

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**Civil Revision Petition (PD) No.3112 of 2017****and****C.M.P.No.14555 of 2017**

1.A.Bhavani
2.A.Lakshmi
3.A.Navaratna
4.A.Girirajan
5.Thiripurasundari

... Petitioners

..Vs..

1.N.Saroja
2.S.Ranjitham

... Respondents

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the order dated 19.04.2017 passed in I.A.No.1406 of 2016 in O.S.No.259 of 2015 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur and allow the said application filed under Order 7 Rule 11 of C.P.C.

For petitioners : Mr.C.S.Kiran
For Respondents : Mr.R.Krishnaswamy

ORDER

Challenging the fair and decreetal order passed by the District Munsif cum Judicial Magistrate, Sriperumpudur, dated 19.04.2017 passed in I.A.No.1406 of 2016 in O.S.No.259 of 2015, the present revision petition has been filed.

2. The respondents filed a suit in O.S.No.259 of 2015 for partition, possession and for declaration. In the said suit, the petitioners have filed an application under Order 7, Rule 11 of C.P.C to reject the plaint on the ground that the schedule property has been under valued and actual court fee has not been paid by the respondents and that the suit is barred by limitation. The respondents filed their counter statement in the said application denying the averments made by the petitioners.

3. The Court below dismissed the said application, holding that the contention of the petitioners that the suit is undervalued is not correct, as the petitioners were parties to the documents in question. Insofar as the question of limitation is concerned, the Court below held that it is a mixed question of fact and law and therefore, it cannot be decided in the said application.

4. The learned counsel for the petitioner vehemently argued that the Court below did not appreciate the case of the petitioner as the respondent has not paid the court fees in accordance with the provisions Tamil Nadu Court Fees and Valuation Act under Section 14 of 1955 and further, the Court below has not gone into the merits of the case and dismissed the application. The learned counsel for the petitioners submitted that if an opportunity is granted to the petitioners, they would produce all the documents at the time of trial.

5. The learned counsel for the respondents has also fairly submitted that the petitioners have not produced any documents before the Court below to prove the allegations made in the affidavit and that the petitioners can produce these documents at the time of the trial to prove that the respondents have filed the suit without properly valuing the court fees under the provisions of the court fees and Valuation Act.

6. In the light of the submissions made by both the parties, this Court is of the view that all the issues can be decided at the time of trial in the suit and it is for the petitioners to establish before the Court below, at the time of the trial, by adducing the oral and documentary evidence, that the value of the property is not in consonance with the provisions of Tamil Nadu Court Fees and Valuation Act 1955.

D.KRISHNAKUMAR, J.,

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7. As the issue involved in the present application is a mixed question of fact and that it can be decided at the time of trial, this Court is not inclined to interfere with order passed by the Court below. Accordingly, the civil revision petition is dismissed with a direction, the trial Court is directed to consider the grounds raised by the petitioners in the application at the time of the trial, without being influenced by any of the observations made in the order of the Court below. No costs. Consequently, connected Miscellaneous Petitions are closed.

08.02.2018

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To
The District Munsif cum Judicial Magistrate, Sriperumpudur

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