



A.S(MD)No.6 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on :22.09.2022
Delivered on : 26 .09.2022**

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

A.S(MD)No.11 of 2012

and

C.R.P(MD)No.194 of 2012(PD)

and

M.P(MD)Nos.1 and 1 of 2012

and

C.M.P(MD)No.8485 of 2017

N.Parthiban

... Appellant/Plaintiff

Vs.

1.N.Ravikumar

2.N.Ramesh Kumar

3.N.Murali

4.N.Reguraman

5.D.Baby

6.C.Ponnuchamy

7.P.Ramu

8.P.Shenbagam

1 / 11



A.S(MD)No.6 of 2012

9.P.Saroja

10.S.Chandra

11.P.Rajeswari

.. Respondents/Defendants

PRAYER: Appeal filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 31.10.2011 passed in O.S.No.93 of 2004 on the file of the Additional District Court, Fast Track Court, Thanjavur.

For Appellant : Mr.N.Parthiban(Party-in-person)

For Respondents : Mr.G.Sridharan

For R2 to R11 : No appearance

C.R.P(MD)No.194 of 2012(PD)

N.Parthiban

... Petitioner/1st Respondent/Plaintiff

Vs.

1.N.Ravikumar

... 1st Respondent/Petitioner/1st

Defendant

2.N.Ramesh Kumar

3.N.Murali

4.N.Reguraman

5.D.Baby

6.C.Ponnuchamy

7.P.Ramu

8.P.Shenbagam

2/11



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9.P.Saroja

10.S.Chandra

11.P.Rajeswari

.. Respondents 2-11/Respondents 2-11

/Defendants 2-11

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 18.10.2011 passed in I.A.No.1125 of 2005 in O.S.No.93 of 2004 on the file of the Additional District Judge, Fast Track Court No.I, Thanjavur.

For Petitioner : Mr.N.Parthiban(Party-in-person)
For Respondents : Mr.G.Sridharan
For R2 to R11 : No appearance

JUDGMENT

J.NISHA BANU, J.

and

N.ANAND VENKATESH, J.

The civil revision petition was filed against the fair and final order passed in I.A.No.1125 of 2005 in O.S.No.93 of 2004, dated 18.10.2011, by the Additional District Judge, Fast Track Court No.1, Thanjavur, directing the petitioner to pay Court fees of a sum of Rs.6,65,715.50/- under Section 37(1) of Tamil Nadu Court Fees and Suits Valuation Act, 1955 (hereinafter referred to 'the Act'), within a period of ten days.



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2.The appeal has been filed against the rejection of the suit on the ground that the appellant did not pay court fees as directed by the Court in I.A.No.1125 of 2005.

3.The appellant filed the suit seeking for the relief of partition and for allotment of 1/6th share in the 'A' schedule properties and 7/36th share in the 'B' schedule properties and for rendition of accounts and to allot the share of the appellant, out of the profits earned in the last three years until the appellant is put in possession of his share in the suit properties.

4.The defendants filed the written statement and issues were also framed by the trial Court.

5.The first defendant filed an application in I.A.No.1125 of 2005 under Order XIV Rules 1 and 2 of C.P.C., on the ground that the appellant did not pay proper Court fees and the same has to be decided as a preliminary issue. Initially, the said application was dismissed and it became the subject matter of challenge before this Court in C.R.P(MD)No.923 of



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2008. This Court, by order dated 29.10.2010, set aside the order passed by the trial Court and directed the trial Court to decide issue Nos.5 and 15 as preliminary issues and to proceed further in accordance with law.

6.After the matter was remanded back to the file of the trial Court, the application filed in I.A.No.1125 of 2005 was taken up for consideration and the same was allowed by directing the appellant to pay Court fee under Section 37(1) of the Act and time was given to pay the Court fee. Since the same was not paid as per the direction given by the trial Court, the suit itself came to be rejected. Aggrieved by the same, the revision petition and appeal has been filed before this Court.

7.Heard Mr.N.Parthiban, who appeared in person and Mr.G.Sridharan, learned counsel appearing for the first respondent.

8.On carefully going through the pleadings, it is seen that one S.Nagarajan and Santha had 5 sons and one daughter. The plaintiff is one of the son and the defendants 1 to 4 are sons and fifth defendant is the



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daughter. After the demise of the father, an agreement dated 10.10.1993 was entered into by the plaintiff and the defendants 1 to 4 and their mother, whereby the plaintiff agreed to release his interest in the properties and also in the business, after receiving a sum of Rs.18 lakhs. Subsequently, a registered release deed was also executed by the plaintiff on 20.04.1995 relinquishing his share in the property. A receipt dated 21.04.1995 was also filed before the Court below, wherein, the plaintiff admitted the receipt of a sum of Rs.21.60 lakhs. It is further seen from the pleadings that the defendants along with their mother entered into a partition and a registered partition deed dated 14.07.1997 was executed and the property was divided.

