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C.R.P.Nos.2294 & 2295 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2023

PRONOUNCED ON : 24.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.Nos.2294 & 2295 of 2009
and M.P.No.1 of 2009

C.R.P.No.2294 of 2009 :-

1. Gopalsamy
Jayaraman (died)
2. Rajagopal @ Selvaraj
3. Sethuraman @ Parthasarathy
4. Kanagam
5. Kanmani
6. Dhanasekaran
7. Gayathri (Minor)
Rep. by her next friend/mother
the fifth petitioner herein

... Petitioners

Vs

1. Kothandaraman
2. Latchumanasamy (died)
Andal Ammal (died)
3. Saraswathi
4. Palaniraja
5. Thandapani
6. Muthukumaraswamy @ Manohar
7. Gopalakrishnan @ Ravi
8. Sowrirajan @ Soundararajan



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9. Suceela
10. Krishnan
11. Jayalakshmi
12. Uma Maheswari
13. Subramanian
14. Shanmugam
15. Uma Durai
16. Sivaraman
17. Raja Valliappan
18. Valli Kannan
19. Jeetendra
20. Adaikappan
21. Indian Bank,
Mudaliarpet branch,
Rep by its Manager,
Situated at Cuddalore Road,
Mudaliarpet, Pondicherry.
22. Pappammal,
23. Vishnupriya @ Arularasi
24. Krishnaveni
25. Radhakrishnan
26. Rajeswari
(R24 to R26 brought on record
as legal heirs of the deceased
R2 viz., Latchumanasamy vide
Court order dated 28.09.2021
made in M.P.No.1 of 2012 in
C.R.P.No.2294 of 2009)

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of Constitution of India, to allow the above Civil Revision Petition and set aside the judgment and decree dated 24.07.2009 made in O.S.No.26 of 2006 on the file of the learned II Additional District Judge, Pudhucherry.



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For Petitioners : Mr.A.L.Somayaji
Senior counsel
For Mr.V.Srikath

For Respondents
For R1, R24 to R26 : Mr.N.Manokaran
For R4 : Mr.T.R.Rajaraman
For R9 : Mr.L.K.Manjunath
For R10 to R12 : Mr.T.S.Baskaran
For R13 & R14 : Mr.G.Mutharasu
For R3, R5 to R8, R15
R16, R17 to R23 : No appearance

C.R.P.No.2295 of 2009 :-

1. Gopalsamy
Jayaraman (died)
2. Rajagopal @ Selvaraj
3. Sethuraman @ Parthasarathy
4. Kanagam

... plaintiffs

Vs

1. Krishnan
2. Jayalakshmi
3. Uma Maheswari
4. Kothandaraman
5. Latchumanasamy (died)
Andal Ammal (died)
6. Saraswathi
7. Palaniraja
8. Thandapani
9. Muthukumaraswamy @ Manohar
10. Gopalakrishnan @ Ravi
11. Sowrirajan @ Soundararajan
12. Suceela
13. Subramanian
14. Shanmugam



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15. Uma Durai
16. Sivaraman
17. Raja Valliappan
18. Valli Kannan
19. Jeetendra
20. Adaikappan
21. Krishnaveni
22. Radhakrishnan
23. Rajeswari

(R21 to R23 brought on record
as legal heirs of the deceased
R5 viz., Latchumanasamy vide
Court order dated 28.09.2021
made in M.P.No.1 of 2012 in
C.R.P.No.2295 of 2009)

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of Constitution of India, to allow the above Civil Revision Petition and set aside the judgment and decree dated 24.07.2009 made in I.A.No.19 of 2006 in O.S.No.26 of 2006 on the file of the learned II Additional District Judge, Pudhucherry.

For Petitioners : Mr.A.L.Somayaji
Senior counsel
For Mr.V.Srikath

For Respondents
For R1 to R3 : Mr.T.S.Baskaran
For R4, R21 to R23 : Mr.N.Manokaran
For R7 : Mr.D.Ravichandu
For Mr.T.R.Rajaraman
For R12 : Mr.L.K.Manjunath
For R13 & R14 : Mr.G.Mutharasu



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COMMON ORDER

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These Civil Revision Petitions are filed as against fair and decreetal orders dated 24.07.2009, passed by the learned II Additional District Judge, Pudhucherry in O.S.No.26 of 2006 and I.A.No.19 of 2006 in O.S.No.26 of 2006, thereby dismissing the suit by allowing the petition filed under Order 14 Rule 1 & 2 of C.P.C., praying that the issue of valuation of suit and payment of Court fees thereupon may be taken as preliminary issue before deciding the other issues.

