

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED : 21.08.2018****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRP (MD) Nos.430 & 431 of 2016 (PD)****WEB COPY**

M.J.Ganesh

... Petitioner in both petitions

Vs.

1.R.S.Eswari

2.Y.Padma

... Respondents in both petitions

Common Prayer : These Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A No.813 & 814 of 2015 in O.S No.105 of 2006 on the file of the 2nd Additional District & Sessions Judge, Thanjavur dated 27.01.2016.

For Petitioner

in both petitions

: Mr.M.P.Senthil

For Respondents

in both petitions

: Mr.S.Parthasarathy for R1

Mr.K.Guhan for R2

in both cases.

COMMON ORDER

The second defendant in OS No.105 of 2006 on the file of the 2nd Additional District Judge, Tanjore is the revision petitioner in both these Civil Revision Petitions. The suit was filed by the revision petitioner's elder sister. The suit is one for partition and separate possession. During the pendency of the suit, the revision petitioner filed IA Nos.813, 814 and 815 of 2015. I.A No.813 of 2015 is for framing additional issues while IA No.814 of 2015 was filed under Order 14 Rule 2 of CPC for framing issue of payment of court fee as a preliminary issue and I.A No.815 of 2015 was filed for staying the trial of the suit till the disposal of I.A Nos.813 & 814 of 2015. All the interlocutory applications were dismissed by a common order dated 27.01.2016. The correctness of the common order is under challenge in these Civil Revision Petitions.

2.Heard the learned counsel on either side.

3.This Court is of the view that since the suit has been instituted only before the District Court, the issue of pecuniary jurisdiction will not arise. The revision petitioner had raised the following issues to be framed as additional issues.



1. Whether the suit is not maintainable and hit by the doctrine of partial partition for not including the properties of late Balarama Iyer, shown in the General Power of Attorney executed by late Balarama Iyer in favour of Govindarajan and the Plots in Balram Nagar situate in Ammachateram Village?

2. Whether the plaintiff is not bound to pay Court Fees for D and E Schedule suit properties under Section 37 (1) of the TN Court Fees and Suits Valuation Act, 1955?

3. Whether the suit is maintainable for not impleading the subsequent purchasers of the E Schedule properties as defendants in this suit?

4. Whether the suit in respect of item No.8 of A schedule property and the entire proceedings covered under E Schedule are barred by law of limitation?

4. This Court is of the view that these issues can be taken up and decided in the main suit. The issue of court fee is left open and it will be decided by the learned Trial Judge in the main suit under Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Both these Civil Revision Petitions are disposed of accordingly. No costs.

Sd/-

Assistant Registrar(Cs-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The 2nd Additional District & Sessions Judge,
Thanjavur.

Copy to :

The Record Keeper, (2 copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Parthasarathy, Advocate Sr.No.79538
+2cc to Mr.K.Guhan, Advocate Sr.No.79612, 79613

SKM

VB/RSK/SAR1/17.09.2018/2P/7C

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