

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P.PD.No.2468 of 2015

and

MP.No.1 of 2015

S. Chinnarasu

... Petitioner

Vs.

S. Nataraj

... Respondent

Prayer :- This Civil revision has been filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 27.01.2015 against I.A.No.294 of 2014 in O.S.No.1540 of 2013 passed by the III Additional Subordinate Judge, Coimbatore, by allowing this Civil Revision Petition.

For petitioner : Mr. V. S. Usha Rani

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioner's application filed under Section 12 of the Tamil Nadu Court Fees and Suits Valuation Act to decide the Court Fee issue as a preliminary issue.

2. The petitioner is the first defendant in the suit. The respondent/plaintiff, filed a suit in O.S.No.1540 of 2013, on the file of the III Additional Subordinate Court, Coimbatore for partition. The above suit has been filed on the ground that the suit schedule property belongs to the father of the plaintiff and the defendants. After the death of their father, both the plaintiff and the defendants have equal share in the property and they have been in joint possession of the same, the plaintiff paid the Court fee under Section 37(2) and 27(c) of the Tamil Nadu Court Fees and suit Valuation Act. Pending suit, the first defendant filed a petition under Section 12 of the Tamil Nadu Court Fees and Suits Valuation Act to decide the issue of the Court fee as a preliminary issue. According to the petitioner, even in the plaint, the plaintiff has admitted that, he is not in possession of the suit

schedule property and hence, the plaintiff has to pay the Court Fee under Section 37(1) of the Act. The trial Court, by an order dated 27.01.2015, dismissed the application holding that since the plaintiff is out of the possession of the suit property temporarily, it cannot be considered as he was ousted from the suit property and the issue need not be considered as preliminary issue. Now, challenging the same, the present revision has been filed.

3. Heard the learned counsel for the petitioner and perused the materials available on records.

4. The trial Court dismissed the application holding that from a reading of the plaint, it could be seen that the plaintiff is only temporarily out of possession of the suit schedule property and it cannot be considered as he has been ousted from the property and dismissed the application. I have carefully gone through the materials. Whether the plaintiff is in joint possession or ousted from suit property are the issues for trial, at this stage, it cannot be decided. Consequently, the Court Fee issue also necessarily to be decided in the suit. However, considering the

fact that the suit is pending from the year 2013, at this stage, I am of the considered view that the issue need not be tried as a preliminary issue. The trial Court can frame the issue of Court Fee while framing other issues and try issue in the suit and dispose the same.

5. Considering the above circumstances, the Civil Revision Petition is disposed of with a direction to the trial Court to frame the issue of Court Fee as one of the issues while framing other issues in the suit, and proceed with the suit and dispose the same, after giving opportunity to both the parties, on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

11.02.2020

mrp
Index : Yes/No
Internet : Yes/No
Speaking order/non speaking order
To

The III Additional Subordinate Judge, Coimbatore,

V.BHARATHIDASAN, J.,

mrp



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