



C.R.P.No.941 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 20.04.2023

Delivered on 01.09.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

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- 1.S.Arunachalam
- 2.Mrs.Muthammal
- 3.Mrs.Subbulakshmi @ Pappathi
- 4.Mrs.Thangamani
- 5.Mrs.Karunambikai
- 6.Mrs.Selvi
- 7.K.Kalaiveni
- 8.K.Sangeetha

...Petitioners/Petitioners/Defendants

-Vs-

P.K.Vellingiri

...Respondent/Respondent/Plaintiff

Prayer:-Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 18.09.2020 made in I.A.No.115 of 2018 in O.S.No.235 of 2017 on the file of the III Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.N.Sridhar
for Mr.R.Bharath Kumar

For Respondent : Mr.R.Babu
for Mr.R.Kumarasamy



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ORDER

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2.The learned Counsel for the Revision Petitioner would submit that the Defendants in the suit had filed I.A.No.115 of 2018 seeking proper valuation of the plaint relief.

3.Brief facts relevant for consideration in this Civil Revision Petition are as follows:

3.1.One Chinnathai @ Kaliammal died intestate and her share in the property vest with other siblings. Third party to the family who is the brother-in-law of Chinnathai @ Kaliammal had filed suit in O.S.No.235 of 2017 before the learned III Additional Sub-Judge, Coimbatore. The Revision Petitioner herein had filed Petition seeking to reject the plaint under Order VII, Rule 11 of CPC. The learned III Additional Sub-Judge, Coimbatore, after due enquiry dismissed the Petition. Therefore, the Petitioner in I.A.No.115 of 2018 had approached this Court under Article



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227 of the Constitution of India, seeking to set aside the order passed in the Petition to reject the plaint.

4.The learned Counsel for the Revision Petitioner contended that one Chinnathai @ Kaliammal died intestate and her share in the property vests with the other siblings. While so, the Plaintiff in the suit claiming that he is brother-in-law of Kaliammal had filed the suit in O.S.No.235 of 2017 on the file of the learned III Additional Sub-Judge, Coimbatore. It is his further contention that the Respondent is the third party to the family of Kaliammal. He cannot be expected to be in joint possession of the property whereas, the plaint averments claims that he is in joint possession. Further, submitted that as per the guideline value published by the Government of Tamil Nadu, per acre of the property fetches a value of Rs.40 lakhs.

5.Therefore, the 1st Defendant in O.S.No.235 of 2017 had filed a Petition in I.A.No.115 of 2018 seeking to reject the plaint under Order VII Rule 11 of CPC. The learned III Additional Sub-Judge, Coimbatore, after conducting enquiry dismissed the Petition stating that the points raised by the Petitioners in I.A.No.115 of 2018 can be considered in the final stage of the trial after adducing evidence by both parties and thereby, dismissed



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the Petition. Aggrieved by the same, 1st Defendant in O.S.No.235 of 2017, who is Petitioner in I.A.No.115 of 2018 has preferred this Civil Revision Petition.

6.Point for consideration:

Whether the order passed by the learned III Additional Subordinate Judge, Coimbatore, dismissing the Petition in I.A.No.115 of 2018 in O.S.No.235 of 2017 dated 18.09.2020 is to be set aside?

7.On perusal of the plaint averments in O.S.No.235 of 2017, the affidavit of the 1st Defendant in O.S.No.235 of 2017 filed the Petition in I.A.No.115 of 2018 [Petition under Order VII Rule 11 of CPC] and the counter filed by the Plaintiff as Respondent in I.A.No.115 of 2018 in O.S.No.235 of 2017 and the order passed by the learned III Additional Subordinate Judge, Coimbatore, dismissing the I.A.No.115 of 2018 in O.S.No.235 of 2017.

