

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4356 of 2015
and M.P.No.1 of 2015

Senthil Kumar

.. Petitioner

Vs

1.Meerabai
2.Vanitha
3.Sujatha
4.Rekha
5.Rajeswari
6.Vijayakumari

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.06.2015 made in I.A.No.192 of 2013 in O.S.No.34 of 2010 on the file of the Sub Court, Madurantakam.

For Petitioner : Mr.Vijaya Narayan
Senior Counsel for Mr.S.Kumaresan

ORDER

The Civil Revision Petition is filed against the order dated 08.06.2015 made in I.A.No.192 of 2013 in O.S.No.34 of 2010 on the file of the Sub Court, Madurantakam.

2.Learned senior counsel appearing for the petitioner/second defendant submitted that one Ramadoss had one son, by name, Chandrasekaran and three daughters. One of his daughter as a plaintiff/first respondent herein filed a suit for partition and separate possession of 1/3 share in the suit properties. The plaintiff/first respondent valued the properties under Section 37(2) of Tamil Nadu Court Fee and Suit Valuation Act and paid the Court fee of Rs.750/. During the pendency of the suit, the second defendant/petitioner herein filed an application under Order VII Rule 11 of CPC in I.A.No.34 of 2010 to reject the plaint on the ground that where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within the time to be fixed by the Court, fails to be so. He further submitted since the defendants 1 to 4/respondents 2 to 6 herein are in exclusive possession of the suit properties, the plaintiff/first respondent ought to valued the suit under Section 37(1) of Tamil Nadu Court Fee and Suit Valuation Act and pay the Court fee in accordance with law. He would also submitted that to prove the same, the second defendant/petitioner herein has filed 18 documents. The Trial Court without considering the same, has dismissed the application stating that whether the plaintiff is in joint possession is to be decided only at the time of trial. Hence, he prayed for setting aside the order passed by the Trial Court.

3. At the time of admission, argument of the learned counsel for the revision petitioner heard in length.

4. The first respondent as a plaintiff filed a suit for partition and separate possession of 1/3 share in the suit properties stating that some of the properties were originally belong to Chellammal and the plaintiff's father Ramadoss got the properties by way of inheritance. Some of the properties were purchased by the mother of the plaintiff Sudamani and so, the properties are belonging to the parents of the plaintiff. Since they died inte state, as a legal heir the plaintiff filed a suit for partition and separate possession of 1/3 share in the suit properties. It is well settled dictum of the Hon'ble Apex Court that the possession of the co-sharer is deemed to be the possession of other co-sharers. Admittedly the suit properties are in possession of one of the co-sharer. Further, whether the defendants 1 to 4 prescribed title by adverse possession by ouster can be decided only at the time of trial after letting oral and documentary evidence. While deciding the application for rejection of the plaint under Order VII Rule 11 of CPC, only the plaint averments alone should be taken into account.

5. At this juncture, it is appropriate to incorporate to incorporate Order VII Rule 11 of CPC, which is reads as follows:

"11.Rejection of plaint.____The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the deficiency within the time, if any, granted by the Court.
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- [(e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9];

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

Here it is not the case that the Trial Court has fixed the market value and directed the first respondent/plaintiff to pay additional Court fee within the stipulated time but the Court fee has not been paid within the time

stipulated by the Trial Court. Then only, the defendants can invoke Order VII Rule 11 of CPC.

6.Now, the application for rejection of the plaint has been filed on the ground that Court fee paid under Section 37(2) of Tamil Nadu Court Fee and Suit Valuation Act is not correct and the plaintiff/first respondent ought to have paid the Court fee under Section 37(1) of Tamil Nadu Court Fee and Suit Valuation Act. But admittedly the possession is within the hands of the family. As per the settled dictum of the Hon'ble Apex Court, the possession of one co-sharer is deemed to be the possession of other co-sharers. In such circumstances, I am of the view that the Court Fee paid by the plaintiff/first respondent herein under Section 37(2) of Tamil Nadu Court Fee and Suit Valuation Act is correct. Hence, I do not find any merits in the revision petition and the revision petition deserves to be dismissed.

7.Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

30.11.2015

Index: Yes/No
Internet: Yes/No
cse

R.MALA. J.,

cse

To

The Sub Court, Madurantakam.

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