

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.06.2018

Coram:

THE HONOURABLE **MR.JUSTICE P.VELMURUGAN**

C.R.P.(PD)No.1801 of 2017 and
C.M.P.No.8543 of 2017

1. S.Karpagam
- 2.S.Paramasivam
3. S.Balaji

... Petitioners

Vs.

1. T.S.Prem Kumaar
2. S.Prema Kumari alias Ammu
3. Usha Raju
4. Monisha Raju
5. Rithika Raju

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 31.08.2016 passed in Appln.No.1594 of 2016 in C.S.No.819 of 2015 on the file of this Court.

For Petitioner : Mr.K.Bijaisundar

For Respondent : Notice served - No Appearance

सत्यमेव जयते

ORDER

This civil revision petition has been filed against the order dated 31.08.2016 passed in Appln.No.1594 of 2016 in C.S.No.819 of 2015 by the Master on the file of this Court.

2 The respondents herein filed a suit in C.S.No.819 of 2015 for partition against the revision petitioners before this Court. The petitioners herein filed an application in A.No.1594 of 2016 in the above said suit, to determine the question of Court fee that has been paid by the plaintiffs on the basis of plaint averments. This application was heard by the learned Master and was dismissed by an order dated 31.08.2016. Aggrieved against the same, the revision petitioners are before this Court with the present civil revision petition.

3 The learned counsel for the revision petitioners would submit that the respondents/plaintiffs have not valued the suit correctly and not paid the correct court fee. Under section 37(2)(ii) of the Tamil Nadu Court Fees and Suits Valuation Act (1955) (herein after referred to as the Act), the plaintiffs should have valued the suit at the market value of the suit property. The petitioners are in possession of the suit property and the respondents are not in "constructive joint possession of the suit property" as alleged by them.

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

5 The respondents/plaintiffs filed a suit for partition and it is avered in the plaint that they are in "constructive joint possession of the suit property" and they have paid the correct court fee.

6 On a reading of the plaint averments, it is seen that nowhere it is stated that the property is joint family property and they are in joint possession. In order to escape from payment of Court fee, the plaint has been drafted cleverly by stating that the plaintiffs are in constructive joint possession. The same is not acceptable without any proof that the plaintiffs are in joint possession with the defendants. Therefore, the plaintiffs ought to have paid the court fee under Section 37(1) of the Act. Under Section 11 of the Act, the matter is rightly referred to the Master and the Master ought to have disposed the application in accordance with law. Under these circumstances, the order dated 31.08.2016 passed by the learned Master warrants serious interference.

7 Accordingly, the order dated 31.08.2016 passed in A.No.1594 of 2016 is hereby set aside and the matter is remitted back to the Master to consider the above application afresh and pass orders

in accordance with law.

