

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.R.P.NO.1643 OF 2019

AND

C.M.P.NO.10738 OF 2019

1. T.S.Prem kumaar

2. S.Prema kumari Alias Ammu ... Petitioners/Respondents

-Vs-

1. Mrs.S.Karpagam

2. Mr.S.Paramasivam

3. Mr.S.Balaji

4. Mrs.Usha Raju

5. Ms.Monisha Raju

6. Ms.Rithika Raju

... Respondents

Prayer:

Petition filed under Article 227 of the Constitution of India against the order dated 20.02.2019 in application in A.No.1594 of 2016 in C.S.No.819 of 2015, on the file of the High Court of Judicature at Madras, passed by the learned Master.

For Petitioners : Mr.S.Mohandas

For Respondents : Mr.K.Bijai Sundar

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O R D E R

This Civil Revision Petition has been filed against the fair and decretal order passed in A.No.1594 of 2016 in C.S.No.819 of 2015, by the learned Master of this Court, by order dated 20.02.2019 .

2. The revision petitioners are the plaintiffs who filed a Civil Suit in C.S.No.819 of 2015 before this Court for partition and separate possession of the suit property.

3. In the said suit, an application was filed by the respondents/defendants 1 to 3 in A.No.1594 of 2016, with a prayer to determine the question of Court fee, that has to be paid by the plaintiffs.

4. In the said application filed by the respondents/defendants, counter affidavit had been filed by the revision petitioners/plaintiffs and after hearing both sides, the learned Master by order dated 31.08.2016 has passed an order rejecting the said application.

5. As against the said order passed by the learned Master, by order dated 31.08.2016, the defendants who are the respondents herein, preferred revision petition in C.R.P.(PD) No.1801 of 2017.

6. In the said Civil Revision Petition, even though notice has been served on the respondents therein, who are the petitioners herein, i.e., plaintiffs, it seems that, there was no appearance. Nevertheless, the learned Judge, who decided the said C.R.P(PD)No.1801 of 2017, by order dated 08.06.2018, set aside the order impugned therein, i.e., the order passed by the learned Master, by order dated 31.08.2016 and remanded the matter back to the learned Master for reconsideration and decision. Pursuant to the said remand order passed by this Court, the learned Master has decided the said application once again in the present impugned order dated 20.02.2019, thereby the learned Master allowed the said application, by thus, directing the revision petitioners/plaintiffs to pay the Court fee as per Section 37(2)(iii) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Aggrieved over the said order, the revision petitioners/plaintiffs filed the present revision petition.

7. I have heard Mr.S.Mohandas, learned counsel appearing for the revision petitioners and Mr.K.Bijai Sundar, learned counsel appearing for the respondents.

8. The issue raised in this revision petition is in very narrow compass, as to whether the order passed by the learned Master of this Court in the order impugned, directing the revision petitioners/plaintiffs to pay the Court Fee Ad-valorem equal to the market value of the share of the plaintiffs in the suit property for the purpose of partition and separate possession, is justifiable or not.

9. Before delve into the question, at least two provisions of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Act), has to be gone into.

10. Under Section 11 of the said Act, the decision as to the proper fee in the High Court, has to be made by the Taxing Officer of this Court, whereas, the power to be exercised by the Taxing Officer is being exercised by the Master of this Court. The order passed by the learned Master in the order impugned, fixing the Court Fee determined by him under Section 11 of the said Act can be only construed as if made by the Taxing Officer.

11. In this context, Section 11 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, is hereby extracted:

" 11. Decision as to proper fee in the High Court:-

Where, in a suit instituted in the High Court in which a fee is payable under this Act, any difference arises between the Officer whose duty it is to see that proper fee is paid and any party as to the necessity of paying a fee or the amount thereof, the question shall be referred to the Taxing Officer who shall decide the same:

Provided that, if in the opinion of the Taxing Officer, the question is one of general importance, he may refer it to the Chief Justice of the High Court or such Judge or Judges of the High Court as the Chief Justice shall appoint, either generally or specifically on this behalf.

Provided further that, when the case comes up for disposal before the Court, the decision of the Taxing Officer may be reviewed by the Court."

12. The other provisions to be looked into under the said Act is Section 37, where, under the heading "Partition Suits", Section 37 of the Act provides the following:

"37. Partition suits.-

(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

(2) In a suit for partition and separate possession of joint family property or property owned jointly or in

common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates:

When the plaint is presented to-

(i)	The High Court.	Rupees ten thousand.
(ii)	Courts other than High Court.	Rupees five thousand.]

Before substitution, section 37 (2) reads as follows:

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates:

When the plaint is presented to-

(i)	a District Munsif's Court.	Rupees one hundred.
(ii)	the City Civil Court, Chennai or a Sub-Court or a District Court.	Rupees one hundred, if the value of plaintiffs share is rupees thirty thousand or less; rupees five hundred, if it is above rupees thirty thousand but below rupees one lakh; and rupees seven hundred and fifty, if the value is rupees one lakh and above.
(iii)	The High Court.	Rupees one thousand.]

(3) Where, in a suit falling under Sub-section (1) or Sub-section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the market value of his share or at half the rates specified in Sub-section (2), according as such defendant has been excluded from possession or is in joint possession.

(4) Where, in a suit falling under Sub-section (1) or Sub-section (2), the plaintiff or the defendant seeks cancellation of decree or other documents of the nature specified in Section 40, separate fee shall be payable on the relief of cancellation in the manner specified in that Section."

13. Only in the teeth of these two Sections, whether the decision taken by the learned Master through the impugned order can be sustained or not can be decided.