2. The petitioners are the plaintiffs and the respondents are the defendants. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The plaintiffs filed suit in O.S.No.26 of 2006 for partition as against the defendants. The case of the plaintiffs is that the suit property originally belonged to one Appavu Gramani and by the Donation cum partition deed dated 29.08.1930 his four sons viz., Natesa Gramani, Rangasamy @ Govindasamy Gramani, Rathinavelu Gramani and



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Ramachandran Gramani donated their respective shares except the suit properties and some of the properties. Therefore, the suit properties are not covered in the said Donation cum partition deed. Though the fifth item of the suit property is covered under the said Donation cum partition deed, it was not acted upon.

4. After demise of the said Appavu Gramani, his four sons enjoyed his properties jointly in co-ownership and each having 1/4th of undivided title, right and interest therein. While being so, the first son viz., Natesa Gramani died on 13.04.1965 leaving behind his two sons viz., the defendants 1 & 2 in the suit. The second son viz., Rangasamy @ Govindasamy Gramani died on 10.03.1977, leaving behind his wife and children viz., the defendants 3 to 6. The defendants 7 to 9 are the sons of the fifth defendant. The third son of the said Appavu Gramani viz., Rathinavelu Gramani died on 07.05.1969, leaving behind his wife and children viz., the plaintiffs. The last son viz., Ramachandran Gramani died on 27.08.1966 leaving behind his only daughter viz., tenth defendant herein. Therefore, there are four branches of claimants and



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they are in possession and enjoyment of the suit properties jointly in respect of their 1/4 share due to them.

5. While being so, the defendants 5 to 9 colluded with defendants 11 to 13 and fabricated document in favour of the defendants 11 to 13, in respect of some of the suit properties, intending to defeat right of other co-sharers. In turn, the defendants 11 to 13 fabricated document in favour of the defendants 14 to 21 in respect of some suit properties. The purported transactions effected in favour of the defendants 14 to 21 are null and void in respect of $\frac{1}{4}$ share of the plaintiffs. Despite repeated demands, the defendants 3 to 6 did not come forwards for an amicable partition. Hence, the plaintiffs filed the suit for partition claiming that they are in joint possession of the suit property along with the defendants 1 to 6 and 10.

6. Resisting the same, the defendants filed written statement and stated that the suit properties are not joint family property belonged to one Appavu Gramani. All the properties are self acquired properties of



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the Rangasamy @ Govindasamy Gramani, as such the legal heirs of the said Govindasamy Gramani rightly sold some of the properties in favour of the defendants 11 to 13 for the valid sale consideration by the registered sale deeds. In turn, they divided the said property into plots and sold out the same in favour of the defendants 14 to 21. They also raised huge buildings and they are in possession and enjoyment of the same.

7. While pending the suit, the defendants 11 to 13 filed an application in I.A.No.19 of 2006 under Order 14 Rule 1 & 2 of C.P.C., to decide the issue of valuation of suit and payment of Court fee as preliminary issue before deciding the other issues, on the ground that the properties referred as item No.2(ii) in the suit schedule properties are now possessed by them exclusively away from the hotchpotch of family properties of the said Appavu Gramani. Therefore in the absence of the consequential relief specifically in the plaint the said immovable properties cannot be put on as form part of joint family property.



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8. Further averred that even according to the plaintiffs, some of the suit properties were purchased by the defendants 11 to 13 herein and thereafter, they also executed sale deed in favour of the defendants 14 to 21. Therefore, admittedly they are not in possession of the suit properties. The suit properties also are not valued properly and the plaintiffs failed to pay correct Court fee. The defendants 11 to 13 obtained valuation certificate of the suit properties and it valued at Rs.2,46,40,250/-. Therefore, they prayed to decide the issue of valuation of the suit and payment of Court fee as preliminary issue before deciding other issues.

9. Resisting the said application, the plaintiffs filed counter affidavit stating that Court fees and the pecuniary jurisdiction of the trial Court cannot be tried as preliminary issues as they are not preliminary issues. The mode of valuation and determination of Court fees for the suit reliefs should be assessed from the pleading made in the plaint and not on the basis of the plea of the defendants. Even according to them, they are the purchasers as such they cannot file petition questioning the Court fee and valuation of the suit property.



