

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4324 of 2015
and M.P.No.1 of 2015

1.Mohanraj
2.Karthikeyan

.. Petitioners/Plaintiffs

Vs.

Mutholimaran

.. Respondent/
2nd Defendant

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 27.07.2015 in I.A.No.402 of 2014 in O.S.No.101 of 2009 on the file of the Principal District Court, Villupuram.

For Petitioners : Mr.A.Tamilvanan

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 27.07.2015 in I.A.No.402 of 2014 in

O.S.No.101 of 2009 on the file of the Principal District Court, Villupuram.

2.The revision petitioners herein as the plaintiffs filed a suit for passing a preliminary decree for partition and separate possession of 2/10 shares in the partition of the suit properties in favour of the plaintiffs and for passing final decree for dividing the suit properties into equal shares and allot 2/10 shares to the plaintiffs by appointing a Commissioner and to direct the defendants to pay the future profits under Order 20 Rule 18 of C.P.C. and valued the suit under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (hereinafter called as "the Act"). The second and fifth defendants have filed the written statement separately and contesting the suit. The second defendant has also filed additional written statement. The respondent herein, who is the second defendant in the suit, has filed an application in I.A.No.402 of 2014 under Order XIV Rule 2 read with Section 12(2) of the Act, for deciding the issue "whether the suit has been properly valued for the purpose of Court fees and whether the proper Court fee has been paid" as preliminary issue. The revision petitioners herein have filed a detailed counter resisting the same.

The trial Court, after hearing both sides, allowed the application, against which, the present revision petition has been preferred by the plaintiffs/revision petitioners.

3.Learned counsel for the revision petitioners submits that whether the revision petitioners/plaintiffs are in joint possession or not is a question of fact and it can be decided only at the time of trial and not as a preliminary issue at this stage. But the trial Court without considering the same, allowed the application. Therefore, he prayed for allowing the revision petition.

4.At the time of admission, argument of the learned counsel for the revision petitioners is heard in length.

5.On perusal of the typed set of papers, it reveals that the revision petitioners herein have filed the suit for partition in respect of A, B and C schedule properties stating that they are joint family properties and they valued the suit properties under Section 37(2) of the Act. The suit has been filed by the plaintiffs not only against the co-owners viz., their father, grand father, paternal uncles and also against the subsequent purchasers. During pendency of the suit, the second defendant/respondent herein has filed an

application in I.A.No.402 of 2014 and in para-3 of the affidavit, it was stated that the defendants 5 to 7, who are strangers to their family, are enjoying the suit properties independently and their possession shall not be deemed to joint possession in respect of co-owners, so the Court fee paid under Section 37(2) of the Act is not correct and hence, he raised the preliminary issue to be decided that whether the Court fee paid under Section 37(2) of the Act is correct or not.

6.Now it is appropriate to incorporate Section 37(1) and (2) of the Act, which read as follows:

37.Partition suits._(1) In a suit for partition and separate possession of a share of joint family property or of property owned jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates:

When the plaint is presented to____

(i) a District Munsif's Court	Rupees one hundred
(ii) the City Civil Court, Chennai or a Sub-Court or a District Court	Rupees one hundred, if the value of plaintiff's share is rupees thirty thousand or less; rupees five hundred, if it is above rupees thirty thousand but below rupees one lakh; and rupees seven hundred and fifty, if the value is rupees one lakh and above.
(iii) The High Court	Rupees one thousand.

7. It is an admitted fact that once the property is in the hands of one co-owner, it is deemed to joint possession of other co-owner. If the properties are in the hands of third party, they are excluded from the possession. Under such circumstances, the suit ought to have been valued only under Section 37(1) of the Act. But D5 to D7 are subsequent purchasers from the co-owner, so the suit ought to have been valued under Section 37(1) of the Act. The trial Court has considered the same in proper perspective manner and also taken note of the provisions of Order 14 Rule 2 of C.P.C. along with various judgments of this Court. Once the subject matter of the suit property is not in the hands of co-owners, the suit ought to have been valued under Section 37(1) of the Act. So the trial Court has rightly held that the preliminary issue to be framed to decide the valuation and payment of court fees paid is correct or not. In such

circumstances, I do not find any merits in this revision petition. The civil revision petition deserves to be dismissed and it is hereby dismissed.

8. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.11.2015

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To
The Principal District Court, Villupuram.

R.MALA,J.

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