



WEB COPY



C.R.P. No. 3874 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 10.10.2022

CORAM

**THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI**

C.R.P.No. 3874 of 2017  
and  
C.M.P. No. 18105 of 2017

1. Shenbagam,  
W/o. Ramanathan

2. Rajmohan,  
S/o. Ramanathan

... Petitioners

Versus

1. Padmini,  
S/o. Dhanabalu Kounder

2. Rani,  
D/o. Seethavedhanayagam

3. Vetriselvi,  
D/o. Seethavedhanayagam

4. Nalini,  
D/o. Suburaya kounder

5. Priya,  
D/o. Suburaya kounder

... Respondents



C.R.P. No. 3874 of 2017

**PRAYER :** Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the Fair and decreetal order dated 10.08.2017 passed in I.A.No.58 of 2017 in O.S.No.170 of 2013 on the file of Principal Sub-Court, Villupuram.

For Petitioners : Ms.R.Meenal

For Respondents : Mr.D.Rajasekar for R1

R2 to R5 – No appearance

### **ORDER**

The Revision Petitioners are the defendants in the suit in O.S.No. 170 of 2013 on the file of Principal Sub-Court, Villupuram, which was filed by the respondents/plaintiffs herein for the relief of partition and other consequential relief in respect of suit property stating that it is a joint family property.

2. The Revision Petitioners, as defendants contested the suit and they have filed an application in I.A.No. 58 of 2017 under Order 14 Rule 2(2) C.P.C. r/w Sec.12(3) of Tamil Nadu Court Fees and Suit Valuation Act, 1955 praying the court to decide the issue whether the suit has been valued properly for the purpose of court fees and jurisdiction. The said application



C.R.P. No. 3874 of 2017

was contested by the plaintiffs. On hearing submissions of both sides, the trial court dismissed the application stating that if the property is in joint family property, it presumes that he is in joint possession and unless he is excluded from such possession and the exclusion pleaded by the defendant can be decided on elaborate evidence both oral and documentary and it cannot be decided in the preliminary issue. For that, he relied upon the judgment reported in **2002 (1) LW 398** in the case of **Laljivora vs. Srividya**. Challenging the said findings, the defendants preferred this Civil Revision Petition.

3. The learned counsel appearing for Revision Petitioner submitted that the trial court erred in coming to the conclusion that the petitioners are dragging on the suit proceedings and failed to appreciate Sec.12 of Tamil Nadu Court Fees and Suit Valuation Act, which has to be decided as a preliminary issue. Hence, he prayed to set aside the order passed by the trial court.

4. On seeing the facts, the suit was filed claiming the relief of partition and the plaintiffs claiming that the property is a joint family property and they are in joint possession of the property. Under law, if the



C.R.P. No. 3874 of 2017

joint possession is presumed and unless they are excluded from such possession, it can be decided on elaborate evidence and it cannot be decided in the preliminary issue. Therefore, relying the said proposition, the trial court has rightly appreciated the fact and dismissed the application, which needs no interference. Accordingly, this Civil Revision Petition is dismissed and the order passed by the trial court in I.A.No. 58 of 2017 is confirmed. However, liberty is granted to the revision petitioners to raise all their defence before the trial court during the trial and since the suit is pending from the year of 2013 without any progress, the trial court is directed to dispose the case within a period of six months from the date of receipt of copy of this order. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

**10.10.2022**

Index : Yes/No  
Internet: Yes/No  
Speaking/Non Speaking order  
rpp

To

Principal Sub-Judge, Villupuram.

4/5



WEB COPY



C.R.P. No. 3874 of 2017

**T.V.THAMILSELVI, J.**

rpp

C.R.P.No. 3874 of 2017

**10.10.2022**