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10. The specific case of the plaintiffs is that they are in joint possession of the suit properties with other co-sharers. Therefore, the defendants 11 to 13 cannot seek any relief under the void transactions. Further they are third parties not being sharers of the estate of the deceased Appavu Gramani. The plaintiffs are in joint possession of the suit properties as such, they rightly valued the suit under Section 37(2) of the Pondicherry Court Fees and Suits Valuations Act, 1972. It was properly verified by the trial Court and taken on file of the plaint.

11. However, the Court below allowed the said application and directed the plaintiffs to pay the deficit Court fee on or before 06.08.2009, failing which the plaint shall automatically stand rejected. The plaintiffs failed to pay the Court fee as such the Court below dismissed the suit on 24.07.2009 itself. Aggrieved by the above orders, the plaintiffs filed the present Civil Revision Petitions.

12. Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioners submitted that under Order 14 Rule 1 & 2 of C.P.C., is



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applicable only to two categories of issues and those issues can be decided as preliminary issue. The first one is jurisdiction of Court and the second one is bar to the suit created by any law for time being in force. In respect of the issue relating to valuations of the suit property and Court fee did not fall under the provisions of Order 14 Rule 1 & 2 of C.P.C.

12.1. He further submitted that after demise of Appavu Gramani, his four sons are entitled to have $\frac{1}{4}$ share in the suit properties. The transactions if any made by one branch will not bind the other shares who were not parties to the documents viz., the sale deed executed in favour of the defendants 11 to 13. In turn they executed sale deed in favour of the defendants 14 to 21. Those documents are not binding on the plaintiffs who were not parties to the said documents.

12.2. He also submitted that the plaintiffs are in joint possession of the suit properties with the co-owners. The fact of possession by all co-owners was also recognized by this Court in S.A.No.543 of 2002. This Court also directed all the parties to file comprehensive suit in



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respect of the suit properties. Further, the trial Court summoned the revenue authorities in order to assist the defendants 11 to 13 to value the suit properties. The revenue authorities cannot depose in order to prove the title in respect of the suit properties. In fact, the defendants 11 to 13 did not even examine any oral or documentary evidence in support of their case. Whereas the Court below has taken up the case and gave findings, without giving sufficient opportunity to the plaintiffs and decided the issue of valuation of suit properties as preliminary issue and directed the plaintiffs to pay deficit Court fee.

12.3. He further submitted that the trial Court by an order dated 24.07.2009 directed the plaintiffs to pay the deficit Court fee into the trial Court on or before 06.08.2009. But unfortunately, the trial Court without even waiting till 06.08.2009, on the date of order passed in I.A., viz., on 24.07.2009 itself dismissed the suit by the judgment and decree dated 24.07.2009. Therefore, the trial Court pre-concluded the suit as if the plaintiffs would not pay the deficit Court fees. In support of his contention, he relied upon the following judgments :-



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- (i) 1980 2 SCC 247 – Neelavathi & ors Vs. N.Natarajan & ors**
(ii) 2006 – 3 LW 931 – Minor Subha & ors Vs. Ramu & ors
(iii) 2007 (1) SCC 694 – Jagannath amin Vs. Seetharama & ors
(iv) 2010 (3) MWN (civil) 577 – P.Sekar Vs. V.K.Viyapuri & ors
(v) 2014 (3) MWN (civil) 30 – Ashish Nevatia Vs. Prabhat
Kumar Nevatia & ors
(vi) 2020 SCC Mad 5115 – S.Chinnarasu Vs. S.Nataraj
(vii) 2021 (1) LW 861 – Madan Suri & anr Vs. Anuradha
Sarin & ors

13. Per contra, Mr.T.R.Rajaraman, the learned counsel appearing for the defendants 5 to 9, submitted that the purchasers of some of the properties viz., the defendants 11 to 13 filed an application in I.A.No.19 of 2006 and prayed that the valuation of the suit property and the Court fee thereupon may be taken up as preliminary issue before deciding other issues in the suit in order to expedite the disposal of the suit, on the ground that, the plaintiffs filed suit for partition and the properties referred as item No.2(ii) in the suit schedule properties are now possessed and hold by the defendants 11 to 13 exclusively away from the hotchpotch of family properties of Appavu Gramani. In the absence of the consequential relief specifically in the plaint the said



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immovable properties cannot be put on as form part of joint family properties as contended by the plaintiffs.

