

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (PD) No.756 of 2021
and
CMP.No.6612 of 2021

P.Natarajan ... Petitioner/Defendant

Vs.

Rajammal ... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair and final order dated 23.01.2021 passed by the learned V Additional District Judge, Coimbatore, in I.A.No.5 of 2020 in O.S.No.591 of 2020.

For Petitioner : Mr.L.Mouli
For Respondent : No appearance

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ORDER

(This case has been heard through video conference)

The defendant in O.S.No.591 of 2020 is the revision petitioner herein.

The said suit is pending on the file of the V Additional District Court,

Coimbatore. The suit had been filed by one Mrs.Rajammal, who was aged 74 years against her brother P.Natarajan, who was aged 71 years at the time of institution of the suit, seeking partition and separate possession of one half share in the suit schedule property and for permanent injunction and consequential reliefs.

2.In that suit, the defendant had filed an application in I.A.No.5 of 2020 under Order VII Rule 11 of CPC to reject the plaint. Two points were taken in the said application, one, that the suit was not properly valued and another one is that proper Court Fees was not paid.

3.With respect to the valuation of the suit, the learned counsel for the petitioner states that the learned Judge had directed the plaintiff to value the suit properly and to pay additional court fees. It is stated that the compliance had been made with respect to that aspect. With respect to the issue of Court Fees, the plaintiff had paid Court Fees under Section 37 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. The revision petitioner claims to be in possession and enjoyment of schedule mentioned property. This claim made by the plaintiff is challenged by the revision petitioner / defendant. According to

the revision petitioner / defendant, the Court Fees should have been paid under Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

4.Essentially this is an issue for evidence which can be resolved only during trial. I would rather point out that in respect of the issues raised by the revision petitioner herein, the plaintiff has to lead evidence including evidence about possession both physical possession and / constructive and / symbolic possession. Let the learned Judge examine the statements in the evidence of the plaintiff after it is tested during cross examination. Thereafter, let the learned Judge apply his mind to the evidence recorded and determine whether the plaintiff should have to pay the court fees under Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 or under Section 37 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Essentially, that is an issue on fact which can be resolved only on the evidence adduced by the plaintiff. At this stage, it would not be appropriate to give a finding based on the averments made which averments are denied and disputed by the other side.

5.With the above said observations, I keep the issue on payment of Court

Fees open and request that the learned V Additional District Judge, Coimbatore, to examine that particular issue during the course of trial. If he finds that the plaintiff is not in possession, the learned Judge has to call upon the application to pay the court fee under Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and if it is otherwise, the matter may rest at that. The revision petitioner herein as the defendant would also get the opportunity to question and challenge any statement by the plaintiff regarding possession.

6. With these observations, the Civil Revision Petition stands disposed of. Consequently, the connected miscellaneous petition also stands dismissed. No order as to costs.

19.04.2021

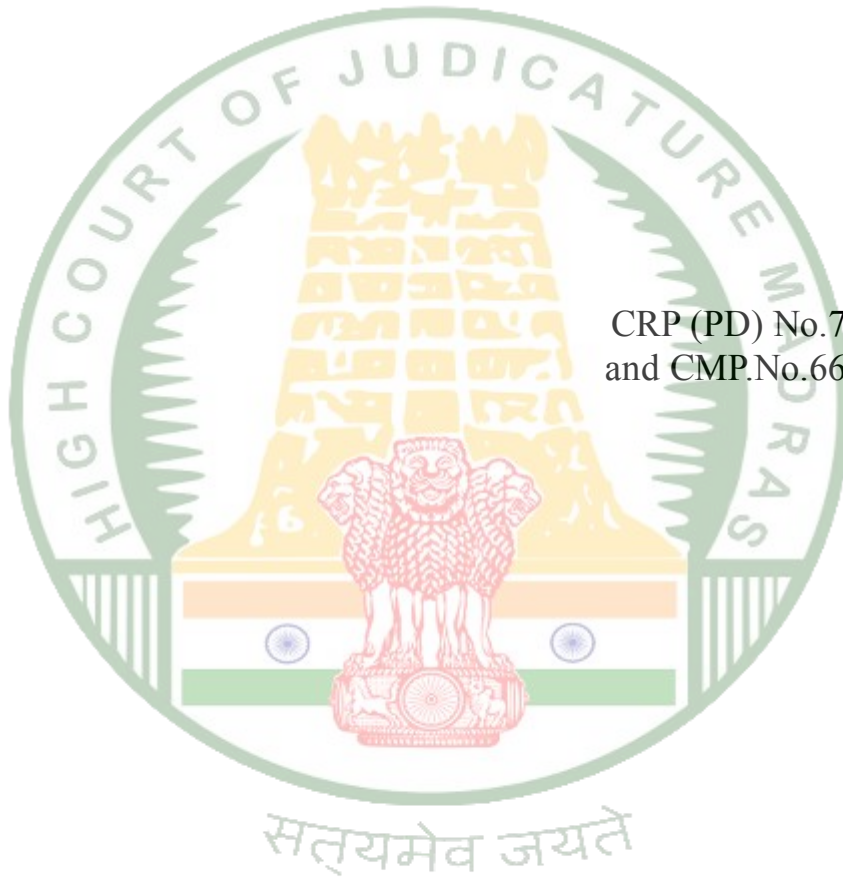
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To

1. The District Judge, Coimbatore.

2.The V Additional District Judge, Coimbatore.

C.V.KARTHIKEYAN, J.,



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