

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2017

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.3912 of 2015 &

M.P. No.1 of 2015

1. S.Mohammed Khaleelur Rehman
2. S.Khader Mohideen

... Petitioners

v.

K.Thanikachalam (Deceased)

1. Elumalai
2. R.Thangavel
3. N.Balakrishnan
4. S.Santhi
5. Prema

(Learned counsel for the petitioner made an endorsement to the effect that R1 to R3 R5 to R7 are given up)

6. Ashik Kumar
7. Santhi
8. T.Gokulakrishnan
9. T.Nijanthan
10. Minor.T.Monisa
11. Minor T.Janani
(Minors 10 & 11 Rep. by their mother and next friend Santhi)

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.08.2015 in I.A.No.13576 of 2014 in O.S.No.12848 of 2010 on the file of VI Additional Judge, City Civil Court, Chennai in so far as directing to pay court fee is concerned.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondent : Mr.D.Murthy
for R4, R8 to R11

Given up - R1 to R3 and R5 to R7

ORDER

Challenging the fair and final order passed in I.A.No.13576 of 2014 in O.S.No.12848 of 2010, on the file of VI Additional Judge, City Civil Court, Chennai, the plaintiffs have filed the above Civil Revision Petition.

2. The plaintiffs have filed the suit in O.S. No.12848 of 2010 for specific performance in respect of B schedule property and permanent injunction in respect of C schedule property. The defendants filed their written statement and are contesting the suit. Subsequently, the plaintiffs filed an application in I.A.No.13576 of 2014 to amend the plaint

by incorporating the relief of recovery of possession, in respect of C schedule property. The Trial Court allowed the application in respect of the entire property, which is mentioned as A schedule. B schedule property is 1/6th share of the A schedule property.

3. The Trial Court, after contest, allowed the application and further directed the plaintiffs to pay the necessary court fee for the remaining 5/6th share in spite of the relief of recovery of possession sought for, by them.

4. It is not in dispute that the suit has been filed in respect of B schedule property which is 1/6th undivided share over A schedule property. C schedule property is the North-East corner portion in the Ground floor of the A schedule property, which was occupied by Thiru. Krishnamoorthy.

5. The plaintiffs sought for permanent injunction in respect of C schedule property claiming to be in possession of the same and also paid separate court fee for the relief of permanent injunction in respect of C schedule property, by way of amendment. The plaintiffs sought for

recovery of possession in respect of A schedule property.

6. When the plaintiffs have paid separate court fee for the relief of permanent injunction in respect of C schedule property, by way of amendment, they sought for recovery of possession and for which they are liable to pay the necessary court fee.

7. Admittedly, C schedule property is not the subject matter of specific performance. That being the case, a single court fee for specific performance with or without possession does not arise. The plaintiffs are liable to pay the court fee for recovery of possession in respect of remaining 5/6th share.

8. The Trial Court, taking into consideration all these aspects, rightly allowed amendment application and also directed the plaintiffs to pay necessary court fee, in respect of 5/6th share. It is open to the VI Additional Judge, City Civil Court, Chennai to decide as to the pecuniary jurisdiction of the suit.

9. In these circumstances, I do not find any error or irregularity in

the order passed by the Trial Court. The Civil Revision petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2017

Index : Yes/No

Rj/Gsa

To

The VI Additional Judge,
City Civil Court,
Chennai

M. DURAISWAMY,J.,

Rj/Gsa

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