13.1. Further, from the date of purchase of the said property, the defendants 11 to 13 are in possession and enjoyment of the property. Therefore, the valuation arrived at for payment of Court fee is not proper. They also obtained valuation certificate from the Taluk Office, Pondicherry and valued the particular schedule of property as Rs.2,46,40,250/-. Therefore, it is the duty of the Court to verify the substances of the plaint and also relief sought with circumvention and assess the value of the property before taking other issues as preliminary issue.

13.2. He further submitted the defendants 5 to 9 in the suit sold out some of the properties in favour of the defendants 11 to 13. In turn, they sold out the said properties in favour of the defendants 14 to 21. Admittedly, the plaintiffs are not in possession of the suit schedule property and already the defendants 11 to 21 had purchased some extent



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of the suit properties. Therefore, the Court below rightly allowed the petition and the plaintiffs are not maintained the suit without value the suit properties properly and without paying proper Court fees.

13.3. The trial Court has given sufficient time to pay the Court fees and even then the plaintiffs failed to pay the same as such the suit itself dismissed. When the suit itself dismissed for non-payment of Court fee, the plaintiffs ought to have preferred an appeal suit. When the specific remedy is very much available under the Civil Procedure Code, the plaintiffs cannot approach this Court under Article 227 of the Constitution of India.

13.4. He further submitted that when the plaint was returned for want of Court fees as fixed by the trial Court, the remedy is only to file appeal suit as contemplated under Section 96 of C.P.C. In support of his contention, he relied upon the judgment reported in **2010 (3) MWN (civil) 722** in the case of **Regila Prem Vs. Chellappan and ors.**, in which this Court after relying various judgment of the Hon'ble Supreme Court



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of India held that Section 12(2) of Tamil Nadu Court Fees and Suit Valuation Act, enables the defendant to raise a dispute regarding proper Court-fee payable on the plaint and under Section 19 of the Court Fees Act, Commissioner can be appointed to properly value the property. When the question of jurisdiction is raised by filing an application under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act, by stating that the property was not properly valued and it properly valued, the Court will have no jurisdiction, the same must be tried as a preliminary issue and Court has to direct the parties to lead in evidence in that aspect, otherwise there is no purpose in enacting Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act.

13.5. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in **2002 (1) SCC 304** in the case of ***Kamaleshwar Kishore Singh Vs. Paras Nath Singh and ors.***, that the Court fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of Court fee or unless there be



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a provision of law requiring the plaintiff to value the suit and pay the Court fee in a manner other than the one adopted by the plaintiff.

13.6. He further relied upon the judgment reported in **(2008) 3 LW 491** in the case of **G.Anusuya Vs. Amirthavalli & 4 ors**, in which this Court held that though under Order 14 Rule 2 of C.P.C., the valuation and payment of Court fee is not specifically mentioned as an issue to be decided as a preliminary issue, Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act comes into play, according to which if a defendant raises a dispute regarding valuation of the suit property or Court fee paid by the plaintiff and all the questions arising on such pleas shall be heard as preliminary issues and no discretion is left with the Court. The Tamil Nadu Court Fees and Suit Valuation Act is a substantial law while C.P.C., is a procedural law. The substantial law will prevail over the procedural code and consequently, it follows whenever the defendants files an application requesting the Court to decide the issue of valuation of the suit property or payment of Court fee and all questions arising on such pleas as a preliminary issue.



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14. Mr.N.Manokaran, the learned counsel appearing for the defendants 1 & 2 supported the case of the plaintiffs and submitted that the suit properties originally belonged to one Appavu Gramani and on his demise all the properties were inherited, possessed and enjoyed by his four sons, who held them on co-ownership each having $\frac{1}{4}^{\text{th}}$ share undivided title, right and interest thereon. After demise of one of his son viz., Natesa Gramani, his $\frac{1}{4}^{\text{th}}$ share undivided title, right and interest devolved upon and inherited by his two sons viz., the defendants 1 & 2. On the death of another son viz., Govindasamy @ Rangasamy Gramani his $\frac{1}{4}^{\text{th}}$ share undivided title, right and interest in the suit properties was in turn inherited by the defendants 3 to 6.