9.The plaintiff in the year 2014 filed the present suit seeking for the relief of partition. The plaintiff, in spite of admitting the above facts, did not challenge the agreement dated 10.10.1993 and the registered release deed dated 26.04.1995 and straight away sought for the relief of partition. The plaintiff also paid the Court fees only under Section 37(2) of the Act as if he is in joint possession of the suit property. The valuation of the suit was specifically questioned in the written statement and a plea was also taken to



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the effect that the plaintiff cannot seek for the relief of partition without putting to challenge the documents dated 10.10.1993 and 20.04.1995.

10.Issue Nos.5 and 15 are extracted hereunder for proper appreciation:

“வழக்கெழுவினா.5

10.10.1993ல் பாக பாத்திய விடுதலை ஒப்பந்தப் பத்திரம்
20.04.95ல் ஏற்பட்ட பொது விடுதலை ஆவணங்களை இரத்து
செய்யாமல் பாகப் பிரிவினை கோரி அசல் வழக்கு தாக்கல்
செய்ய இயலுமா?

வழக்கெழுவினா.15

தாவா சொத்திற்கு சரியாக சொத்து மதிப்பு கணக்கீட்டு
அதற்கேற்றவாறு நீதிமன்றக் கட்டணம் செலுத்தப்பட்டுள்ளதா?
ஏன்பதேயாகும்.”

11.According to the plaintiff, the agreement dated 10.10.1993 and the release deed dated 20.04.1995 are sham and nominal documents and the defendants never fulfilled their obligations. That apart, those documents are not binding on the plaintiff.



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12.It is now a settled law that where the plaintiff is a party to the documents and he seeks to question the same, the plaintiff has to necessarily seek for the relief of declaration to declare the document as null and void and not binding on him. Without seeking for such a declaration, the plaintiff cannot maintain the other reliefs. By seeking for such a relief, the plaintiff has to necessarily pay the Court fee under Section 40 of the Act.

13.In the present case, it is admitted that the plaintiff had entered into an agreement with the defendants on 10.10.1993 and had also executed a registered release deed dated 20.04.1995. If the plaintiff wants to avoid these documents for any reason, he has to necessarily seek for the relief of declaration and pay proper Court fees. Without doing so, the plaintiff cannot seek for the relief of partition as if he has subsisting right over the the suit property.

14.The Court below was perfectly right in directing the plaintiff to pay the Court fees under Section 37(1) of the Act. If the plaintiff has already released the share in the suit property, there cannot be a presumption that he



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is in joint possession as a joint owner of the property and particularly when the defendants have taken possession of the suit property. Hence, the plaintiff cannot pay the Court fees under Section 37(2) of the Act. This finding given by the Court below is perfectly in accordance with law. The same does not require any interference of this Court. If the Court fees is not paid, the consequence would be to reject the plaint. That was rightly done by the Court below.

15.This Court does not find any ground to interfere with the fair and final order passed in the application and the judgment and decree passed in rejecting the suit. However, considering the fact that the appellant has been agitating his case from the year 2004 onwards, this Court is inclined to give four weeks time from the date of receipt of a copy of this order/judgment, to the appellant to pay the Court fees as directed by the Court below. If the Court fees is paid within the time stipulated by this Court, the suit shall be restored. It will be left open to the appellant to file an amendment application also and it goes without saying that the defendants can raise all their grounds by filing an additional written statement including the ground



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of limitation. The same shall be considered by the Court below strictly in accordance with law. If the appellant fails to pay the Court fees within the time stipulated by this Court, the judgment and decree dated 31.10.2011 rejecting the suit, shall stand restored.

16.In the result, Civil Revision Petition is dismissed and the Appeal Suit is disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B.,J.) (N.A.V.,J.)
26.09.2022

Index:Yes/No

Internet:Yes/No

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To:

- 1.The Additional District Judge,
Fast Track Court No.I,
Thanjavur.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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J.NISHA BANU, J.

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N.ANAND VENKATESH, J.

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A.S(MD)No.11 of 2012

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C.R.P(MD)No.194 of 2012(PD)

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M.P(MD)Nos.1 and 1 of 2012

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C.M.P(MD)No.8485 of 2017

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