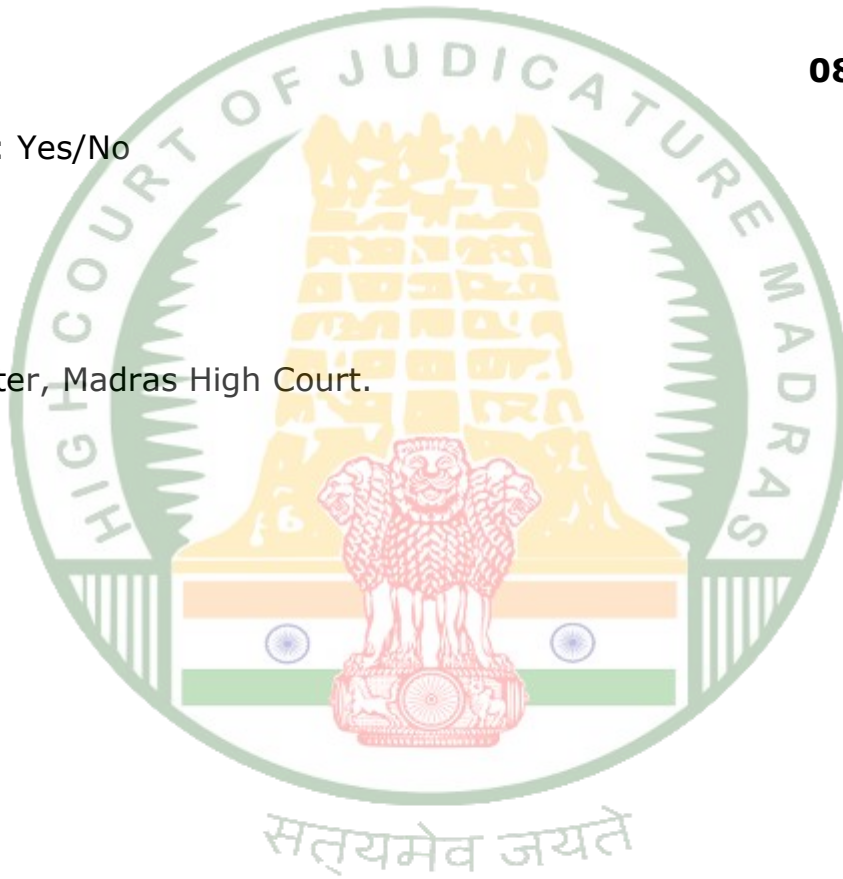
8 In the result, the civil revision petition is allowed.
Consequently, connected miscellaneous petition is closed. No costs.

08.06.2018

Internet: Yes/No
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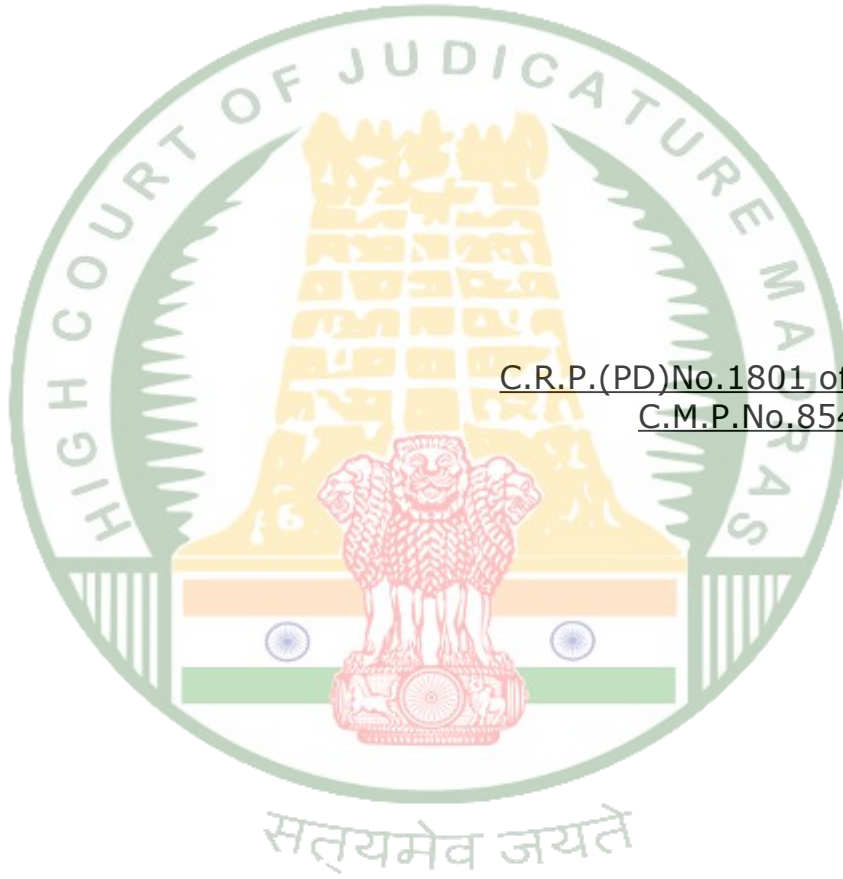
The Master, Madras High Court.



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P.VELMURUGAN, J.,

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