



CRP No.2919 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.2919 of 2024
and CMP No.15594 of 2024

Kalpana Sekar

.. Petitioner

-VS-

1. Uma Shakthi
2. Srividya Kanakaraj

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order passed by XXI Additional City Civil Court, Chennai in I.A.No.2 of 2023 in O.S.No.1851 of 2022 dated 20.02.2024.

For Petitioner : Ms.C.Shankari
For M/s Nathan and Associates

For Respondents : Mr.S.Monish Kumar
on Caveat



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ORDER

The civil revision petitioner is the plaintiff in the suit. She has filed O.S.No.1851 of 2022 on the file of XXI Additional City Civil Court, Chennai.

2. The relationship between parties is not in dispute. One Radhakrishnan married Padma and from the wedlock, he had three children, namely, Kalpana, the plaintiff, Uma Shakthi, the first defendant and Srividya, the second defendant. The suit schedule mentioned property was acquired by Radhakrishnan. Tmt.Padma passed away leaving behind Radhakrishnan and her daughters as legal heirs. Radhakrishnan too passed away on 26.07.2015. The plaintiff would plead that he left behind a Will and Codicil. Both sides would agree that the said Will and Codicil have not received the approval of this Court in its testamentary and probate jurisdiction. Since the defendants were not willing to give a share of the property, the plaintiff brought forth the suit for partition.



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3. In paragraph 8 of the plaint, she specifically pleads that she is in joint possession of the property along with the other legal heirs. On being served with summons, the defendants took out an application for rejection of plaint stating that the suit has not been properly valued. They would plead that the court fee should have been paid under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965 and not under Section 37(2) of the said Act as claimed by the plaintiff. The learned Judge received a counter from the plaintiff and allowed the application directing the plaintiff to value the suit under Section 37(1). Against which, the present revision.

4. Heard Ms.Shankari for the civil revision petitioner and Mr.Monish Kumar for the respondents.

5. Ms.Shankari would invite my attention to paragraph 8 of the plaint to state that they were in joint possession of the property and therefore, the Court ought not to have entertained the application. Curiously enough, Mr.Monish Kumar has also referred to the very same paragraph to plead that



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the plaintiff has admitted that she is not in possession and therefore, no exception can be taken to the order of the trial Court.

6. I have carefully considered the submissions and perused the records.

7. Insofar as the rejection of plaint is concerned, wrong valuation is not a ground for the same. Order 7 Rule 11(b) contemplates a situation where the Court directs the plaintiff to pay the court fee in case of under valuation and if still the plaintiff fails to value it properly, only then the plaint is liable to be rejected. For the purpose of court fee and jurisdiction, the averments made in the plaint alone matter (See *S. Rm. Ar. S. Sp. Sathappa Chettiar vs. S. Rm. Ar. Rm. Ramanathan Chettiar*, reported in *AIR 1958 SC 245*). The plaintiff has made a specific averment that she is in joint possession of the property along with the defendants. Therefore, applying the principle laid down above, I am not in a position to sustain the order of the learned trial Judge.



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8. The civil revision petition stands allowed. The order in I.A.No.2 of 2023 in O.S.No.1851 of 2022 dated 20.02.2024 is set aside. I.A.No.2 of 2023 shall stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.08.2024

Index : Yes/No

Neutral Citation : Yes/No

sra

To

The XXI Additional City Civil Court, Chennai



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V.LAKSHMINARAYANAN, J.

(sra)

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