

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) NO.2322 OF 2017
AND CMP NO.11124 OF 2017

1.Durgamba
2.Kanakalakshmi
3.Theja
4.Lakshmi
5.Banu
6.Balaji

... Petitioners

Jagadeeshwari

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.573 of 2017 in O.S.No.5718 of 2013 on the file of the XVI Additional City Civil Court, Chennai.

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For Petitioners : Mr.P.Satheesh Kumar

ORDER

This Civil Revision Petition is directed against the order dated 19.04.2017 dismissing I.A.No.573 of 2017 in O.S.No.5718 of 2013, filed under Order VII Rule 11 read with Section 151 of the Civil Procedure Code.

2. The contention of the petitioners is that at the time of cross examination, the respondent / plaintiff has categorically admitted that she was not in possession of the building and it is admitted that she was thrown out from the suit property and she never came to the suit property after her dispossession. When there is categorical admission by the respondent / plaintiff during cross examination, valuation of the suit is without payment of proper court fee. Therefore, the respondent / plaintiff should be directed to pay the proper court fee before proceeding the case further. In the event of failure of payment of adequate court fee, the plaint is liable to be rejected on the ground of undervaluing the relief and

failure to pay the correct court fee within the time as fixed by this Court.

3. The Trial Court after considering the judgment of the Hon'ble Supreme Court in **SALEEM BHAI AND OTHERS VS. STATE OF MAHARASHTRA AND OTHERS [2003 (1) SCC 557]** has held that the averments made in the plaint are germane for rejection of plaint and it cannot be made on the basis of the evidence adduced or on other documents.

4. The learned counsel for the petitioners would rely on a Division Bench judgment of this Court in **P.LALITHA AND ANOTHER VS. KALIMUTHU AND OTHERS [CDJ 2003 MHC 1532]** wherein, it has been held as follows:

"We have considered this question and found that even in the pleadings, the plaintiffs have admitted that they are not in possession of the suit properties. The small room which is said to be in their possession is also based on a

letter which has been rightly rejected by the court and found that the said letter addressed to Maruthi Rao would not mean that he was in possession and enjoyment of that room. Therefore, since we have already seen that Maruthi Rao has parted with his right and that the defendants, on their own right, are in possession and enjoyment of these properties, it cannot be construed at any stretch of imagination that they are in constructive possession as co-owners. The defendants have established that even long prior to the plaint, they were in possession of all the suit properties on their own right exclusively and had denied the plaintiffs' right to have a share in them. The plaintiffs had been excluded from possession of the property and they have no right to have a share in the property. It cannot be considered that the plaintiffs had been excluded from possession of the property and that the properties were owned jointly. We have found that the plaintiffs were neither in possession nor they can be said to be in constructive possession of the properties since the defendants have set up hostile and exclusive right and on their own showing in the plaint and in the evidence, it has been rightly found by the trial court that the court fee ought to have been paid on the market value under Section

37(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Therefore, the finding and the conclusion of the court below in this regard is hereby confirmed. We also hold that consequent to our finding in reference to item 2 and the sub-items in item 12 of the suit properties, though the 6th defendant was in possession and enjoyment, the plaintiffs are liable to pay court fee for all the said items."

5. I have considered the contentions raised by the learned counsel for the petitioners. The judgment, which is relied on by him, has been passed in an Appeal Suit and it was not passed in a matter, which relates to Order VII Rule 11 of the Civil Procedure Code. Therefore, the judgment cited supra is not applicable to the case on hand.

6. On the other hand, it is well settled law that the plaint can be rejected based on the averments made in the plaint. In so far as this case is concerned, the plaint discloses the cause of action and there is a clear statement that the respondent / plaintiff is the co-owner and she is not in constructive possession and as long

as plaint averments goes to show that the valuation made is correct, there is no reason to reject the plaint on the basis of evidence adduced during cross examination. However, it is open to the parties to raise issue of valuation during trial and the Court shall consider the same.

7. Considering the facts and circumstances of the case, the order dated 19.04.2017 passed in I.A.No.573 of 2017 in O.S.No.5718 of 2013, by the Trial Court is reasonable, and does not require any interference. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

