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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 13TH DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE N.SESHASAYEE

A.No.2686 of 2020

in

C.S.No.819 of 2015

1. Mr.T.S.Prem Kumaar
S/o.late P.T.Sambandam
B-4, Nest Towers, Door No.83, Old No.72
Kamdar Nagar, III Street,
Nungambakkam,
Chennai-600 034.

2. Mrs.S.Prema Kumari @ Ammu
W/o.Mr.K.Siva Kumar
F-11, Royal Denizen,
Pattabiraman Street,
Tennur,Tiruchirapalli-620 017.

..Plaintiffs

Vs

1. Mrs.S.Karpagam
W/o.late P.Shanmugha Sundaram

2. Mr.S.Paramasivam @ Ravi
S/o.late P.Shanmugha Sundaram

3. Mr.S.Balaji
S/o. late P.Shanumgha Sundaram

4. Mrs.Usha Raju
W/o. late S.Manika Raju

5. Miss Monisha Raju
D/o.late S.Manika Raju



6. Miss.Rithika Raju
D/o. late S.Manika Raju, minor, rep
by Mother/Natural Guardian, Mrs.Usha Raju
the 4th Defendant above named,
All are residing at Door No.26 (Old No.16)
Coats Road, T.Nagar, Chennai-600 017.

..Defendants

A.No.2686 of 2020:-

1. Mrs.S.Karpagam
W/o.late P.Shanmugha Sundaram

2. Mr.S.Paramasivam
S/o.late P.Shanmugha Sundaram

3. Mr.S.Balaji
S/o. late P.Shanumgha Sundaram

All residing at Door No.26 (Old No.16)
Coats Road, T.Nagar,
Chennai-600 017.

..Applicants/ Defendants 1 to 3

Vs

1. Mr.T.S.Prem Kumaar
S/o.late P.T.Sambandam
B-4, Nest Towers, Door No.83, Old No.72
Kamdar Nagar, III Street,
Nungambakkam,
Chennai-600 034.

2. Mrs.S.Prema Kumari @ Ammu
W/o.Mr.K.Sivakumar
F-11, Royal Denizen,
Pattabiraman Street,
Tennur,Tiruchirapalli-620 017.

..Respondents 1 & 2/ Plaintiffs

3. Mrs.Usha Raju
W/o. late S.Manika Raju

4. Ms.Monisha Raju
D/o.late S.Manika Raju



5. Miss.Rithika Raju
D/o. late S.Manika Raju, Minor, rep
by Mother/Natural Guardian, Mrs.Usha Raju
(3) to (5) Door No.26 (Old No.16)
Coats Road, T.Nagar,
Chennai-600 017.

..Respondents 3 to 5/ Defendants 4 to 6

Application praying that this Hon'ble Court be pleased to reject the plaint as the plaintiffs have failed to pay the deficit court fee as ordered by this Hon'ble Court and is also hence consequently barred under law.

This application coming on this day before this court for hearing, the court made the following order:

Reserved on : 05.08.2021
Pronounced on : 13.09.2021

The applicants herein are the defendants 1 to 3. The facts may be briefly stated in some details now:

- The suit is laid for partition and for separate possession of ½ share in the suit property and for permanent injunction. The defendants 1 to 3 took objection before the learned Master of this Court, on the Court fee payable under Section 11 of the Tamil Nadu Court Fee and Suit Valuation Act, in A.No.1594 of 2016. The learned Master, Vide his order dated 31.08.2016 initially dismissed the application, and this was challenged by the applicants herein in C.R.P.No.1801 of 2017. This Court, Vide its order dated 08.6.2018 allowed the



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dated 31.08.2016, and directed the Master to hold a *denovo* enquiry and pass appropriate orders. Thereafter, the learned Master allowed the application of the applicants Vide his order dated 20.02.2019, and directed the plaintiffs to pay the deficit Court fee within three weeks. Challenging the aforesaid order of the Master, the plaintiffs have preferred C.R.P.No.1643 of 2019 and that came to be dismissed on 04.11.2019.

1.2 Alleging that the deficit court fee was not paid as stipulated, the present application is filed for rejecting the plaint under Order VII Rule 11 CPC.

2. Mr.K.Bijai Sundar, learned counsel for the applicants submitted that the plaintiffs in the suit are duty bound to comply with the orders of the learned Master and that inasmuch as they have also approached this Court in C.R.P.No.1643 of 2019, they ought to have paid the deficit stamp duty within a period of three weeks, atleast from the date of its dismissal on 04.11.2019. He added that the plaintiffs had moved this Court in A.No.3094 of 2020 for extension of time for payment of deficit court fee, but, the same came to be dismissed as withdrawn on 03.03.2021. Now, the plaintiffs have deposited a sum of Rs.1,55,000/- as deficit stamp duty before the Registry and this is untenable.



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3. Responding the same, the learned counsel for the plaintiffs, took this Court through paragraph 8 of his counter affidavit which reads as below:

"8. I submit that it is pertinent to note that the copy of the order dated 04.11.2019 was made ready only on 10.06.2020 and the copy of the order was received only on 20.11.2020 and based on that receipt of the copy of the order immediately we have taken necessary steps to pay the necessary deficit court fee within three weeks, stipulated by this honourable High Court. As such we have paid the required deficit court fee on 07.12.2020 before this Honourable High Court vide Receipt No.TNCT0715L2057O175 the sum of Rs.1,55,000/- along with the application before this honourable court and the same is already numbered as 3094/2020 in CS.No.819 of 2015 and the same is yet to be listed for appropriate order. As such we have already complied with the operative portion of order accordingly and the same is enforceable in the eye of law."

He added that he has also moved an application in S.R.No.25164 of 2021 on 05.03.2021 in C.R.P.No.1643 of 2019 for seeking extension of time.

4. The point is, should the Court wear a cap of an unrelenting disciplinarian and deal with the plaintiffs accordingly? This Court holds it in the negative,



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(a) The cause of action for the suit is recurring and even if the suit is rejected, still a fresh suit on the same cause of action cannot be prevented. This is also enabled by Order VII Rule 13 of CPC.

(b) Since an order was passed in CRP.No.1643 of 2019, as per which the plaintiffs are bound to pay the deficit Court fee, it has been made ready right in the middle of COVID Wave-1. During this period, the order of the Hon'ble Supreme Court dated, 23.03.2020, in suo motu Writ Petition (Civil) No. 3/2020, has suspended the running of limitation taking into account the difficulties faced by litigants in approaching various Courts and Tribunals due to the pandemic situation engulfing the entire nation and also the consequent lockdowns imposed by the Governments. This aspect has to be factored in.

5. In conclusion, this Court does not find merit in the application and the same is dismissed.

Sd/-NSSJ
13/09/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

JJ 21/09/2021

COURT OFFICER(O.S.)