



C.R.P. No. 3595 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

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

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and

C.M.P.No. 22521 of 2023

1. R.Asha
2. M.Agarchand Chordia
3. M.Sureshchand Chordia
4. M.Rameshchand Chordia
5. S.Chandra
6. P.Indra

... Petitioners

Vs.

V.Kapila Shree

.. Respondent

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, to set aside the order dated 13.04.2023 passed in I.A.No.1 of 2022 in O.S.No.241 of 2021 on the file of learned III Addl. District and Sessions Court of Cuddalore at Vridhachalam and consequently directing the trial court to decide court fees as preliminary issue.



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For Petitioners : Ms.S.Pooja Shree

For Respondent : Mr.R.Balachandderan

ORDER

The Revision Petitioners are the defendants 26 to 30 in the suit in O.S.No. 241 of 2021 and they are purchasers of the property. They have filed an application before the trial court in I.A.No.1 of 2022 in O.S.No.241 of 2021 on the file of III Addl. District and Sessions Judge, Cuddalore at Vridhachalam praying to decide the issue in respect of payment of court fee as a preliminary issue. The said application was objected by the plaintiff. According to the plaintiff, whether the court fee paid by her is correct or not, it can be decided only after completion of evidence and not as a preliminary issue.

2. The main objection of the Revision Petitioners is that at the time Cof purchase made by these Revision Petitioners, the plaintiff was the minor, she was represented by her mother and through power of attorney,



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sale deeds were executed. Subsequently, after lapse of nearly 18 years and after attaining majority, minor preferred a suit and in fact, they were in possession of the property. Therefore, the court fee paid by the plaintiff under Sec.37(2) of Tamil Nadu Court fees and Suits Valuation Act is not correct and she ought to have paid the court fee under Sec. 37(1) of Court Fees Act. Hence, they prayed to decide the court fee issue as preliminary issue. On considering both side submissions, the trial judge concludes that whether the court fee paid by the plaintiff is correct or not, need not be a preliminary issue as it is connected with other issue, whether the minor is out of possession or sale deeds executed by her mother is valid, are to be decided only after completion of evidence and not at the preliminary stage. Accordingly, the trial judge dismissed the said application. Challenging the said order, the present Civil Revision Petition has been filed.

3. The learned counsel for Revision Petitioners argues that the averments of the plaint itself would clearly reveals that immediately after attaining majority, the plaintiff has not filed the suit and only after lapse of nearly 18 years later, she had filed the suit in the year of 2011, which



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itself clearly shows that they were not in possession of the property.

Furthermore, on seeing the entire plaint averments, there was lot of facts and circumstances narrated by the plaintiff and she is disputing the compromise decree and division of the property. The further averment made in the plaint, she had stated that after the demise of her father, she has raised lot of allegations with regard to suit schedule of property. Moreover, with regard to payment of court fee, whether it is correct or not, it has to be decided after recording the evidence, since because the averment in the suit itself is implicated with lot of facts and circumstances, under which, the plaintiff was forced to file a suit. It is a settled proposition, as a joint owners, the possession of other owner deems to be constructive possession. Whether the plaintiff was in possession of the property or not, it has to be decided only after completion of trial. Therefore, it cannot be decided as a preliminary issue and hence, the findings of the learned trial judge is sustainable one, which needs no interference.



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4. With the above observation, this Civil Revision Petition is dismissed and the findings of the trial judge in I.A.No.1 of 2022 is confirmed. However, liberty is granted to the Revision Petitioners to take all defence before the trial court by filing additional written statement and the trial judge is also directed to complete the trial and dispose the suit as expeditiously as possible. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

04.10.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

III Addl. District Judge,
Cuddalore at Vridhachalam.



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T.V.THAMILSELVI, J.

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