

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRP.P.D.No.1301 of 2018

and

CMP.No.6745 of 2018

E.Kamalakannan

.. Petitioner

Vs

1.A.Saraswathi

2.S.Sarala

3.D.Valli

4.E.Kannammal

5.E.Shanthi

6.M.Gomathi

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 18.01.2018 made in I.A.No.386 of 2017 in O.S.No.92 of 2016 on the file of District Court-II, Kanchipuram.

For Petitioner : Mr.P.B.Ramanujam

WEB COPY
ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 18.01.2018 passed in I.A.No.386 of 2017 in O.S.No.92 of 2016 on the file of District Court-II, Kanchipuram.

2. The fourth defendant in O.S.No.92 of 2016 on the file of the District Court No.II, Kanchipuram, is the revision petitioner herein.

3. According to the petitioner, the respondents 1 to 3/plaintiffs had filed a suit against the petitioner and the respondents 4 to 6 in O.S.No.92 of 2016 to set aside the partition deed dated 05.06.2015 and to grant preliminary decree for partition of the suit properties into 7 equal shares and to allot 3/7th share to the plaintiffs. Notice were served to respondents 4 to 6. Subsequently, the petitioner had filed an Application in I.A.No.386 of 2017 in O.S.No.92 of 2016 to reject the plaint. The Trial Court had dismissed the application. Aggrieved by the said order, the petitioner has filed the present civil revision petition before this Court.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The learned counsel for the petitioner would contend that the respondents 1 to 3 had filed the suit against the petitioner and respondents 4 to 6 for cancellation of partition deed and for consequential relief of partition. The respondents 1 to 3 have not properly valued the suit and paid the correct

Court Fee for their share. But the Trial Court has not considered the fact that whether the suit has been properly valued and Court Fee has been paid correctly or not. Therefore, the impugned order is liable to be rejected.

6. It is well settled principle of law that the valuation of the suit property to be made under Section 40 of Tamil Nadu Court Fee and Suits Valuation Act. At the time of deciding the application filed under Order VII Rule 11 C.P.C, if the Court finds that there is a deficit Court fee, the Court has to give a direction to pay deficit Court fee and then the plaintiff should be given an opportunity to comply with the said order and on failure to do so, the Court shall reject the plaint. Admittedly, in this case, the plaint discloses the cause of action and it is not barred by any law and there is no specific direction given to the respondents 1 to 3 for payment of deficit Court fees. In the absence of the same, the said prayer for rejection of plaint is premature.

7. Further, this Court looked into the averments made in the plaint, which discloses cause of action and also not barred by law. Therefore, there is no illegality or infirmity in the order passed by the trial Court .

P.VELMURUGAN,J.

kkd

8. Considering the facts and circumstances of this case, the civil revision petition is dismissed. The impugned order passed in I.A.No.386 of 2017 in O.S.No.125 of 2015 in O.S.No.92 of 2016 on the file of II District Court, Kanchipuram dated 18.01.2018 is hereby confirmed. No costs. Consequently, the connected civil miscellaneous petition is closed.

11.04.2018

Index : yes/No
kkd
To
II District Court, Kanchipuram.

CRP.P.D.No.1301 of 2018

and CMP.No.6745 of 2018

सत्यमेव जयते
WEB COPY