14. In this context, it is also to be taken note of that, as against the order of dismissal of the very same application by the learned Master in the first round, by order dated 31.08.2016, the revision petitioners / defendants filed C.R.P. (PD) No. 1801 of 2017 as said above, where the learned Judge of this Court by order dated 08.06.2018 has passed the following order:

"5. The respondents / plaintiffs filed a suit for partition and it is averred 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."

15. Paragraph 6 of the said order as has been extracted above is crucial, where the learned Judge has given a finding that, in the plaint averments, it is seen that, nowhere it is stated that the property is a joint family property and they are in joint possession. The learned Judge has also given a finding, that, 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. Though such findings against the plaintiffs was given by the learned Judge, in the aforesaid judgment it has not been questioned further and in fact having accepted the said judgment, the plaintiffs submitted the issue before the learned Master to decide as directed and remitted by the learned Judge in the said order dated 08.06.2018.

16. Accordingly, the learned Master has gone into the plaint averments filed by the plaintiffs and has found that, no where in the plaint it has been specifically averred and claimed by the plaintiffs that, they have been in joint possession of the suit property.

17. However they have mentioned at paragraph 14 of the plaint that, for the purpose of Court fee and jurisdiction for the relief of partition and separate possession, the plaintiffs valued the suit for Rs.1,50,00,000/- (One Crore and Fifty Lakhs Only) being the value of the plaintiffs one-half share out of total value of Rs.3,00,00,000/- (Rupees Three Crores Only) and since the plaintiffs were in constructive joint possession of the suit property, the plaintiffs pay a Fixed Court Fee of Rs.1,000/- (Rupees Thousand Only) under Section 37(2)(iii) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

18. Though the said averments has been made only in paragraph 14 of the plaint for the purpose of Court Fee and suit valuation, even in the said averments it has not been stated, the plaintiffs have been in joint possession of the suit property and only stated as constructive joint possession and which has been considered by the learned Judge in the earlier round of litigation by previous CRP in his order dated 08.06.2018 stating that, without any proof that, the plaintiffs are in joint possession with the defendants, the said claim that they had been in constructive joint possession would not be helpful to the plaintiffs to claim shelter under Section 37(2)(iii) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, to pay the Fixed Court Fee of Rs. 1,000/- (Rupees Thousand Only).

19. Section 37 of the Act, as has been extracted above, makes it clear that, once it is a suit for partition, where joint possession has not been claimed or averred in the plaint, the plaintiffs are not entitled to pay Fixed Court Fee, as has been contemplated under Section 37(2)(iii) of the Act, therefore if a partition suit is filed before this Court, the plaintiffs would not be entitled to invoke Section 37(2)(iii) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, unless and until, he pleaded for joint possession of the suit property including the share of the plaintiffs.

20. In the absence of such averments in the plaint and claim made therein about the joint possession of the suit property, the plaintiffs would have to value the suit at the market value of the share claimed by the plaintiffs in the suit and accordingly Ad Valorem Court Fee has to be paid.

21. In the given circumstances, in the absence of any such averments or the claim made by the plaintiffs i.e., revision petitioners herein, in the plaint, that they have been in joint possession of the suit property along with the defendants, the plaintiffs are not entitled to take shelter under Section 37(2) (iii) of the Act to pay the Fixed Court Fee of Rs.1,000/- (Rupees Thousand Only), whereas, the plaintiffs would be liable only to pay the Court Fee at Ad Valorem, for the market value of the share of the plaintiffs claimed in the suit property which the plaintiffs themselves quantified as Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs) being 1/2 share of the total worth of the property of Rs.3,00,00,000/- (Rupees Three Crores Only).

22. In view of the aforesaid facts and circumstances, the present order which is impugned herein, passed by the learned Master, on its perusal cannot be found faulty one, as the learned Master has given the reasons that, on perusal of the averments of the plaint, it is clear that, there is no whisper to the effect that, the plaintiffs are in the joint possession of the suit property. The learned Master in the order impugned further stated that, the only term which can be seen in the plaint is that, the plaintiffs are in constructive joint possession of the suit property. He has further stated that, the respondents / plaintiffs have not averred in their counter, that they are also in joint possession of the suit property, which shows that, the respondents / plaintiffs are not in the joint possession of the property, therefore, the suit has to be valued at the market value of the alleged plaintiffs' share of the suit property.

23. By giving all these reasons, the learned Master have allowed the said IA through the impugned order.

24. As I have stated above, there is absolutely no infirmity or perversity or erroneousousness attached with the said order impugned, since the said order has been passed completely based on the averments made by the plaintiffs / revision petitioners in the plaint and that was inconsonance with the provisions of the Act namely Sections 11 and 37 and more particularly in the context of the remand order passed by this Court, by an order of the learned Judge, who disposed of the earlier Civil Revision Petition, by order dated 08.06.2018 in C.R.P. (PD) No. 1801 of 2017.

25. Therefore, this Court has no hesitation to hold that, the order impugned is perfectly valid and justified and also sustainable and hence, it does not require any interference from this Court.

26. Since three weeks already fixed to pay the Fixed Court Fee by the learned Master through the impugned order, in view of the pending of this revision, got lapsed, taking into account of all these factor, this Court grants three weeks time from the date of receipt of a copy of this order to pay the correct Court Fee as determined through the impugned order.

27. In the result, the Civil Revision Petition fails and hence it is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vji

To

The Master
High Court of Madras,
Chennai.

+1cc to Mr.G.Thangavel, Advocate, S.R.No.91322
+1cc to Mr.K.Bijai Sundar, Advocate, S.R.No.91605

C.R.P.No.1643 of 2019
and
C.M.P.No.10738 of 2019

SVI (CO)
CS/22/05/2020

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