14.1. On the demise of another son viz., Rathnavel Gramani, his $\frac{1}{4}^{\text{th}}$ share undivided title, right and interest in the suit properties was inherited by his legal heirs viz., the plaintiffs herein. On the demise of one Ramachandra Gramani, his $\frac{1}{4}^{\text{th}}$ share undivided title, right and interest in the suit properties was in turn inherited by his only daughter viz., the 10th defendant in the suit. These all the legal heirs of the four



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sons of Appavu Gramani having $\frac{1}{4}^{\text{th}}$ undivided share are entitled by them. Further, it is categorically averred in the plaint that the plaintiffs are in joint possession of the suit properties along with other legal heirs. Therefore, the suit filed in respect of all the items of the suit properties. Hence, the plaintiffs rightly valued the suit and accordingly paid the Court fees.

14.2. He further submitted that it is not in dispute that the defendants 1 to 6 & 10 are entitled to have a share in the properties to which the plaintiffs are also entitled their undivided joint family properties. The general principle of law is that in the case of co-owner, 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 should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession.



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Before the plaintiffs could be called upon to pay Court fee under Section 37(1) of the Court Fees Act, on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been excluded from joint possession to which they are entitled in law.

14.3. The averments in the plaint that the plaintiffs could not remain in joint possession as they were not given any income from the joint family property would not amount to their exclusion from possession. Therefore, as per the averments made in the plaint, the plaintiffs are entitled to have $\frac{1}{4}$ th share and they are in joint possession of the suit property along with other sharers. In support of his contention, he relied upon judgment reported in **2007 (1) SCC 694** in the case of **Jagannath Amin Vs. Seetharama and ors.**

14.4. He further submitted that the Court Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. In



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support of his contention he relied upon the judgment reported in *AIR 1961 SC 1299* in the case of *Sri Rathnavarmaraja Vs. Vimla*.

15. Mr.L.K.Manjunath, learned counsel appearing for the 9th defendant in C.R.P.No.2294 of 2009 viz., 10th defendant submitted that the 10th defendant is none other than the daughter of Ramachandran Gramani, who had $\frac{1}{4}$ th share in the suit schedule property. All other defendants except the clan of Rangasamy @ Govindasamy Gramani, other two clans viz., Ramachandran Gramani and Natesa Gramani are supporting the case of the plaintiffs viz., Rathinavelu Gramani's clan. The 10th defendant also entitled to have $\frac{1}{4}$ th share in the clan of Ramachandran Gramani, who had $\frac{1}{4}$ th share among his brothers.

15.1. In fact, without the consent of the 10th defendant, other legal heirs of the three branches entered into agreement for sale, dated 26.07.1994 with the 11th defendant. Thereafter, the 11th defendant filed suit in O.S.No.241 of 1995 on the file of the Principal Subordinate Court, Pondicherry, for specific performance in respect of the property



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comprised in T.S.No.85/2 to an extent of 0.61.00 hectares situated at Vaithikuppam, Pondicherry. The said suit was decreed and the sale deed was executed in his favour . However, the said suit property was acquired by the Government of Pondicherry, by invoking urgency provisions of Land Acquisition Act for construction of houses to the Tsunami victims. Therefore, the 10th defendant being the legal heir of Ramachandran Gramani, submitted representation before the Land Acquisition Authority claiming $\frac{1}{4}$ th share in acquired property and sought for apportionment of $\frac{1}{4}$ th share in the total award amount. It was not considered by the Authority concerned as such, she filed a Writ Petition before this Court in W.P.Nos.2533 of 2007 & 8752 of 2008.

15.2. He further submitted that the 11th defendant filed the suit in O.S.No.241 of 1995 for specific performance on the strength of the sale agreement executed by the other three branches of the legal heirs of Appavu Gramani. However, the 10th defendant was not a party to the said document and therefore she claimed title to the acquired property. Therefore, this Court by an order dated 06.01.2009 passed in W.P.Nos.



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2533 of 2007 & 8752 of 2008, directed the authority concerned to make a reference to the competent civil Court under Section 30 of the Land Acquisition Act, for apportionment of compensation payable to the 10th defendant. Aggrieved by the same, the 11th defendant filed Writ Appeals in W.A.No.149 & 150 of 2009 and the Hon'ble Division Bench of this Court by an order dated 07.02.2011 dismissed the Writ Appeals.

