

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD)No. 1203 of 2017
& C.M.P.No.5707 of 2017

1) D.Selvi

2) D.Sathish

3) D.Suryanarayanan

4) D.Harish

Rep., by their Power Agent

Mr.D.Suryanarayanan

.. Petitioners

Vs

1) S.Jeyalakshmi

2) J.Mohanraj

3) J.Premavathi

4) Bhavani

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal Order in I.A.No.15956 of 2012 in O.S.No.8985 of 2011 on 09.09.2016 on the file of the IV Additional City Civil Court, Chennai.

For Petitioners : Mr.K.S.Kumar

For R1 : Mr.T.Velumani

For R2 : No Appearance

For RR3 & 4 : Exparte before Court below

ORDER

The petitioner has filed an application under Section 12(2) of the Tamil Nadu Court Fees & Suits Valuation Act in I.A.No.15956 of 2012 in O.S.No.8985 of 2011 to decide the issue of payment of Court fee as a preliminary issue before proceeding further in the suit. However, the same was dismissed by the Court below. Challenging the said order, the petitioner has filed the present Civil Revision Petition before this Court.

2. According to the revision petitioners, the first respondent/plaintiff has not properly valued the suit by stating that the value of the suit property is at Rs.1,20,00,000/- and her share in the suit property is Rs.24,00,000/- Therefore, the issue of the payment of Court fee should be decided as a preliminary issue before proceeding further in the suit.

3. According to the revision petitioners, the first respondent has paid the court fee under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, which clearly states that, "In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint

possession of such property, fee shall be paid at the following rates". But the respondent has paid the Court fee under Section 37(1) of Tamil Nadu Court Fees & Suits Valuation Act which states, "In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share" and not under Section 37(2) of Tamil Nadu Court Fees & Suits Valuation Act.

4. According to the learned counsel for the respondent, the Court below rightly dismissed the application by holding that the issue of payment of Court fee can be decided during the trial of the suit. Since the claim of the petitioners to decide the Court fee as preliminary issue is not found to be genuine and the contentions of the respondents that the petition had been filed only with an intention to delay the proceedings found to be acceptable and since the original suit is ripe for trial, all the contentions put forth by the petitioners can be decided after conclusion of evidence of both parties and can be decided on merits. Hence, the Civil Revision Petition is liable to be dismissed.

5. According to the revision petitioner, limitation issue is a preliminary issue in a suit. The Court can interfere and decide the issue

of payment of Court fee in this suit, as a preliminary issue as contemplated under Order 14 Rule 2(2) of Civil Procedure Code and as per Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act 1955. The value of the property as mentioned in the suit is not in consonance with the provisions of the Act.

6. The learned counsel for the respondents would submit that the Court below has rightly dismissed the application of the petitioners. If there is any dispute regarding the valuation of the Court fees under the Tamil Nadu Court Valuation Act, 1955, it can be decided at the time of the trial of the suit by the concerned Court.

7. The grievances of the petitioner is that the said suit has been filed by the respondent without properly valuing the Court fee under Section 37(1) of the Tamil Nadu Court fees Valuation Act 1955. The payment of Court fee has to be decided by framing an additional issue in the said suit and thereafter, decide on the basis of pleadings in the plaint, written statement issues, oral and documentary evidence let in by the parties during trial of the suit. Therefore, the order of the Court below does not warrant interference by this Court.

8. Hence, the Civil Revision Petition is disposed of with a direction to dispose of the suit in O.S.No.8985 of 2011 as expeditiously as possible within a period of five months from the date of receipt of a copy of this order without being influenced by any of the observations made in this order. However there shall be no order as to costs. Consequently, connected C.M.P.No.5707 of 2017 stands closed.

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Index: Yes/ No

Internet : Yes /No

Speaking Order / Non-Speaking Order

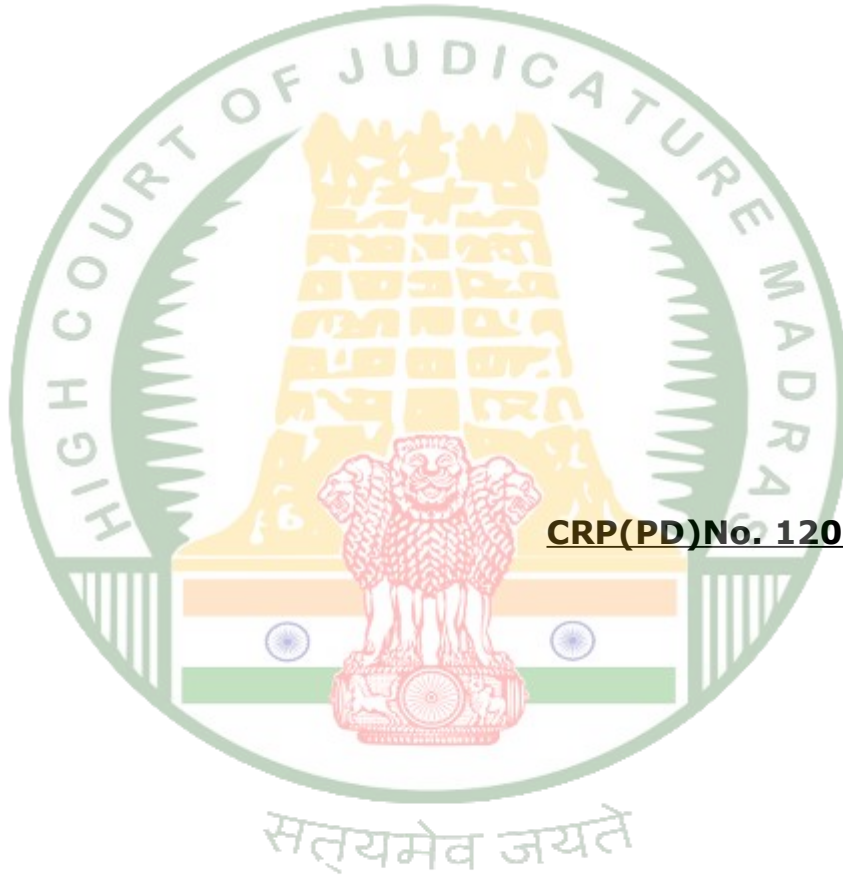
05.02.2018



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D. KRISHNAKUMAR J.,

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Order in
CRP(PD)No. 1203 of 2017

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