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Application No. 282 of 2024
IN
C.S.No. 125 of 1996

C.V.KARTHIKEYAN, J.

This application has been filed by the fourth plaintiff P.R.Shanmugasundaram seeking a direction against the first and second respondents / second and third plaintiffs Mrs.R.Mallika and R.Kumaraguru to pay a share of the rental amount of Rs.3,52,000/- collected by them from third to 11th respondents, who are the tenants for the property on and from 01.01.2023 till 31.11.2023 together with damages at the rate of Rs.10,000/- every month which total comes to Rs.4,62,000/- till the date of payment.

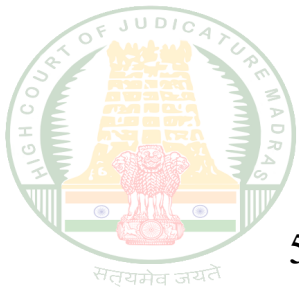
2. The suit in C.S.No. 125 of 1996 had initially been instituted by P.S.Rajasekaran seeking a preliminary decree for partition and separate possession of his 1/6th share in the suit property and for a direction against the defendants to render true and proper account of the income from the suit properties and for



appointment of an Advocate Commissioner to effect division by metes and bounds and to pass final decree and for costs.

3. Unfortunately during the pendency of the suit, the plaintiff P.S.Rajasekaran died. This necessitated bringing on record his wife and two sons Mrs. R.Mallika, P.Kumaraguru and R.Shanmugasundaram as further plaintiffs in the suit. There is however no unity among the plaintiffs, who had been so impleaded. The mother R.Mallika and one of the sons and R.Kumaraguru appear to be on one side and the other son R.Shanmugasundaram appears to be on the other side.

4. By this application, the fourth plaintiff R.Shanmugasundram seeks a direction against the second and third plaintiff / his mother and brother to handover a portion of the rents collected from the tenants which according to the applicant, is his share.



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5. The application came up for consideration along with A.No. 281 of 2024 which was for a direction against the tenants not to pay a share of the rent of the applicant to the other two plaintiffs and to deposit the share of the applicant towards the rental amount in this Court. By an order dated 27.06.2024, a learned Single Judge had struck a middle path by noting down the admitted rents received by the second and third plaintiffs/ R.Mallika and R.Kumaraguru and therefore as an interim measure directed the share of the applicant/fourth plaintiff / R.Shanmugasundaram to be paid to him.

6. The learned counsel for the applicant places reliance on such observation and claims that on and from that particular date the share in the rent had not been paid and therefore claims that such share in the rents which had been collected by the second and third plaintiffs should be paid to the applicant herein.

7. In effect, this is a suit within a suit. The cause for



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institution of the suit was the refusal to partition the property by metes and bounds necessitating P.S.Rajasekaran to institute the suit. Thereafter, within the co-sharers, namely among his legal heirs, if there is a dispute, that would be the subject matter of the separate cause of action and that cannot be intermingled with the cause of action for the institution of the suit. The present applicant has also not transposed himself as defendant and therefore retains the status as one of the plaintiffs. He cannot seek relief against the other plaintiffs. The Code is very clear as to who could be joined as plaintiffs and who could be joined as defendants.

8. In the instant case, if the applicant R.Shanmugasundaram has a grievance against the two plaintiffs, then necessary relief will have to be obtained in separate proceedings and not in this suit. The applicant may await partition and separate possession and thereafter may claim his share to be allotted to him but not as interim measure seek share in the rents collected from the other plaintiffs.



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9. Keeping that particular issue open for the applicant to proceed further in manner known to law and in appropriate manner, I hold that the applicant will have remain satisfied in the order passed by the learned Single Judge on 27.06.2024. This Application stands dismissed. However, the right of the applicant to a share in the rental income is not in dispute and that right is not taken away by the dismissal of this particular application.

Vsg

16.06.2025

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