15.3. On a reference under Section 30 of the Land Acquisition Act in L.A.O.P.No.27 of 2011, the learned III Additional Judge, Puducherry, by an order dated 14.08.2013 awarded $\frac{1}{4}$ th share of the apportionment of the compensation payable for the land acquired in favour of the 10th defendant. Aggrieved by the same the 11th defendant filed an Appeal Suit before this Court in A.S.No.524 of 2013 and the Hon'ble Division Bench of this Court by the judgment dated 10.01.2023, dismissed the said appeal with a cost of Rs.1,00,000/- payable by the 11th defendant to the 10th defendant. Therefore, her share in respect of $\frac{1}{4}$ th share has been confirmed by this Court



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15.4. He further submitted that the 10th defendant filed written statement along with counter claim petition and valued the claim under Sections 37(2) & 37(3) of the Pondicherry Court Fees and Suit Valuation Act, 1972 and paid the Court fees. Without even considering the counter claim, the Court below dismissed the entire suit. In fact, the defendants 11 to 13 did not even challenge the counter claim under Order 14 Rule 1 & 2 of C.P.C. Even then, the Court below dismissed the entire suit along with the counter claim of the 10th defendant.

16. Heard Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioners/plaintiffs, Mr.N.Manokaran, learned counsel appearing for the respondents/defendants 1 & 2, Mr.D.Ravichandu and Mr.T.R.Rajaraman, learned counsel appearing for the respondent/5th defendant, Mr.T.S.Baskaran, learned counsel appearing for the respondents/defendants 11 to 13, Mr.G.Mutharasu, learned counsel appearing for the respondents/ defendants 14 & 15, Mr.L.K.Manjunath, learned counsel appearing for the respondent/10th defendant.



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17. The plaintiffs filed suit for partition in respect of the suit properties in O.S.No.26 of 2006 and claimed $\frac{1}{4}$ th share by metes and bounds. On a perusal of averments made in the plaint revealed that originally the suit properties belonged to one Appavu Gramani and he had four sons viz., Natesa Gramani, Rangasamy @ Govindasamy Gramani, Rathinavelu Gramani and Ramachandran Gramani. On his demise his four sons inherited the properties owned by the said Appavu Gramani and entitled to have $\frac{1}{4}$ share of the undivided title, right and interest thereon.

18. On the death of Natesa Gramani, his $\frac{1}{4}$ undivided share in the suit properties was inherited by his legal heirs viz., the first and second defendants. On the demise of Rangasamy @ Govindasamy Gramani, his $\frac{1}{4}$ undivided share was inherited by his legal heirs viz., the defendants 3 to 6. On the demise of Rathinavelu Gramani, his $\frac{1}{4}$ undivided share was inherited by his legal heirs viz., the plaintiffs. On the demise of fourth son viz., Ramachandran, his $\frac{1}{4}$ undivided share was inherited by his only legal heir viz., the 10th defendant.



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19. Thus, the plaintiffs and defendants 1 to 6 and 10 are in joint possession and enjoyment of the suit properties in co-ownership each branch representing the sons of Appavu Gramani having $\frac{1}{4}$ th share therein. The suit property still remain undivided and the plaintiffs are entitled to have $\frac{1}{4}$ share in the suit properties. Further, they are in joint possession of the suit properties along with the defendants 1 to 6 & 10. Therefore, they valued the suit properties under Section 37(2) of the Pondicherry Court Fees and Suits Valuation Act, 1972 and paid the Court fees.

20. The defendants 11 to 13 had purchased some of the suit schedule properties and in turn they had executed sale deed in favour of the defendants 14 to 21. Therefore, the defendants 11 to 13 filed petition under Order 14 Rule 1 & 2 of C.P.C., praying that the issue of valuation of suit and payment of Court fee thereupon may be taken as preliminary issue before deciding the other issues in the suit, on the ground that the properties referred as item No.2(ii) in the suit schedule properties are



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now possessed and hold by them exclusively, after purchase. Further the suit properties were not valued properly.

21. The points for consideration in these Civil Revision Petitions are as follows :-

(i) Whether the plaintiffs are in joint possession of the suit properties in order to value the suit properties under Section 37(1) of the Pondicherry Court Fees and Suits Valuation Act?

(ii) Whether the issue of valuation of suit property and the payment of Court fee can be decided as preliminary issue?

