

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.(P.D.) No.2993 of 2016 and
CMP.No.15101 of 2016

1. Pasuvathi,

2. Mohanasamy

...Petitioners

Versus

1. Sowdaram

2. Subbayammal

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 03.12.2015 made in I.A.No.664 of 2015 in O.S.NO.48 OF 2014 on the file of the Subordinate Judge of Perundurai by allowing this Civil Revision petition.

For Petitioner : Mr.R.Marudhachalamurthy

ORDER

The respondents filed a suit for partition before the Sub Court, Perundurai. In the said suit, the petitioner filed an application in I.A.No.664 of 2015 under Order 7 Rule 11(a) and Section 151 CPC to reject the plaint. The said application was dismissed by the learned Trial Judge. Feeling aggrieved, the petitioner is before this Court.

K.K.SASIDHARAN, J.

kmi/ds

2. The learned counsel for the petitioner contended that the respondents were out of possession and as such they are liable to pay court fee at a higher rate. The learned counsel for the petitioner contended that the respondents are not entitled for a decree of partition.

3. The respondents in the plaint in O.S.No.48 of 2014 made it very clear that they are enjoying the property in common, along with the petitioners. The said statement is sufficient to permit them to pay Court fee under Section 37(2) of Tamil Nadu Court Fees and Suit Valuation Act. The respondents contended that they requested the petitioners to take steps for partition the property. Since there was no follow up action, the respondents filed the suit for partition. The cause of action was clearly spelt out in the plaint filed by the respondents.

4. In view of the above, the learned Trial Judge was correct in dismissing the application.

The Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

27.09.2016

Index:Yes/No
kmi/ds

To

1. The Subordinate Judge, Perundurai.

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