



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :15 .07.2021

(Reserved on 05.02.2021)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.137 of 2021

and

CMP(MD)No.856 of 2021

C.K.Sekar

... Petitioner /1st defendant

vs.

1) L.R.J.Madumathi

2) P.M.Santhi

... Respondents /Plaintiffs

Petition filed under Article 227 of the Constitution of India, against the fair order and executable order, dated 07.01.2020, passed in I.A.No.631 of 2016 in O.S.No.67 of 2016 by the learned IV Additional District Judge, Madurai.

For Petitioner : Mr.M.Rajaraman

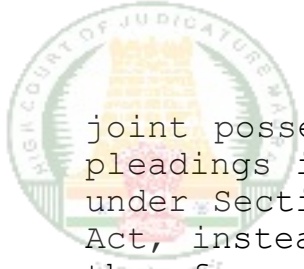
For Respondents : Mr.T.R.Subramanian

ORDER

Aggrieved by the order dismissing the application for rejection of plaint, this revision petition is filed by the 1st defendant.

2.The respondents/plaintiffs filed the suit in O.S.No.67/2016 against the revision petitioner/1st defendant and five other defendants, for partition of suit schedule properties and rendition of accounts in respect of suit A schedule property. Pending suit, the revision petitioner/1st defendant filed a petition under Order 7 Rule 11 and Section 151 of CPC to reject the plaint which was dismissed by the Court below, against which, this revision is filed by the 1st defendant.

3.The learned counsel for the petitioner/ first defendant would state that the respondents/plaintiffs have no right to claim partition in the suit properties. He would further state that after the death of mother and father, the revision petitioner/1st defendant has been in possession and enjoyment of the suit properties as absolute owner for more than a statutory period on the basis of a gift settlement deed executed in his favour and therefore, the claim of the respondents is barred by limitation. He would further state that as the respondents/plaintiffs are not in



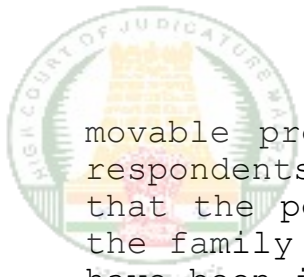
joint possession and enjoyment of the suit properties as per their pleadings in the suit, the respondents ought to have paid court fee under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, instead they paid Court fee under Section 37(2) of the Act and therefore, the suit is not maintainable. It is further submitted that the relief in respect of movable properties ie., jewels and cash, has to be filed within three years and hence, it is also barred by limitation. The adjudication of claim without payment of necessary Court fee is illegal.

4.The learned counsel for the petitioner/1st defendant would further submit that though the present petition filed under Order 7 Rule 11 CPC, it should have been treated as an application under Section 12 of the Tamil Nadu Court Fees and Suits Valuation Act and the learned Judge ought to have framed a preliminary issue regarding payment of court fee in respect of movable items and decided the same. In support of his contentions, he would rely on the decisions in **S.K.Kumaraswami and others vs. S.R.Somasundaram and others reported in (1995) 1 MLJ 322** and **S.N.S.Sukumaran and others vs. C.Thangamuthu and others, reported in 2012 (5) CTC 705**. He would further submit that the Court below, without considering the above aspects, has erroneously dismissed the petition filed by the petitioner. Thus, he prays for setting aside the impugned order.

5.The learned counsel appearing for the respondents/plaintiffs would submit that the suit is filed for partition of 1/5th share each in the suit properties. According to the respondents, their mother had not executed any gift settlement deed in favour of the petitioner since she was mentally ill during the relevant period. He would further state that all the suit properties are in common enjoyment of the plaintiffs and defendants 1 to 5. As per the Partition Act, there is no bar of limitation and further, the Court fee paid by the respondents/plaintiffs is correct. He would also state that the 1st defendant has not filed any written statement for his defence and therefore, the present petition to reject the plaint is not maintainable. After considering the facts and circumstances of the case, the Court below has held that the question of court fee can be decided only during trial. The learned Judge has rightly dismissed the petition for rejection of plaint and hence, the same does not require interference by this Court.

6.Heard the learned counsel for the petitioner as well as the respondents.

7. The main contention of the learned counsel for the petitioner/1st defendant is that in the plaint itself, the respondents/plaintiffs have admitted that the petitioner/first defendant has been in the custody of the jewels and hence, there is no question of joint possession of the movable properties and consequently, the Court fee paid under Section 37(2) in respect of



movable properties is not sustainable in law. According to the respondents/plaintiffs, they have categorically stated in the plaint that the petitioner/1st defendant being a male member and Kartha of the family has been maintaining the joint family properties and they have been in joint possession and enjoyment of the same.

WEB COPY

8. It is well settled that while deciding the application filed under Order VII Rule 11 of C.P.C. averments stated in the plaint alone must be looked into and, merits and demerits of the matter and the allegations by the parties need not be gone into. It is also well settled 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/she should be getting a share or some income from the property.

9. In view of the above settled positions of law and in the view of the fact that the issue of joint possession or separate possession of properties can be decided only after trial, as rightly held by the Court below, the plaint cannot be rejected. More over, the question of rejection of plaint on non payment of Court fee would arise only if the plaintiff fail to pay the deficit Court fee, even after being called upon by the Court to pay. Therefore, the contention of the learned counsel for the petitioner cannot be countenanced. Further, the decisions relied by the learned counsel for the petitioner are not applicable to the facts and circumstances of the case. The Court below has rightly dismissed the petition for rejection of plaint and the same does not require any interference at the hands of this Court. Hence, this Court is inclined to dismiss this petition.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.



To

1.The IV Additional District Judge,
Madurai.

+1 CC to M/s.T.R.SUBRAMANIAN, Advocate (SR-22648[F] dated
15/07/2021)

CRP(MD)No.137 of 2021
DATED :15 .07.2021

SVN(CO)
KB(26.07.2021) 4P 3C