

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THE HONOURABLE MR JUSTICE K.KUMARESH BABU

A NO. 5049 of 2024

in C.S.No.30 of 2023

M.Sarada

W/o Late B.Muralidharan D.No.9-133, Vanniyar Block,
Chittoor Town, Chittoor District, Andhra Pradesh.

Applicant(s)

Vs

G.Vaishnavi,

D/o G.R.Giridharan D.No.4-2014/2, Ward No.4, Sai Ram Street
No.3, Balamurugan Street, Durga Nagar Colony, Chittoor
Town And Chittoor District, Andhra Pradesh. and 2 Others

Respondent(s)

For Applicant(s):

M/s.S. Hemalatha

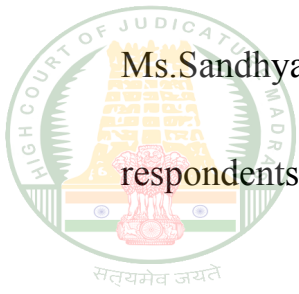
T.Harish Chowdhary

For Respondent(s): Ms.Sandhya for
Mr.K.Pattabhi for RR1-3

ORDER

The instant Application had been taken out by the applicant/plaintiff to direct the respondent/defendants to render due and proper audit accounts from 16.12.2021, and future mesne profits by metes and bounds of the schedule mentioned property collecting rents from the tenants in common to render and deposit 1/3rd share to the Suit account until the disposal of the Suit.

2. Heard Ms.S.Hemalatha, learned counsel appearing for the applicant and



Ms.Sandhya, learned counsel appearing for Mr.K.Pattabhi, learned counsel for respondents 1 to 3.

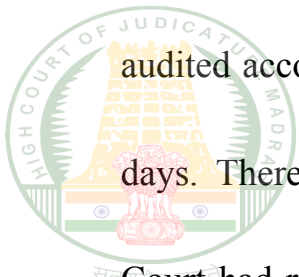


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3. The learned counsel appearing for the respondents would contend that the issues have been framed by this Court which also included an issue as to whether the applicant/plaintiff is a legally wedded wife of the deceased Muralidharan, who is the brother of the defendants 1 & 2. Without the said issue being decided, the plaintiff would not be entitled to her claim of 1/3rd share. He would further submit that the property is in the possession of the defendant, as the “Kartha” of the family and their possession cannot be said to be illegal. He would also submit that the plaintiff had only paid the Court fees as being in the constructive possession of the property and therefore, even on the said ground, the suit claimed by the plaintiff cannot be entertained by this Court.

4. He had also relied upon the judgments of the Patna High Court and this Court to strengthen his contention that the applicant/plaintiff could not be entitled for a share in the property including the mesne and profits.

5. The instant application had been taken out by the applicant in which this Court by an order dated 16.11.2024 had directed the respondents/defendants to submit the



audited account from 16.12.2021 till the date of the order within a period of th

days. Thereafter, when the matter was taken up for hearing on 20.11.2024, this

Court had recorded that there has been a default in submitting the accounts by the

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respondents and had granted further time to file the audited report before

27.11.2024, with a caveat that on such failure, an Advocate Receiver would be

appointed to receive the rent and render the accounts.

6. Thereafter, the matter was taken up for hearing by this Court on 12.12.2024. On

that day, the audited report was filed on the side of the third defendant in respect of

the rents derived from the said properties. The said audit statement was objected to

by the applicant/plaintiff and had sought this Court is indulgence to appoint an

Advocate Commissioner to note down the physical features of the building, the

persons occupying the place and the rent paid by them along with the advance. The

appointment was also objected to by the learned counsel appearing for the

defendants.

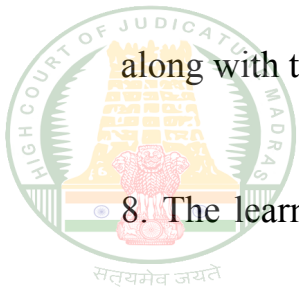
7. This Court finding that the plaintiff had made out a *prima facie* case relating to

the relief of partition and entitled to a share in the property had appointed an

Advocate Commissioner to find out the fact as available in the suit property to

ascertain what will be the entitlement of the plaintiff if the plaintiff succeeds in the

Suit. The learned Advocate Commissioner had also filed a report before this Court

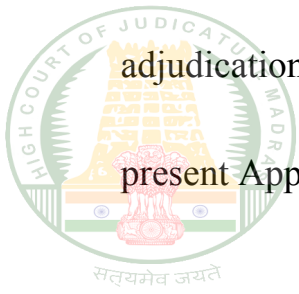


along with the relevant documents as indicated in his report dated 20.02.2025.

8. The learned Advocate Commissioner's report indicates that the monthly income received from the property through the tenants would be Rs.81,800/- per month and the advance had also been collected from them to the tune of Rs.7,30,000/-. The defendants had filed a statement of account indicating that the monthly rental income from the properties from January 2021 to December 2023 was Rs.16,48,800/-. The breakup in the income that was received from the month of January 2024 had been given month wise along with the expenditure indicated. The income given that was received from the building has been given is much lesser than the income received as noted down by the learned Advocate Commissioner.

9. That apart, the conduct of the defendant as noted down in the order also do not augur well. The present Application is also well founded, as this Court had repeatedly found that the applicant has a *prima facie* case for the grant of such interim order in her favour. It may be true that the Kartha is in the possession of the property, that does not entitle him to hold on to the income, when such a position has become litigious.

10. The other grounds raised by the learned counsel for the respondent with regard to the Court fee and with regard to mesne profits can still be decided during the final



adjudication of the Suit and the same cannot be a bar for this Court to order
present Application.

11. In such view of the matter, the defendants are directed to deposit the 1/3rd of
Rs.81,800/- from the rents that are collected from the 1st of April 2025 to the credit
of the suit. The entitlement of the applicant/plaintiff for the said amount shall be
decided at the end of the trial. No costs.

Gba 03-04-2025

To

1. G.Vaishnavi,
D/o G.R.Giridharan
D.No.4-2014/2, Ward No.4,
Sai Ram Street No.3, Balamurugan Street,
Durga Nagar Colony, Chittoor Town And Chittoor District, Andhra
Pradesh.

2. G.Karthik
S/o G.R.Giridharan
D.No.4-2014/2, Ward No.4,
Sai Ram Street No.3, Balamurugan Street,
Durga Nagar Colony, Chittoor Town And Chittoor District, Andhra Pradesh.

3. M.Geetha
W/o A.Murugan
D.No.Old No.85, New No.52, Ellaiaimman Koil Street,
Vannandurai, Adyar, Chennai 600 020.