22. Insofar as the issue of valuation of suit property and the payment of Court fee is concerned, the law relating to trying preliminary issue has been held in the following judgments :-

(i) 1980 2 SCC 247 – Neelavathi & ors Vs. N.Natarajan & ors

(ii) 2006 – 3 LW 931 – Minor Subha & ors Vs. Ramu & ors

(iii) 2007 (1) SCC 694 – Jagannath amin Vs. Seetharama & ors

(iv) 2010 (3) MWN (civil) 577 – P.Sekar Vs. V.K.Viyapuri & ors

(v) 2014 (3) MWN (civil) 30 – Ashish Nevatia Vs. Prabhat

Kumar Nevatia & ors



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(vi) 2020 SCC Mad 5115 – S.Chinnarasu Vs. S.Nataraj

(vii) 2021 (1) LW 861 – Madan Suri & anr Vs. Anuradha

Sarin & ors

In all the above cases, it has been held that when an issue involves a mixed question of fact and law, it is desirable for the Court to pronounce judgment on all the issues. It is further held that under Order 14 Rule 2 of C.P.C., only a question of law can be taken up as preliminary issue and the question relating to jurisdiction involves question of law and fact and the same can be taken as preliminary issue. It is further held that the issue relating to valuation is not a pure question of law and it cannot be decided as a preliminary issue. Thus it is clear that when the preliminary issue can be decided only if it is a pure question of law otherwise it cannot be decided as preliminary issue and it can be decided along with other issues.

1. In this regard, it is relevant to extract the provisions under Section 37 (1) and (2) of the Pondicherry Court Fees and Suits Valuation Act, as follows :-

- 2.



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“37. Partition suits.-

(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

*(2) In a suit for partition and separate possession of joint family property or property owned jointly or in common by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates, namely:-
When the plaint is presented to-*

(i) a District Munsif's Court : Rupees thirty

(ii) a Sub-court or a District Court: Rupees thirty if the value of plaintiff's share is Rs. 5,000 or less. Rupees one hundred if the value is above Rs. 5,000, but below Rs. 10,000; and Rupees two hundred if the value is Rs. 10,000 and above.”

Therefore, in the light of the averments made in the plaint, the plaintiffs valued their share at Rs.25,00,000/- and paid Court fee of Rs.200/- under Section 37(2) of the Pondicherry Court Fees and Suits Valuation Act.



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24. It is settled law that the question of Court fee must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. All the material allegations contained in the plaint should be construed and taken as a whole. The general principal of law is that in the case of co-owners, the possession of one is in lawful possession of all, unless ouster or exclusion is proved. To continued 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 should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession.

25. As per the averments made in the plaint, the plaintiffs are in joint possession of the suit schedule properties along with other share holders. The phrase “joint possession” has to be interpreted viz-a-viz., exclusion from possession. If a person is not proved to be excluded from



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possession, then he is presumed to be in joint possession. The word “joint possession” has been interpreted in the decision reported in **AIR 1980 SC 691** in the case of **Neelavathi Vs. N.Natarajan**, and the observation reads as follows :-

“Joint possession – If not to a share and joint nature of the property remains unimpaired, joint possession is presumed in law unless the exclusion is established by clear and specific averments in the plaint. Exclusion from possession of joint property is essential for application of sub Section (1) of Section 37 of the Pondicherry Court Fees and Suits Valuation Act.”

Thus it is clear that unless the exclusion is alleged and proved, the defendants 11 to 13 cannot contend that the Court fee payable is under Section 37(1) of the Pondicherry Court Fees and Suits Valuation Act.

26. That apart, even according to the defendants 11 to 13, they had purchased only item No.2 clause (ii) of the suit schedule property. Insofar as the other items of the properties, the plaintiffs are in joint possession along with other share holders. Further the plaint averments did not disclose anywhere that the plaintiffs had adversed themselves all



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the possession right in the suit properties or they were in out of possession after execution of the sale deed in favour of the defendants 11 to 13. Whereas the specific case of the plaintiffs is that they are in joint possession of the suit properties along with defendants 1 to 6 & 10.

27. Therefore, whether the plaintiffs are in joint possession of the suit properties or not, can be decided only after taking evidence and therefore, the issue of valuations of suit property and the payment of Court fee cannot be decided as preliminary issue. The Hon'ble Supreme Court of India in the judgment reported in ***AIR 1961 SC 1299*** in the case of ***Sri Rathnavarmaraja Vs. Vimal***, held that the Court Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action.

