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CRP(PD)No.1832



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P.(PD)No.1832 of 2016
and C.M.P.No.9639 of 2016**

1.Vijaya

2.Vanithamani

... Petitioners

Vs.

Rajkumar

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 25.08.2015 in I.A.No.368 of 2015 in O.S.No.49 of 2015 on the file of the I Additional District Court, Coimbatore.

For Petitioners : Mr.G.Ethirajalu

For Respondents : No appearance

ORDER

The revision arises against an order passed by the learned I Additional District Judge, Coimbatore, under Section 12(3) of the Tamil Nadu Court Fees and Suit Valuation Act (hereinafter referred to as 'the Act').

2. The civil revision petitioners are the plaintiffs and the respondent is the 1st defendant. The declaration that was sought for in the suit O.S.No.49 of 2015 is that



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the relinquishment deed dated 23.05.2012 is null and void. The 1st plaintiff is the mother, the 2nd plaintiff is the sister and the 1st defendant is the son. From the averments made in the suit, it is clear that all the three of them had entered into the relinquishment deed dated 23.05.2012.

3. The position of law is that a person, who is a party to the document, will have to seek for its cancellation. The Court fee that is payable for the cancellation is under Section 40 of the Act. However, the plaintiffs have valued the suit only under Section 25(d) of the Act. Such a valuation is improper. It has been correctly found by the trial Court that the valuation should have been under Section 40 of the Act and not under Section 25(d) of the Act, since admittedly, the plaintiffs and 1st defendant are parties to the document.

4. Mr.G.Ethirajalu, learned counsel for the petitioners would submit that the 1st petitioner died and the 2nd petitioner is not in a position to pay the Court fee.

5. In case, a party is not able to pay the Court fee, even pending litigation, she is always entitled to present a petition under Order XXXIII of the Code of Civil Procedure and sue as an indigent person. The Court cannot change the charging provision on account of the financial inability of a party.

6. In view of the above, I confirm the order of the trial Court. I grant liberty to the 2nd petitioner to file a petition under Order XXXIII of C.P.C. and claim the relief of



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cancellation by way of pleading that she does not have the money to pay the Court fee.

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7. With the above liberty, the Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

19.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

I Additional District Judge, Coimbatore.

V.LAKSHMINARAYANAN,J.



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