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C.R.P. No. 402 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 402 of 2023
and C.M.P. No.3390 of 2023

M.Nataraj Gounder

... Petitioner

Vs

N.Rajamani

... Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 04.08.2022 passed in I.A.No.3 of 2019 in O.S.No.205 of 2019, on the file of III Additional District Judge, Coimbatore.

For Petitioner : Mr.R.Krishna Prasad

For Respondent : Mr.C.Ravichandran

ORDER

By challenging the impugned order passed in I.A.No.3 of 2019 in O.S.No.205 of 2019 on the file of the III Additional District Judge, Coimbatore, the petitioner / defendant has preferred this Revision.



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2. The suit in O.S.No.205 of 2019 was filed by the respondent / plaintiff for the relief of partition against the defendants. The plaintiff is a brother, who claimed the partition against the defendants. Thereafter, the 5th defendant filed I.A.No.3 of 2019 under Order 7 Rule 11 r/w Sec.151 of Code of Civil Procedure to reject the plaint on the ground that already there was an oral family arrangement and though plaintiff is not entitled to enjoy the property, but, she paid Court fee under Section 37 (2) of Tamil Nadu Court Fee and Suit Valuation Act and also not fulfilled the condition to the cause of action to file the suit. Accordingly prays to reject the plaint.

3. The said application was objected to by the respondent/ plaintiff stating that as a co-owner, she is in joint possession of the suit property, and therefore, she demanded a partition, but her brother has refused the same. Hence, she filed a suit for partition.

4. On considering the submissions made by both parties, the trial Court held that the respondent claims right over the property as a co-owner and the possession is also deemed to be in joint possession. It also held that



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merely because the oral arrangement was pleaded by the fifth defendant and his brothers, it could not be said that the plaintiff had given up right to sue for partition. Accordingly, the application was dismissed. Challenging the said findings, he preferred this revision.

5. The learned counsel for the petitioner argues that the suit was filed without cause of auction and the same was liable to be rejected under Order 7 Rule 11 and contended that as the plaintiff is not in possession of the property, she is not entitled to pay the Court fee under Section 37 (2) of the TNCFA. Admittedly, the learned counsel for the respondent submits that as a co-owner, she filed a suit by paying the Court fee, which was appreciated by the trial Judge.

6. On considering submissions made on either side, the respondent filed a suit for partition against her brother, and she has also claimed as a co-owner and paid the Court fee. Since the petitioner claims that there was an oral arrangement, it is for him to prove the same as it requires oral and documentary evidence as well as mixed question of law and facts. The



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findings of the trial Court needs no interference, with regard to the payment of the Court fee, liberty is given to the respondent / plaintiff to prove her right of possession during the course of trial. Therefore, the ground raised by the petitioner /5th defendant as such is not maintainable to reject the plaint and the finding of the trial Court is confirmed.

7. Accordingly this Civil Revision petition is dismissed. No costs.
Consequently connected Miscellaneous petition is closed.

15.03.2023

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

The III Additional District Judge,
Coimbatore.



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T.V.THAMILSELVI, J.

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