



CRP.No.2904 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

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

CRP.No.2904 of 2016 and
CMP.No.14776 of 2016

N.Paramasivam

... Petitioner

Vs.

1.Sivabaggiam
2.N.Duraisamy
3.Nallammal

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 25.09.2015 in IA.No.172 of 2014 in OS.No.4 of 2014 on the file of the Principal District Court, Namakkal.

For Petitioner : Mr.S.Kalyanaraman

For Respondents

For R1 : No appearance

ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 25.09.2015 in IA.No.172 of 2014 in OS.No.4 of 2014 on the file of the Principal District Court, Namakkal, thereby dismissed the application to decide the issue on court fee on merits as preliminary issue.



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2. Though notice was served, no one appeared on behalf of the first respondent before this Court in person or through pleader.

3. The petitioner is the first defendant in the suit filed by the first respondent herein for partition and separate possession. The case of the first respondent is that she is in constructive possession of the schedule properties and valued the suit under Section 37(2) of the Court Fees Act. While pending the suit, the petitioner filed application to decide the issue on court fee on merits as preliminary issue for the reason that the first respondent got married in the year 1959 and she is living with her husband after her marriage. The specific averments made in the plaint is that the suit properties are the ancestral properties of one, Nalliya Gounder i.e. the father of the petitioner and the first respondent herein. He died intestate on 12.12.1995. While he was alive, he had executed registered Will dated 07.02.1990 in favour of the petitioner herein and some of the property in favour of the second respondent herein. After his demise, the petitioner and the second respondent herein acquired the properties as per the Will dated 07.02.1990 and 25.10.1995 and they are in possession and enjoyment of the said property. Therefore, the first respondent is never in possession of the suit properties. When the first respondent is not in possession



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and enjoyment of the suit property, she has to value the suit property under

Section 37(1) of Tamilnadu Court Fees and Suits Valuation Act, 1955 for the purpose of paying the court fees. However, the court below dismissed the application for the reason that the issue on court fee cannot be decided at this initial stage since the first respondent herein is denying the Will and stated that unless the Will stands proved as not true, only then, the first respondent will be entitled to her share.

4. In this regard, the learned counsel for the petitioner relied upon the judgment of this Court in the case of ***S.N.S.Sukumaran Vs. C.Thangamuthu*** reported in ***2012 (5) CTC 705***, in which this Court held as follows:

20. Section 12 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 reads as under :-

“12. Decision as to proper fee in other courts.

(1) In every suit instituted in any court other than the High Court, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under Section 10, the proper fee payable thereon, the decision being however subject to review, further review and correction in the manner specified in the succeeding sub-Sections.



(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-Section, not later, plead that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the courts decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the court shall pass such order as it deems just regarding costs of the suit.

5. Thus, it is clear that before the first hearing of the suit or before evidence is recorded, in respect of the valuation of the suit property and payment of court fee shall be heard before evidence is recorded. In the case on hand, the specific stand of the petitioner is that already the suit properties were bequeathed by his father in favour of him and the second respondent herein by the registered Wills dated 07.02.1990 and 25.10.1995. Further the first respondent also got married and she is living with her husband. Therefore, in order to provide valuation of the suit and proper payment of court fees, the issue



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has to be decided as preliminary issue as per Section 12 of the Tamilnadu Court Fees and Suits Valuation Act.

6. In view of the above, this Court finds infirmity in the order passed by the court below and the same is liable to be set aside. Accordingly, the fair and decretal order dated 25.09.2015 in IA.No.172 of 2014 in OS.No.4 of 2014 on the file of the Principal District Court, Namakkal is set aside and this civil revision petition is allowed. The application in IA.No.172 of 2014 is allowed and the trial court is directed to decide “the valuation of the suit property and the court fees issue” as preliminary issue on merits and thereafter decide the suit on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.02.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The Principal District Court, Namakkal.

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