

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
16.02.2021	19.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

A.No.723 of 2020
in C.S.No.429 of 2019

1. Sandhanam
2. Jayaraman
3. Raghu
4. Ms. Neela
5. Tmt. Thulasi
6. Mr. Rose
7. Tmt. Latha
8. Perumal
9. Tmt. Yasodha
10. Nandhagopal
11. Tmt. Radha Bai
12. Tmt. Andaal

.. Applicants/Defendants 1 to 5, 10 to 16.

Vs

1. Radhakrishnan
2. S. Aravind
3. Ravi
4. Kannan
5. Parthiban
6. R. Ganesan
7. Elangovan
8. Asaithambi

9.Sankar

10.Anandhan

11.Balan

.. Respondents 1 to 11 / Plaintiffs

12.Paneer Selvam

13.Kousalya

14.Selvamani

15.Tmt.Amul

16.Sankar

.. Respondents 12 to 16 / Defendants 6 to 9, 17

Prayer: Application filed under Order XIV Rule 8 O.S. Rules r/w Order VII Rule 11(b) of CPC to reject the plaint in C.S.No.429 of 2019 as not maintainable.

For Applicants : Mr.L.Dhamodharan

For Respondents : Mr.G. Ranganathan

ORDER

Defendants No.1 to 5, 10 to 16 in C.S.No.429 of 2019 have filed this Application under Order VII Rule 11(b) of CPC praying to reject the plaint in C.S.No.429 of 2019.

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2. Heard Mr.L. Dhamodharan learned counsel appearing for the Applicants/ Defendants and Mr.G.Ranganathan, learned counsel appearing for

the Respondents/Plaintiffs.

3. It is the contention raised by the Applicants that the suit has been under valued. After the demise of one Thiru.Ponnu Pillai, who is the purchaser of the suit schedule property, the Plaintiffs and Defendants are separated themselves. After separation, the Plaintiffs were never been in possession of the property. Therefore, since the suit has been filed for the relief of partition, the suit has been valued under Section 37(1) of the Tamil Nadu Court Fee and Suits Valuation Act, 1955 and not under Section 37(2) of the said Act. The Applicants/Defendants herein in their Written Statement pleaded that the Plaintiffs have lost their right by way of ouster therefore due to the reason that the plaintiffs paid the less court fee, the plaint has to be necessarily rejected.

4. Per contra, it is the case of the Respondents/Plaintiffs that the Plaintiffs and Defendants are the legal representatives of the deceased Thiru. Ponna Pillai and therefore being the legal heirs of the common ancestor, both the Plaintiffs and Defendants are termed as co-owners. In this occasion, since the plea of ouster is proved, it cannot be termed that the Plaintiff are out of possession.

Further, the payment of Court Fee is not supposed to be a reason for rejecting the plaint. Accordingly, the Respondents/Plaintiffs are prayed to dismiss this Application.

5. Now, by considering the submissions made by the learned counsels appearing on either side, first of all we have to decide whether this application has to be decided based upon the pleadings found in the plaint and written statement or only upon the pleadings found in the plaint. At this juncture, it is relevant to see the judgment of this Court in ***Tamilnadu Table Tennis Association Vs.N.Arulselvi [(2018) 6 MLJ 581]*** wherein this Court has already held as follows:

“Court has to go by averments made in plaint to find out whether it discloses cause of action and not to judge issue based on defence raised by Defendant in his pleadings.”

6. So, it is settled position that if an application is filed under Order VII Rule 11 of the C.P.C., it has to be decided only by referring the averments found in the Plaint and not in the Written Statement. More over, now it is not the stage

to decide whether the Defendants have proved the plea of ouster or not. In the judgment referred by the Applicants in ***S. Balammal vs. Sundaresan and nine others [1996 1 CTC 420]*** this Court has held as follows:

*“The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved,” To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share of some income from the property. So long as his right to a share and the nature of the property as joint is not disputed, the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court-fee under **Section 37(1)** of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been "excluded" from joint possession to which they are entitled to in law. The averments in the plaint that the plaintiff could not remain in joint possession as he was not given any income from the*

joint family property would not amount to his exclusion from possession.”

