



A.No.856 of 2024

A.No.856 of 2024
in C.S.No.151 of 2023

WEB COPY

N.SATHISH KUMAR, J.

The application has been filed to reject the suit mainly on the ground that the suit has not been valued properly and the Court fee has not been paid correctly.

2. The suit is filed for partition of the property claiming 2/3rd share in the suit properties. It is the specific case of the plaintiff that the suit property was purchased by their father Mr.P.S.Yogaraj and he died on 02.05.2021. Therefore, the plaintiff being the sisters are entitled to 2/3rd share together in the suit property. The defendant is none other than the brother of the plaintiff. Hence, the suit has been laid. The applicant has been taken out to reject the plaint on the ground that the suit ought to have been properly valued. The application has been filed under Order VII Rule 11 (b) of CPC for rejecting the plaint. The main contention of the defendant in application is that since the plaintiff are not in joint possession, the suit has not been valued under Section 37(1) of The Tamil Nadu Court-Fees and Suits Valuation Act, 1955, on the contrary, the suit has been valued under Section 37(2) of The Tamil Nadu Court-Fees and Suits Valuation Act, 1955. It is the only ground, the suit is sought to be rejected.



A.No.856 of 2024

3. I have perused the entire materials. Admittedly, the suit property is owned by the father of the parties, this fact is not in dispute. The suit has been laid for claiming their rights. Merely, because one of the co-owner is in possession of the property, it cannot be said that the other co-owners is totally excluded from the property. In Law, possession of one co-owner is deemed possession on behalf of others. Such being the position, the suit cannot be rejected at threshold merely on the ground that Court Fee has not been paid as per the Section 37(1) of The Tamil Nadu Court-Fees and Suits Valuation Act, 1955.

4. It is also to be noted that the very Rule which relied upon to reject the suit at threshold will not be applicable to the Chartered High Court. The suit is sought to be rejected under Order VII Rule 11 (b) of CPC, the applicability of the said Rule has been specifically excluded under the very same Code under Order XLIX Rule 3 which reads as follows:

**“ORDER XLIX
CHARTERED HIGH COURTS**

...

3. Application of rules:-

The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely-

(1) rule 10 and rule 11, clauses (b) and (c) of Order VII;



A.No.856 of 2024

WEB COPY

- (2) rule 3 of Order X;
(3) rule 2 of Order XVI;
(4) rule 5,6,8,9,10,11,13,14,15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;
(5) rules 1 to 8 of Order XX; and
(6) rule 7 of Order XXXIII (so far as relates to the making of memorandum) and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.”

5. The same makes it clear that the Rule 10 and 11, Clauses (b) & (c) of Order VII shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction. Such being the position, when the very applicability of the Rule is excluded to the Chartered High Court, the applicant cannot rely upon the Rule to non-suit the suit at this stage.

6. Accordingly, I do not find any merits in this case and this application stands dismissed.

27.02.2024

dhk



WEB COPY



A.No.856 of 2024

dhk

A.No.856 of 2024
in C.S.No.151 of 2023

27.02.2024