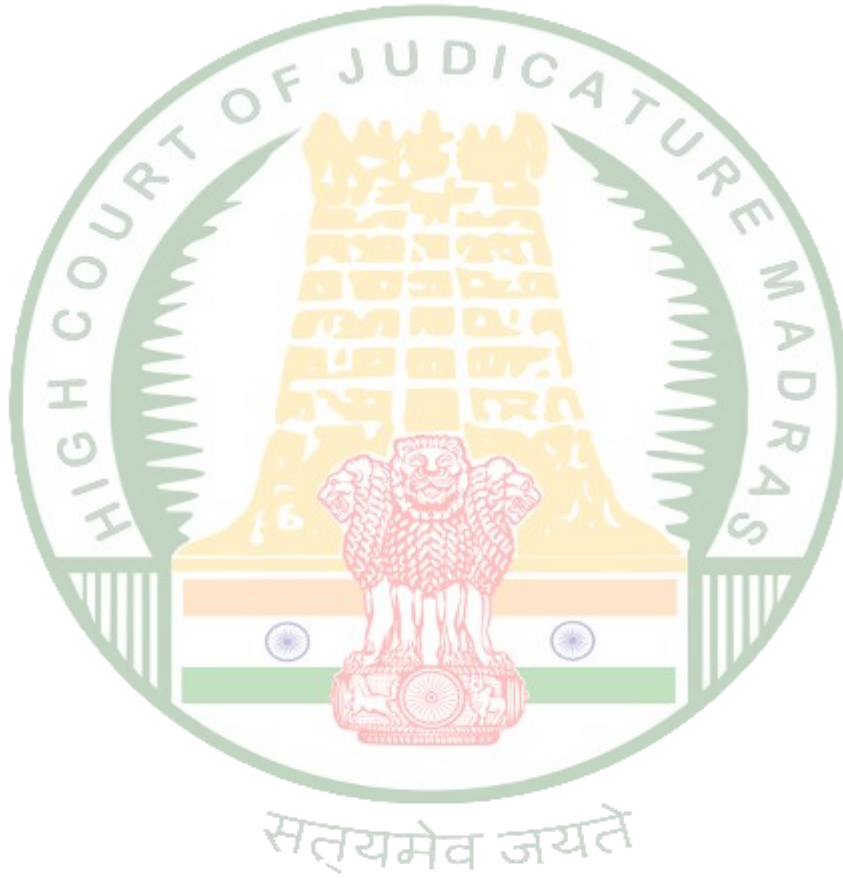
8. The Trial Court shall consider the issue of valuation while deciding this matter.

13.09.2017

Index : Yes/No
Internet : Yes/No
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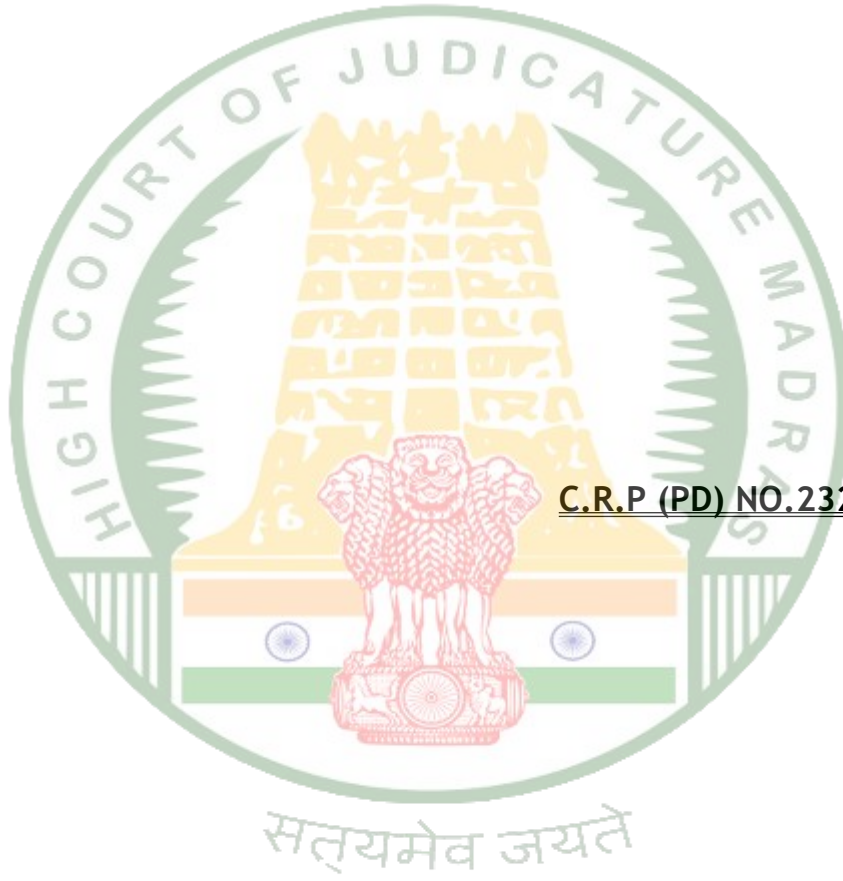
The XVI Additional Judge
City Civil Court
Chennai.



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M.GOVINDARAJ, J.

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