



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

Coram

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

O.S.A.No.306 of 2021
and C.M.P.No.17512 of 2021

1.Madan Suri
2.Jagan Suri

..Appellants

Vs

1.Anuradha Sarin
2.Mridula Gettu

3.The Bank of India having its Branch
at No.172, Luz Church Road,
P.O. Box No.643, Mylapore, Chennai
rep. by its Branch Manager with its
Zonal Office at Star House,
No.30/Old No.17, 2nd Floor,
Errabalu Street, Chennai - 1 and
its Head Office at Star House,
C-5 G Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051
rep. by its Chairman and Managing Director

..Respondents

Appeal preferred under Order XXXVI Rule 1 of O.S. Rules r/w
Clause 15 of Letters Patent against the order dated 04.02.2021
made in A.No.1854 of 2021 in C.S.No.624 of 2014.

Prayer in A.S.No.1854 of 2021 : This Application is filed under
Section 12 of Tamil Nadu Court Fee and Suit Valuation Act, 1955,
R/w Order XIV, Rule 8 of the Original Side Rules, Madras High
Court, 1959, to decide and determine the issue of Court fee as a
preliminary issue.

For Appellants .. Mr.Najeeb Usman Khan

For Respondents.. Mr.Adeesh Anto for R1



JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order passed by learned Single Judge dated 04 February 2021 in A.No.1854 of 2020 in C.S.No.624 of 2014. The said application was given by original defendants 1 and 2 and they are appellants.

2. Learned advocate for the appellants has submitted that the issue with regard to court fee is a preliminary issue and an application by the present appellants to decide such an issue as preliminary issue was in accordance with law, supported by various decisions of this Court and therefore, rejection of that application needs to be interfered with by this Court. Learned advocate for the appellants further submitted that there is no averment in the plaint that the first respondent/original plaintiff is in joint possession of the suit property.

3. During the course of submissions, a query was raised by the Court to the learned advocate for the appellants as to whether issues are framed or not and if yes, when the issues are framed. To this, learned advocate for the appellants has submitted that he needs to take instructions in this regard.

4. Learned advocate for the appellants has also relied on the decisions of this Court in (i) Minor C.R.Ramaswami Aiyangar Vs. C.S.Rangachariar and Others ((1940) 1 MLJ 32) and (ii) Sridharan and Others Vs. Arumugam and Others ((1993) 2 MLJ 428). It is submitted that this appeal be entertained.

5. On the other hand, learned advocate for the first respondent/original plaintiff has submitted that the suit was filed in the year 2014, written statements were filed in the years 2017 and 2019 respectively, issues were framed on 25 February 2019 and one of the issues being Issue No.7 pertains to court fee which is already framed and is being tried. Learned advocate for the first respondent has further submitted that the order passed by learned single Judge is just and proper and no interference be made by this Court.

6. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds that the suit is for partition. The case of the present appellants that, the plaintiff has paid insufficient court fee is based on his assertion that the first respondent/original plaintiff is not in joint possession of the suit property. Whether the first respondent/original plaintiff is in joint possession of the suit property or not itself is an issue, which if pressed, may require trial. Consequential effect thereof that the court fee paid by the first respondent/original plaintiff is



insufficient, in the facts of the case, could not be tried as a preliminary issue. Further, the grievance of the appellants is already taken care of, since as per the say of learned advocate for the first respondent/ original plaintiff, one of the issues is already framed in that regard.

7. In view of above, we find that, entertaining this appeal would only result in delaying the adjudication of the suit, that too, when there is less motivation on the part of original defendants 1 and 2 to proceed with the matter, though not expressly so submitted before the Court. In this regard, as noted above, on the query whether issues are framed or not and if yes when - it was submitted by learned advocate for the appellants that he needs to take instructions in that regard.

8. In totality, we find that, no prejudice will be caused to the appellants if this appeal is not entertained and at the same time, serious prejudice will be caused to the original plaintiff, if this appeal is entertained.

9. In the facts noted above, the decisions relied by the learned advocate for the appellants will not take the case of the appellants any further.

10. In view of above, this appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mmi/3

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.Adeesh Anto, Advocate SR.No.55777

O.S.A.No.306 of 2021

CA (CO)
GMY (26/11/2021)