28. Further, the trial Court issued summons to the Sub Collector (Revenue) North, for his appearance and to produce revenue records which were marked through C.W.1 as Ex.X.1 to Ex.X.4. Based on those



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documents, the trial Court concluded that the suit properties are not stand in the name of Appavu Gramani and some items of the suit properties are stand in the name of the individuals and finally concluded that there is no evidence to show that the suit properties stand in the name of Appavu Gramani and they are in joint possession and enjoyment of the suit properties.

29. There is absolutely no necessity for the trial Court to summon the revenue officials in order to verify the documents in respect of the suit properties. As stated above, the plaintiffs categorically averred in their plaint that they are in joint possession and enjoyment of the suit properties along with other shareholders. They are not excluded from the suit properties and there was no averment in the plaint in this regard. Therefore, the trial Court ought not to have summoned the revenue officials to verify the revenue documents in respect of the suit properties. It is matter for trial and all the issues are discussed during the trial to decide the suit.



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30. The learned counsel appearing for the defendants 11 to 13 cited the judgement reported in **2010 (3) MWN (Civil) 722** in the case of **Regila Prem Vs. Chellappan and ors.**, in which this Court held that when a question of jurisdiction is raised by filing an application under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act, by stating that the property was not properly valued and if properly valued, the Court will have no jurisdiction, the same must be tried as a preliminary issue and Court has to direct the parties to lead in evidence in that aspect, otherwise there is no purpose in enacting Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act.

31. Whereas in the case on hand, the defendants 11 – 13 filed application under Order 14 Rule 1 & 2 of C.P.C. Further, these Civil Revision Petitions are not arising out of the provisions under Section 37 (1) and (2) of the Pondicherry Court Fees and Suits Valuation Act. The points emerged in the present Civil Revision Petitions are that whether the plaintiffs are in joint possession in the suit schedule properties or not and whether the issue of valuations of the suit properties and the payment



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of Court fees can be decided as preliminary issue. As concluded supra, when it is pure question of law, it can be decided as preliminary issue otherwise it cannot be decided as preliminary issue.

32. That apart, the defendants 11 to 13 filed petition to value the suit properties under Section 37(1) instead of 37(2) of the Pondicherry Court Fees and Suits Valuation Act, as if the plaintiffs are not in joint possession and enjoyment of the suit properties. Therefore, there is no question to decide the pecuniary jurisdiction of the trial Court. If the defendants 11 to 13 questioned the pecuniary jurisdiction then it can be tried as preliminary issue, since it is a question of law. Whereas in the given case, the application has been filed under Order 14 Rule 1 & 2 of C.P.C., in order to pay the Court fee under Section 37 (1) of the Pondicherry Court Fees and Suits Valuation Act. Therefore, the judgment cited by the learned counsel appearing for the defendants 11 to 13 are not applicable to the case on hand. Therefore, the trial Court ought not to have directed the plaintiffs to pay the deficit Court fee as valued by the C.W.1 viz., Tahsildar, that too on or before 06.08.2009.



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33. It is also curious to note that the trial Court directed the plaintiffs to pay deficit Court fee on or before 06.08.2009, by an order dated 24.07.2009. Whereas on the same day viz., 24.07.2009, dismissed the main suit itself by the judgment and decree dated 24.07.2009, without even waiting till 06.08.2009. Further, the 10th defendant filed written statement along with counter claim insofar as her 1/4th share in the suit schedule properties. She had also paid requisite Court fee. Even then, the trial Court without considering the counter claim dismissed the entire suit. Therefore, this Court has no hesitation to exercise its jurisdiction confers under Article 227 of the Constitution of India to interfere with the judgment and decree passed by the trial Court.

34. Accordingly, the judgments and decrees dated 24.07.2009, passed by the learned II Additional District Judge, Pudhucherry in O.S.No.26 of 2006 and I.A.No.19 of 2006 in O.S.No.26 of 2006, are hereby set aside. The trial Judge viz., the learned II Additional District Judge, Pudhucherry, is directed to dispose the suit within a period of six



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months from the date of receipt of a copy of this Order, on merits and in accordance with law.

35. With the above directions, both the Civil Revision Petitions stand allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

24.02.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-speaking order

rts

To

1. The II Additional District Judge,
Pudhucherry.



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G.K.ILANTHIRAIYAN, J.,

rts

PRE DELIVERY COMMON ORDER
IN C.R.P.Nos.2294 & 2295 of 2009
and M.P.No.1 of 2009

24.02.2023