

In the High Court of Judicature at Madras

Dated : 27.1.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

Civil Revision Petition (PD) No.288 of 2015 and M.P.No.1 of 2015

1.S.Palanivelu Chettiar

2.Mrs.Usha

...Petitioners

Vs

1.Mrs.P.Lakshmi (a) Kowsalya

2.Mrs.K.Latha

...Respondents

PETITION under Article 227 of The Constitution of India against the fair and decretal orders dated 22.12.2014 made in I.A.No.179 of 2014 in O.S.No. 4567 of 2014 on the file of the 18th Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.P.Magesh

ORDER

The petitioners have come up with the above revision challenging the dismissal of their application under Order VII Rule 11 of the Civil Procedure Code.

2. Heard Mr.P.Magesh, learned counsel for the petitioners.

3. The respondents herein filed a suit in O.S.No.4567 of 2014 on the file of the 18th Additional Judge, City Civil Court, Chennai for partition. The respondents paid fixed court fees under Section 37(1) of the Tamilnadu Court Fees and Suits Valuation Act, 1955 on the basis that they are constructively in joint possession. Challenging the said claim and contending that even

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V.RAMASUBRAMANIAN,J

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apparently they are ousted from possession, the petitioners took out an application for rejection of the plaint under Order VII Rule 11, claiming that Section 37(2) alone will apply. But, the said application was dismissed by the Trial Court, forcing the petitioners to come up with the above revision.

4. As rightly observed by the Trial Court, the question of possession is a question of fact. The question as to whether they are in joint possession along with co-owners, is a matter for evidence. Hence, this is not a case where Order VII Rule 11 could be invoked.

5. Accordingly, the civil revision petition is dismissed. Consequently, the above MP is also dismissed.

27.1.2015

Internet : Yes

To
The Registrar, City Civil Court, Chennai.

CRP(PD)No.288 of 2015
and MP.No.1 of 2015