8.The learned Counsel for the Revision Petitioners submitted that the 1st Revision Petitioner is the brother of the deceased of Chinnathai @ Kaliammal. The Defendants in the suit in O.S.No.235 of 2017 are the brothers and sisters of deceased Chinnathai @ Kaliammal. The Plaintiff in



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O.S.No.235 of 2017 is a third party to the family of the Chinnathai @

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Kaliammal and he was not in joint possession of the property. Whereas the plaintiff averments claims that he is in joint possession. The further submission of the learned Counsel for the Revision Petitioners, is that they are Defendants in the suit. The guideline value published by the Government of Tamil Nadu for the suit property fetches guideline value of Rs.40 lakhs per acre. Therefore, the Plaintiff in O.S.No.235 of 2017 before the III Additional Subordinate Judge, Coimbatore, who is not in joint possession ought to have paid court fee for the value of 1/7th share. The Court ought to have directed him to pay appropriate court fees failing which the plaint to be rejected under Order VII Rule 11 of CPC. After due enquiry, the learned III Additional Subordinate Judge, Coimbatore, had dismissed the I.A.No.115 of 2018 in O.S.No.235 of 2017 order dated 18.09.2020 stating that the points raised by the Petitioners in I.A.No.115 of 2018 in O.S.No.235 of 2017 is to be considered only in the light of the evidence as it is a mixed questions of fact and law. Therefore, the order passed by the learned III Additional Subordinate Judge, Coimbatore, is perverse and is to be set aside cannot be accepted in the facts and circumstances of this case. The Defendants in O.S.No.235 of 2017 had furnished the guideline value as downloaded from the website of the



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Legislative Department of the Government of Tamil Nadu.

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9.The learned Counsel for the Revision Petitioners contended that the Plaintiff in O.S.No.235 of 2017 is a third party and is not in joint possession of the property. It is to be noted that the Plaintiff is seeking partition on the basis of a Will executed by the deceased Chinnathai @ Kaliammal. As per the Will, the Plaintiff in O.S.No.235 of 2017 is her brother-in-law, who had supported her at the time of distress. Therefore, she had executed a Will for her undivided share in the property. If that be so, the Will has to be proved, if the Will is proved, then the share of Chinnathai @ Kaliammal alone is sought by the Plaintiff. Whether the Chinnathai @ Kaliammal was not in joint possession or not is to be decided based on the evidence, the Plaintiff is seeking the share of Chinnathai @ Kaliammal he had entered the shoes of Chinnathai @ Kaliammal on the basis of the alleged Will. The Defendants in the suit had not filed written statement on the date of filing of this Petition under Order VII Rule 11 of CPC. Therefore, the learned III Additional Subordinate Judge, Coimbatore, was right in arriving at the conclusion that the points raised in I.A.No.115 of 2018 in O.S.No.235 of 2017 is a mixed question of fact and law. It is to be noted that in considering Petition under Order VII



Rule 11 of CPC the plaint averments alone is considered the circumstances mentioned in Order VII Rule 11 of CPC.

10. Order VII Rule 11 of CPC is as follows:-

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails comply with the provision of Rule 9.*

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff”.



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11. On perusal of the plaint averments, it is seen that the Plaintiff is none other than the brother of the husband of Chinnathai @ Kaliammal.

Chinnathai @ Kaliammal is sister of Defendants 1 to 5 and sister-in-law of the 6th Defendant. Chinnathai @ Kaliammal and her husband did not have children. After the death of the husband of Chinnathai @ Kaliammal, she was supported financially for her medical expenses and for her maintenance by the brother of her husband, brother-in-law. Chinnathai @ Kaliammal became ill and she was treated with the financial assistance by her brother-in-law. Therefore, she had executed a Will in favour of her brother-in-law that after her death he can claim 1/7th share in the joint family property belonging to her and her brother and sisters. In the light of the above circumstances, the brother-in-law of the Chinnathai @ Kaliammal had filed the suit in O.S.No.235 of 2017 seeking partition of the 1/7th share of the property of Chinnathai @ Kaliammal. The person claiming partition is stated to be third party to the family of Defendants 1 to 8. Defendants 6 to 8 are the widow and children of pre-deceased brother of Chinnathai @ Kaliammal namely, Krishnan.

