

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.187 of 2016

1.S.Gopi  
2.G.S.Latha

... Petitioners

Vs

S.Rambabu

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned II Additional District Judge, Tiruvallur at Poonamallee made in I.A.No.1601 of 2014 in O.S.No.199 of 2013 on 18.06.2015.

For Petitioners : Mr.P.Krishnan  
For Respondent : Mr.G.Dilip Kumar

### **ORDER**

The plaintiffs in the Original Suit are the petitioners in the present revision. The suit was filed for partition against the respondent, on the basis of their contention that the suit properties were the joint family properties acquired in the name of the respondent/defendant using the joint family funds. It was also contended therein, that the plaintiffs and the defendants being co-sharers/co-owners, the possession by the defendant would be a possession on behalf of the co-owners. Accordingly, the relief of partition and separate possession has been valued under Section 37[2] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and a fixed court fee came to be paid.

The defendant who entered appearance, besides filing a written statement, filed an application in I.A.No.1601 of 2014 under Section 12[2] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 for the determination of the question of propriety of the valuation and the sufficiency of the court fee paid on the plaint. It was contended by the respondent herein/defendant that, since the property had been purchased in his name alone, the petitioners/plaintiffs could not claim to be in joint possession and hence, the valuation made under Section 37[2] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 attracting a fixed court fee could not be proper. According to the respondent/defendant, the relief should be valued *ad valorem* on the share claimed by the plaintiffs and corresponding court fee should be paid. The learned trial Judge, after hearing both sides, accepted the contention of the respondent herein/defendant and passed an order on 18.06.2015 directing the petitioners herein/plaintiffs to pay the correct court fee holding that the relief should be valued at Rs.9,66,999/- under Section 37[1] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and corresponding court fee should be paid. It is as against the said order of the trial Court, the present Civil Revision Petition has been filed.

2. The arguments advanced by Mr.P.Krishnan, learned counsel for the petitioners/plaintiffs and by Mr.G.Dilip Kumar, learned counsel for the respondent/defendant are heard.

3. The application came to be filed by the respondent herein contending that, since the purchase in the name of the respondent/defendant has been admitted,

the property should be deemed to be in the separate possession of the respondent/defendant and the claim of the petitioners/plaintiffs to be in joint possession could be rejected at the threshold. On the other hand, the petitioners/plaintiffs contend that the plaint averments that they are in joint possession should be accepted for the purpose of valuation and collection of court fee and the dispute raised in respect of such a contention, cannot be gone into in an application filed under Section 12[2] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

4. The learned trial Judge, without assigning any reason, simply relying on the value given by the respondent herein/defendant in his application and without considering the plea made by the petitioners herein/plaintiffs that they are in joint possession of the suit property along with the respondent/defendant, simply passed the impugned order directing payment of court fee for the amount Rs.9,66,999/-. The trial Court has not adverted to the plea of the plaintiffs that the possession by the defendant as a co-owner would be deemed to be a possession on behalf of the co-owners. The learned trial Judge has not even assigned any reason for coming to the conclusion that the relief of the suit have been valued and the court fee should have been paid under Section 37[1] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 as against Section 37[2] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. A bare reading of the fair order of the trial Court will show that though it has been passed in so many sentences, the order is nothing, but a non-speaking order.

5. Even on the merits of the case, when a person claiming to be a co-owner makes a claim that the other co-owner's possession is a possession on behalf of all the co-owners including himself, the same shall be accepted for the purpose of valuation and collection of court fee and the question whether his claim to be a co-owner and thus, a person in joint possession can be sustained or not cannot be decided, on the basis of the averments made in the written statement or in an application filed by the defendant under Section 12[2] of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 for the purpose of collection of court fee. The order of the trial Court seems to have been made solely relying on the averments made by the respondent/defendant, without even considering the plaint averments made by the petitioners/plaintiffs. Hence, this Court does have no hesitation in coming to the conclusion that the impugned order cannot stand the scrutiny of this Court and the same is an improper exercise of the jurisdiction conferred on the trial Court which should be corrected by this Court in exercise of its power under Article 227 of the Constitution of India.

6. In the result, the revision succeeds and the same is allowed. The order of the trial Court dated 18.06.2015 made in I.A.No.1601 of 2014 in O.S.No.199 of 2013 on the file of the II Additional District Judge, Tiruvallur is set aside. I.A.No.1601 of 2014 shall stand dismissed. No costs.

15.03.2016

Index : Yes  
Internet : Yes  
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P.R.SHIVAKUMAR, J.

gva

To  
The II Additional District Judge,  
Tiruvallur at Poonamallee.

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