So, law is well settled that in the case of co-owner, the possession of one is in law possession of all.

7. Secondly, now go to the relationship between the Plaintiffs and Defendants, in the plaint averments it is mentioned that the Plaintiffs and Defendants are the legal heirs of Thiru. Ponna Pillai S/o Srinivasa Pillai who alone purchased the suit schedule property in the year 1959 from one Ammani Ammal W/o Kanniappa Naicker. Further in Para 3 of the plaint, it is specifically pleaded that the plaintiffs are the legal heirs through 1st wife and the Defendants are the legal heirs through 2nd wife of the Ponna Pillai. Further, it is stated that after the demise of said Ponna Pillai the Plaintiffs and Defendants are occupied the premises and without making any development, they are possessing and enjoying the existing nature without any alteration. So, the said averment found in the plaint clearly shows that there is a pleading for joint possession between the Plaintiffs and Defendants. So, in all, the grounds raised by the Applicants/Defendants ended in vain. More than that, in the Judgment in **K.**

Ramadoss and Others vs. E.Stalin [2016-2-L.W.572] this Court has held as follows:

“Nothing has been provided in any of the sub-clauses to Rule 11 under Order VII CPC nor the rejection of the plaint straightaway on the ground of undervaluation or payment of deficit Court fee.”

8. Herein also the said observation of this Court is very clear that for the reason for the payment of less Court fee, the Plaint cannot be rejected. Accordingly, in the line of the above discussion, the Application is liable to be dismissed. Accordingly, the Application is dismissed.

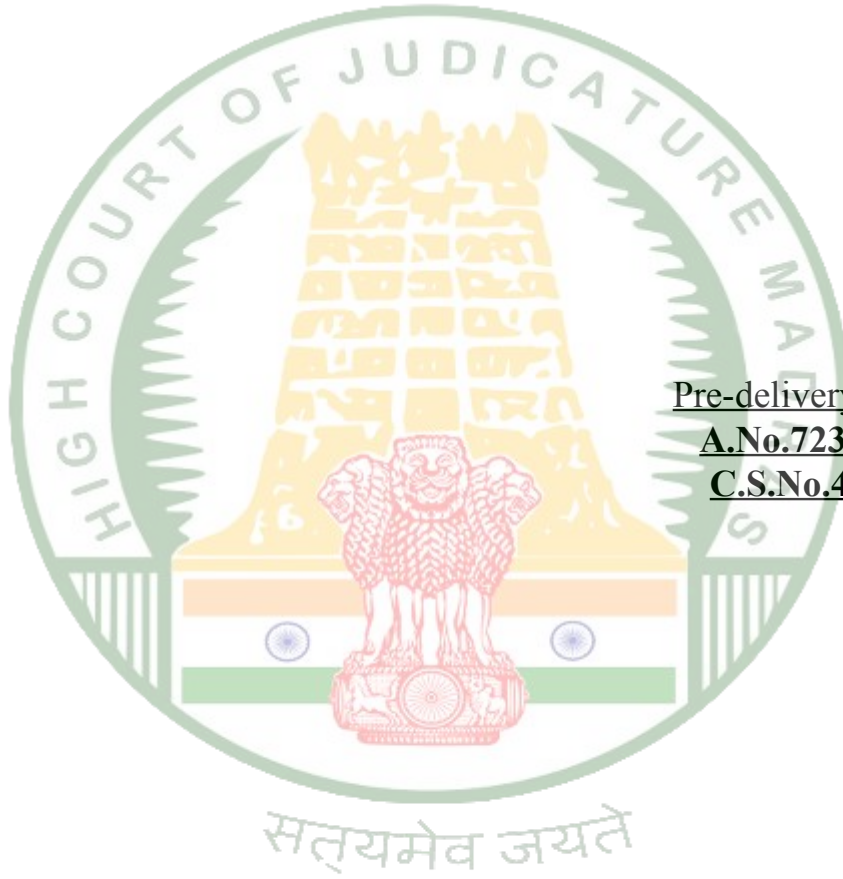
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R.PONGIAPPAN, J.

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Pre-delivery Order in:
A.No.723 of 2020 in
C.S.No.429 of 2019

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