



C.R.P(MD)No.1370 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **15.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1370 of 2023

and

C.M.P(MD)No.6820 of 2023

Leela Pushpam

...Petitioner/Plaintiff

Vs.

1.S.Selvaraj

2.P.Kasinathan

3.Chella Srinivasan

4.Ramanujam

5.S.Gurusamy

6.A.Lakshmanan

7.K.Viswanathan

8.M.Kalimuthu

9.M/s.S&P Agro Products Private Limited,
Represented by its representative,
S.Suresh,

10.C.M.Ganesh

...Respondent/Defendants



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PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the impugned notice issued by the Additional District Court, Virudhunagar dated 02.03.2023 directing the petitioner/plaintiff to pay additional Court fee in O.S.No.6 of 2018.

For Petitioner : Mr.Lakshmi Gopinathan
For M/s.Polax Legal Solutions

ORDER

The present Civil Revision Petition has been filed against the impugned notice issued by the Additional District Court, Virudhunagar dated 02.03.2023 directing the petitioner/plaintiff to pay additional Court fee in O.S.No.6 of 2018.

2. The petitioner is the plaintiff before the Additional District Court, Virudhunagar in O.S.No.6 of 2018. The suit has been filed by the petitioner to partition the suit schedule property.

3. In almost all the paragraphs of the plaint filed in support of the above suit, the petitioner has stated that the petitioner is in joint possession of the property. Therefore, the petitioner paid a sum of Rs.5,000/- as Court fee under Section 37 (2) of the Tamilnadu Court Fees



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and Suits Valuation Act, although, the petitioner has stated that the Court fee was paid under Section 37 (1) of the Tamilnadu Court Fees and Suits Valuation Act in the plaint. It is submitted that the properties in question are the house property and an agricultural property.

4. The learned counsel for the petitioner submits that there was a typographical mistake in Paragraph No.24 of the plaint inasmuch as instead of Section 37 (2) of the Tamilnadu Court Fees and Suits Valuation Act, the petitioner has referred Section 37 (1) of the Tamilnadu Court Fees and Suits Valuation Act, although the petitioner has correctly paid the Court fee that is payable under Section 37 (2) of the Tamilnadu Court Fees and Suits Valuation Act. That apart, it is submitted that the defendants have also filed their written statement and the Court has also framed issues on 29.03.2019, which is before the trial commenced. The Court has asked the petitioner to pay the deficit Court fee of Rs.1,17,596/- by assessing the Court fees of Rs.1,22,596/-. In this connection, the learned counsel for the petitioner has placed reliance on the decision of this Court rendered in the case of **Chithra Ramalingam Vs G.Sridharane and others** reported in **2010 5 MLJ 271**. It is submitted that the Court can even frame preliminary issue regarding the Court fee.



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The Court cannot midway call upon the petitioner merely because there is a typographical error in Paragraph No.24 of the plaint.

5. I have considered the arguments advanced by the learned counsel for the petitioner.

6. The petitioner is a resident of Kovilpatti in Thoothukudi District. The suit schedule properties are located in Sattur. The suit schedule property No.3 is a house property while the other properties are agricultural land. Therefore, merely because the petitioner had made clever drafting *ipso facto* would not entitle the petitioner to take recourse to Court fee on the residential property under Section 37 (2) of the Tamilnadu Court Fees and Suits Valuation Act. As far the agricultural properties are concerned there can be presumption that the parties are in joint possession.

7. Under these circumstances, this Court is inclined to direct the petitioner to pay requisite Court fee on the third item, namely, residential house under Section 37 (1) of the Tamilnadu Court Fees and Suits Valuation Act. As far the deficit Court fee on the other properties that is



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agricultural properties are concerned, the learned Additional District Judge, Virudhunagar shall proceed to frame supplementary issues to be considered as a preliminary issue and proceed to pass appropriate orders thereafter. The petitioner shall pay requisite Court fee on the residential property within a period of 30 days from the date of receipt of copy of this order. On such compliance, the Court shall frame preliminary issue as mentioned above and dispose of the same within a period of 30 days thereafter. All the issues are left open including the prayer of the petitioner, if any, to let in additional evidence.

8. The present Civil Revision Petition stands partly allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

15.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The learned Additional District Judge,
Virudhunagar
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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