



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2017

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P. (MD) .No.781 of 2017

and

C.M.P. (MD) No.3565 of 2017

WEB COPY

R.Ramakrishnan

...Petitioner/Petitioner/2nd Defendant
Vs.

1.R.Muthusamy

2.R.Panchalingam

3.R.Maruthayee Ammal

...Respondents/Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal Order made in I.A.No.711A of 2016 in O.S.No.67 of 2013 by the District Munsif Court, Palani dated 03.11.2016.

For Petitioner : Mr.D.Venkatesh

For Respondent : No appearance

ORDER

The revision petition is directed against the dismissal of the application filed by the revision petitioner to take up the Suit Valuation and Court fee as paid by the plaintiff as preliminary issue to take up whether the Suit Valuation and Court fee is under valued or not.

2. The trial Court has dismissed the application on the ground that the allegation of the plaintiff is that the suit is an ancestral property and of joint possession by both plaintiff and defendant. Hence the main relief is for partition. Accordingly, Court fee is affixed in terms of Section 37(2) of the Court Fees Act. The main reason for dismissing the application is that the said application has been filed after framing of issues and the matter taken up for trial in the witness box. After cross examination of PW1, the present application has been filed for determining the Court fee issue as preliminary issue.

3. The learned Trial Judge has consciously dismissed the application holding that it is the duty of the Court to decide about the valuation of the suit property and payment of Court fee. Since trail has commenced and witness has already been examined, the question of deciding the valuation of the suit property and Court fee as a preliminary issue is not maintainable.

<https://hcservices.courts.gov.in/hcservices>
4. In support of the order, the trial Court has referred the judgment of this Court reported in **2016 (5) CTC 500 (S.Saibullakhan Vs. Hairunisha Beevi and others)** wherein the



procedure to be adopted in case of plea of under valuation, preliminary Trial Court has dismissed the application on the sole ground that the application has been taken out belatedly after commencement of trial.

5. This Court finds no reason to interfere with the order of the Trial Court because, any plea to decide preliminary issue ought to have been taken up on the earliest point of time. It is not sufficient to raise the point in the written statement and keep quiet, even after commencement of trial.

6. At the time of framing the issue itself, a plea of under valuation ought to have been taken and the party should have requested the Court to take up that issue as a preliminary issue. Having failed to do so, such plea cannot be entertained since it will cause only inconvenience to the litigants as well as the Court. Since the valuation of the property escalates in a geographical proportion. In a suit filed in the year 2013, I.A. filed in the year 2016, questioning the valuation of the suit is unreasonable and unsustainable under law.

7. Hence, this revision petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To
District Munsif,
Palani.

+1 cc to Mr.D.Venkatesh, Advocate, SR.No. 52386

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SM/MR
MKV-MMS-SAR 4/2.5.2017/2P-3C