12. As per the plaint averments, the Plaintiff namely, P.K.Vellingiri, who is the brother-in-law of the Chinnathai @ Kaliammal. He had spent



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for her medical expenses and for her maintenance. Therefore, the sister-in-

law the deceased Chinnathai @ Kaliammal had executed a Will in favour of the Plaintiff P.K.Vellingiri for her undivided share in the joint family property. Based on the said Will, he had filed the suit seeking partition of the share of Chinnathai @ Kaliammal.

13.As per the contention of the Defendants in O.S.No.235 of 2017, the Plaintiff is a third party and is not in joint possession. He had sought partition. Therefore, the third party seeking partition and who is not in joint possession has to pay court fee. As per the guideline value furnished by the Defendants in which one acre of the property fetches Rs.40 lakhs. Therefore, the Court has to direct the Plaintiff to pay appropriate court fees and grant him time by which if he does not pay appropriate court fee, the plaint has to be rejected under Order VII Rule 11 of CPC. The learned III Additional Subordinate Judge, Coimbatore, in his order in I.A.No.115 of 2018 in O.S.No.235 of 2017 while dismissing the Petition had stated that the points raised by the Defendants as Petitioners in I.A.No.115 of 2018 in O.S.No.235 of 2017 is a mixed questions of fact and law which cannot be considered by the Court on the basis of the affidavit of the Petitioners and the contents of the counter of the Respondent and hence, dismissed.



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purpose of valuation of the property. Here it needs detailed assessment of the evidence. Therefore, trial alone is to be considered. It is for the Trial Judge whether to consider preliminary issue regarding maintainability and valuation of the property after framing issues or to go for a full fledged trial with the disputing Defendants filing written statement. Here they have not filed written statement for the Trial Court to frame issues. In the absence of issues regarding maintainability, regarding court fee and valuation merely on the basis of Petition under Order VII Rule 11 of CPC without evidence just on the basis of the pleadings in the plaint, the Court cannot direct the Plaintiff to pay additional court fee or reject the plaint. Therefore, the order passed by the learned III Additional Subordinate Judge, Coimbatore, is found to be a well-reasoned order in the light of the Order VII Rule 11 of CPC does not warrant any interference by this Court. Therefore, the submission made by the learned Counsel for the Revision Petitioners is rejected.

16.The point for consideration is answered in favour of the Respondent and against the Revision Petitioners. The order passed by the learned III Additional Subordinate Judge, Coimbatore, in dismissing the Petition in I.A.No.115 of 2018 in O.S.No.235 of 2017 dated 18.09.2020 is



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confirmed.

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17.The Defendants are directed to file written statement as early as possible, the learned III Additional Subordinate Judge, Coimbatore, is directed to proceed with the framing of issues and trial regarding the points raised in this Petition by the Defendants and dispose of the suit as early as possible, without being interference by any of the observation made in the course of this argument. The Trial Court has directed the Plaintiff in O.S.No.235 of 2017 to pay appropriate court fee as per the guideline vale furnished by the Defendants in the suit. The Court had granted time to the Plaintiff in O.S.No.235 of 2017 failing which the plaint will be rejected.

18.Whether the court fee is to be paid under Section 37(2) of the Court Fees Act or Section 37(1) of the Court Fees Act is to be decided later on is the observation by the learned III Additional Subordinate Judge, Coimbatore. The learned Counsel for the Revision Petitioners contended that the observation of the learned III Additional Subordinate Judge, Coimbatore, that the Plaintiff as Respondent in I.A.No.115 of 2018 in O.S.No.235 of 2017 had not disputed the points raised by the Defendants



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in I.A.No.115 of 2018 in O.S.No.235 of 2017 to pay the appropriate court

fee as per the guideline value and as per the plaint averment for 1/7th share

for the deceased Chinnathai @ Kaliammal granting time to the Plaintiff failing which the plaint will be rejected. The plaint averments is to be treated alone at this stage point is raised by the Defendants can be considered whether in joint possession or out of possession is to be considered only on conclusion of the trial on the basis of appreciation of evidence.

19.In the result, **the Civil Revision Petition stands dismissed.** No costs.

01.09.2023

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Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

The III Additional Subordinate Judge, Coimbatore.



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SATHI KUMAR SUKUMARA KURUP, J.,

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**Order made in
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