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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.No.3952 of 2019
and
C.M.P.No.26076 of 2019

Mumtaj Begum

.. Petitioner

Vs.

Dhulkar

.. Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order, dated 31.07.2017 in I.A.No.118 of 2016 in O.S.No.51 of 2015 by the learned I Additional District and Sessions Judge, Cuddalore.

For Petitioner : Mr.K.Moorthy

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O R D E R

This revision is directed against the order rejecting the petitioner's application in I.A.No.118/2016 in O.S.No.51 of 2015 filed under Order XIV Rule 2 read with Section 12(2) of Tamil Nadu Court Fees and Suits Valuation Act to decide the Payment of Court Fee on the plaint as preliminary issue.

2. The respondent/plaintiff filed a suit for preliminary decree for partition and separate possession of plaintiff's half share in Suit 'A' Schedule property and for permanent injunction restraining the defendants from entering upon the suit 'B' Schedule property and for a declaration that the sale deed dated 17.10.2013, between 1st and 2nd defendants as null and void.

3. The first defendant in the suit has filed the above application in I.A.No.118 of 2016 under Order XIV Rule 2 read with Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act. It is stated that the plaintiff is not in joint possession with the defendants in respect of 'A' schedule property and hence Court fee has been paid under Section 37(2) of the Tamil Nadu Court Fees Act. It is stated by the first defendant that as the plaintiff has not properly valued the suit and paid insufficient Court fee, hence the same has to be decided as a preliminary issue. The



trial Court dismissed the said application stating that the issue as to valuation and payment of Court fee cannot be decided without recording evidence. Now, challenging the said dismissal order, present revision has been filed.

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4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused the records carefully.

5. A perusal of the records would show that the plaintiff came out with a case that she is not in joint possession. Whether the plaintiff is in joint possession or in separate possession cannot be decided at this stage. It can be decided only during the trial. The Trial Court considering all aspects dismissed the application. This Court does not find any illegality or irregularity in the order passed by the trial Court. There is no merit in the revision and the same is liable to be dismissed.

6. In the result, the civil revision petition is dismissed and the order and decretal order of the Court below, impugned in this revision petition, are hereby confirmed. The trial Court is directed to decide the issue of Court fee raised by the petitioner at the time of trial. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

The I Additional District and Sessions Judge,
Cuddalore.

+1cc to Mr.K.Moorthy, Advocate, S.R.No.103855

C.R.P.No.3952 of 2019 and
C.M.P.No.26076 of 2019

RK (CO)
CB (15/07/2020)