

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3963 of 2014 and
M.P.No.1 of 2014

1.M.J.Mohan
2.Poongothai
3.S.Nivas
4.S.Harini

.. Petitioners

Vs.

1.Vasantha Suthanantham
2.J.Kasi Viswanathan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 07.08.2014 made in I.A.No.1 of 2014 in O.S.No.315 of 2012 on the file of the II Additional Subordinate Court, Erode.

For Petitioners : Mr.J.Titus Enock

for Mr.I.C.Vasudevan

For Respondents : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 07.08.2014 made in I.A.No.1 of 2014 in O.S.No.315 of 2012 on the file of the II Additional Subordinate Court, Erode.

2. The petitioners are plaintiffs and respondents are defendants in O.S.No.315 of 2012 on the file of the II Additional Subordinate Court, Erode. The petitioners filed the said suit for partition. The respondents filed written statement on 01.03.2013 and are contesting the suit. The respondents filed I.A.No.1 of 2014 under Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, to adjudicate the issue of valuation of the suit claim and payment of Court fee before commencement of trial as a preliminary issue.

3. According to the respondents, the petitioners have not valued the suit properly and not paid the correct Court fee. The allegation that the petitioners are in joint possession of the suit property is only a bald allegation and they are not in joint possession of the suit property with the respondents. The Court fee paid under Section 37(1) of the Tamil Nadu Court Fees and Suit

Valuation Act, is not correct. The petitioners have to pay the Court fee under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act.

4. The petitioners filed counter affidavit and opposed the said application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and judgments rendered by this Court, allowed the application framing two preliminary issues.

6. Against the said order dated 07.08.2014 made in I.A.No.1 of 2014, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners and perused the materials available on record. Though notice was served on the respondents and their names are printed in the cause list, there is no representation on behalf of the respondents either in person or through counsel.

8. From the materials available on record, it is seen that the respondents have filed the present application to decide the issue of pecuniary jurisdiction as a preliminary issue. According to the respondents, the petitioners are not in joint possession of the suit property and therefore, they have to pay the Court fee as per Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 and Court fee paid by the petitioner under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, is not correct. If the suit is properly valued, the Court will not have jurisdiction to try the suit. The petitioners have given value of the property at Rs.10,00,000/- and their share is Rs.5,00,000/-. The respondents have not made any averments or produced any document to show that value of the property is more than Rs.10,00,000/-. Their objection is that the petitioners are not in joint possession of the suit property and therefore, they have to pay the Court fee under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

9. The learned Judge having held that whether the petitioners are in joint possession of the suit property with the respondents or not can be decided only by letting in evidence, erred in holding that

only by deciding the said issue as a preliminary issue, it can be decided whether the Court has pecuniary jurisdiction or not. The two preliminary issues framed by the learned Judge are not valid. As per Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, only when the defendant satisfies the Court prima facie that the suit is undervalued, the Court can order enquiry with regard to the value of the property and decide the said issue as a preliminary issue. The respondents have not disputed the value of the property as given by the petitioners.

10. In view of the above, impugned order of the learned Judge is liable to be set aside and it is hereby set aside, as he has committed irregularity in framing preliminary issue whether the petitioners are in joint possession of the suit property.

11. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.02.2018

Index:Yes/No

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V.M.VELUMANI,J.

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To

II Additional Subordinate Judge, Erode.



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