



C.R.P(MD)No.2351 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2351 of 2022

and

C.M.P(MD)No.11364 of 2022

Rajan Premkumar

... Petitioner/Petitioner/
1st Defendant

Vs.

1.Kresh Ammal

2.Latha

3.Selvakumar

... Respondents 1 to 3/
Respondents 1 to 3/
Plaintiffs

4.Devabalan

...4th Defendant/
4th Respondent/
2nd Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order, dated 02.09.2022 made in I.A.No.1 of 2019 in O.S.No.47 of 2014 on the file of IV Additional Subordinate Judge, Tiruchirappalli and set aside the same.

For Petitioner : Mr.S.Manikandan



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ORDER

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The present civil revision petition has been filed against the fair and decreetal order, dated 02.09.2022 made in I.A.No.1 of 2019 in O.S.No.47 of 2014 on the file of IV Additional Subordinate Judge, Tiruchirappalli.

2. The petitioner is the first defendant in O.S.No.47 of 2014 before the IV Additional Sub Court, Tiruchirappalli. The petitioner is aggrieved by the impugned fair and decreetal order, dated 02.09.2022 in I.A.No.1 of 2019. By the impugned order, the trial Court has dismissed the above application filed by the petitioner under Order 14 of C.P.C. By the said petition, the petitioner wanted the Court to raise a preliminary issue regarding the Court fee paid by the second respondent (second plaintiff in O.S.No.47 of 2014). It is submitted that the Court has committed a grave error in rejecting the application and therefore, submits that the impugned order is liable to be interfered under Article 227 of the Constitution of India. The relevant portion of the impugned order reads as under:

"7.As per decision of our Hon'ble High Court preliminary issue regarding Court fee can be decided on the plaint averments. 1st plaintiff is mother of 3rd plaintiff and 2nd plaintiff is wife of 3rd plaintiff and contention of plaintiffs that



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they are living together and wife of joint family members purchased the property from 3rd plaintiff. On perusal of the plaint averments would reveal that plaintiffs are in joint possession. This Court is of view that since the plaintiffs are in joint possession and member the joint family purchase the suit property and they are in joint possession at the time of the purchase of the suit property, plaintiffs paid the Court fee under 37 (2) of Tamil Nadu Court Fee Act is correct.

In the result, this petition is dismissed. No cost."

3. The Court has referred the decision of this Court in the case of ***N.Ramachandran Vs Munisamy and others*** reported in ***1998 (1) CTC***

560. A specific reference is made to paragraph 13, which reads as under:

"13. I am not able to subscribe my view to the submission made by the learned counsel for the respondent. As quoted above, this Court and the Apex Court, while considering the question whether to apply 37(2) or 37(4) of the Court-Fee Act, the Court has to go into the averment of the plaint alone and it need not be influenced by the averment in the written statement."

4. The learned counsel for the petitioner has placed reliance on the decision of this Court in the case of ***S.Mahendhiran and others vs S.Velmurugan*** (C.R.P(MD)Nos.510 and 514 of 2019) vide order, dated 13.02.2019. A specific reference is made to paragraph No.13, which reads as under:

"13. On careful perusal of the above Section makes it clear that when the plaintiff is not in possession of the property, he has to pay the Court fee on the market value of the plaintiff's share. Admittedly, he has not paid the Court fee as per Section 37 of the Court Fee Act but he has paid Court fee only under Section 37(2) of the Court Fee Act.



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Therefore, this Court is of the view that till the disputed Will is established, a stranger to the family cannot claim joint possession and he has to necessarily pay the Court fee under Section 37(1) of the Court Fee Act. The trial Court has not considered this aspect and therefore, the order of the trial Court dated 17.12.2018 in I.A.No.358 of 2017 is hereby set aside. The plaintiff is directed to pay the Court fee under Section 37(1) of the Act on the market value of his share, within a period of two months from the date of receipt of a copy of this order."

5. An issue arise when a material proposition of fact or law is affirmed by the one party and denied by the other as per Order 14 Rule 1 of C.P.C. There are two kinds of issues, namely, issue of facts and issue of law as per Sub Clause 2 Rule 1 of Order 14 of C.P.C. As per Sub Clause 5 to Rule 1 of Order 14 of C.P.C., at the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 of Order X and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the decision of the case appears to depend.

6. The Court has to pronounce judgment on all issues that may be framed under Rule 5 of C.P.C. The Court may at any time before passing



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a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties

7. The case of the petitioner before the trial Court appears to be that the second respondent/second plaintiff in O.S.No.47 of 2014 is not in joint possession of the property. It is submitted that since the second respondent is not in joint possession of the property filed for partition of the property, Court fee ought to have been paid on the market value in terms of Section 37 of the Tamil Nadu Court Fees and Suit Valuation Act.

8. O.S.No.47 of 2014 has been filed by the respondents 1 to 3 herein. The first respondent herein appears to have given a power of attorney to the third respondent, who is none other than the son of the first respondent and sibling of the petitioner herein and the fourth respondent. In other words, the petitioner, the respondents 3 and 4 are siblings born to late.Samraj.The third respondent as the power of attorney of the first respondent appears to have executed a sale deed in favour of the second respondent. The issue relating to joint possession



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and ownership cannot be determined at the preliminary stage without evidence.

9. The trial Court can exercise its power under Order 14 Rule 5 of C.P.C and frame any additional issues, if required at the appropriate stage of the case. In my view, impugned order does not call for any interference at this stage, it can be determined at the time of trial subject to the evidence. The respondent/plaintiff can be called upon to pay deficit Court fee, if joint possession is not proved during trial.

10. Therefore, the present Civil Revision Petition stands disposed of by directing the trial Court to keep in mind the issue relating to joint possession to arrive the Court fee that may be payable by the respondents 1 to 3 at the time of final hearing after trial before passing final judgment and decree. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2023

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



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To

1.The IV Additional Subordinate Judge,
Tiruchirappalli.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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