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C.R.P.No.1825 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.1825 of 2019
and C.M.P.No.12025 of 2019

P.Easwaramoorthy

... Petitioner

Vs.

M.Mutheswari

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order of the II Additional District and Sessions Court at Tiruppur, dated 22.01.2019 in I.A.No.257 of 2018 in O.S.No.315 of 2016.

For Petitioner : Mr.P.Valliappan

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed by the 1st defendant challenging the fair and decreetal order passed in I.A.No.257 of 2018 in O.S.No.315 of 2016 by the IInd Additional District and Sessions Judge Court, Tiruppur, dated



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22.01.2019, dismissing the application filed by the petitioner under Section 12 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (herein after called as “Act”).

2.The respondent/plaintiff filed a suit seeking for the relief of partition and for allotment of 4/9th share in the suit properties. The respondent valued the suit at Rs.3,43,12,110/- and whereas, paid the Court fees under Section 37(2) and Section 27(c) of the Act.

3.The petitioner filed an application in I.A.No.257 of 2018 under Section 12 of the Act to direct the respondent/plaintiff to pay the proper Court fees under Section 37(1) of the Act on the ground that the averments made in the plaint established that the defendant was in exclusive portion of the suit properties and hence, the Court fees ought to have been paid under Section 37(1) of the Act.

4.The Court below on considering the rival contentions, came to a conclusion that the property is held by the defendant as joint owners and the plaintiff, who was married and was residing elsewhere should be deemed to be in



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the joint portion of the suit properties. Hence, the Court below upheld the payment of the Court Fees under Section 37(2) of the Act. Aggrieved by the same, the present Civil Revision Petition has been filed before this Court.

5.Heard Mr.P.Valliappan, learned counsel appearing on behalf of the petitioner.

6.The respondent has been served with notice and the name of the respondent has also been printed in the cause list. However, there is no representation on the side of the respondent either in person or through counsel.

7.The application was filed by the petitioner in I.A.No.257 of 2018 mainly on the ground that the overall averments that were made in the plaint clearly established that the plaintiff has been excluded from the possession of the suit properties. Hence, the plaintiff ought to have paid the Court fees under Section 37(1) of the Act. The Court below while considering this issue, has gone by the plaint averments and has come to a conclusion that the possession that is claimed by the defendant is based on Settlement Deeds and the plaintiff was away from the



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property, since she was married and was living in her matrimonial home.

Therefore, the plaintiff cannot be held to have been excluded from the possession of the suit properties and must be deemed to be in joint portion of the property.

8.In the considered view of this Court, the finding rendered by the Court below, at the best is a *prima facie* finding based on whatever averments have been made in the plaint. The petitioner has raised various grounds while pointing out to the plaint and one of the main ground that was raised was that the partition had taken place in the year 1994 itself and the same has also been admitted by the plaintiff in the pleadings and thereafter, the suit was filed in the year 2017 and thereby, the established right over the suit properties was sought to be reopened by the plaintiff. This issue will come to surface only during the course of trial. That apart, the effect of the Settlement Deeds and as to whether the plaintiff was aware of the same and had kept quiet for a considerably long time and thereafter, has attempted to reopen settled rights, can also be unearthed only in the course of trial.

9.In view of the above, this Court is not inclined to interfere with the fair and decretal order passed by the Court below in I.A.No.257 of 2018. The issue with



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regard to the payment of the Court fees shall be dealt with as a separate issue while deciding the suit finally. The finding rendered in I.A.No.257 of 2018 shall not have any bearing while deciding the issue of Court fees. The said issue shall be dealt with based on the evidence collected during the course of trial and on the appreciation of the same.

10.In the result, this Civil Revision Petition is disposed of with a direction to the Court below to complete the proceedings in O.S.No.315 of 2016, within a period of six months from the date of receipt of a copy of this order and report compliance before this Court. No Costs. Consequently, connected miscellaneous petition is closed.

11.01.2023

Internet : Yes / No
Index : Yes / No
Speaking Order / Non Speaking Order
Neutral Citation Case : Yes / No
SSR

To



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The II Additional District and Sessions Court,
Tiruppur.

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N. ANAND VENKATESH, J.

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