



CRP.No. 2783 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

Civil Revision Petition No. 2783 of 2023

and

Civil Miscellaneous Petition No. 17200 of 2023

1.Radhika

2.Mahavishnu

...Petitioners

versus

1.Ashokan

2.Ushamaheshwari

3.Saravanan

4.Kumudha

5.Padmavathi

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Order dated January 06, 2023 passed in IA.No. 550 of 2018 in O.S.No. 173 of 2017 on the file of Subordinate Judge, Attur, Salem District.

For Petitioners : Mr.L. Rajendran

For Respondents : Mr.K. Shakespeare



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ORDER

This Civil Revision Petition has been filed against the Order dated January 06, 2023 passed in I.A.No. 550 of 2018 in O.S.No.173 of 2017 filed under Order VII Rule 11(b) of Code of Civil Procedure read with Section 151 CPC and under Section 12(2) of Tamil Nadu Court Fees and Suits Valuation Act, 1955, [in short 'TNCF' Act] seeking to reject the plaint on the basis of no pecuniary jurisdiction.

2. Heard Mr.L.Rajendran, learned Counsel for the revision petitioners and Mr.K. Shakespeare, learned Counsel for the respondents.

3. The revision petitioners herein are the Defendant Nos.12 & 13 and the respondents 1 to 5 herein are the plaintiffs in the Suit in O.S.No.173 of 2017 before the trial Court.



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4. The respondents/plaintiffs have filed the Suit in O.S.No. 173 of 2017 for partition seeking to divide the Suit Property into 11 equal shares and allot one such share to the respondents/plaintiffs.

5. The case of the plaintiffs is that the Suit Property originally belonged to Ayyavoo @ Ramasamy Udayar. He died in the year 1993 intestate leaving behind him, the plaintiffs and the defendants as his legal-heirs/legal representatives. The plaintiffs and the defendants are in joint possession in the Suit Property. Accordingly valued the Suit under Section 37(2) of TNCF Act. The defendants' 12 and 13 questioning the valuation that the Suit ought to have been valued under Section 37(1) of TNCF Act. The plaintiffs are not in joint possession and enjoyment in the Suit Property. Hence, the plaintiffs' valuation of Suit under Section 37(2) is incorrect.



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6. This Court has perused the plaint. Total valuation of the Suit Property has been valued as Rs.55,00,000/- and the plaintiffs 1/11 share of the property valued at Rs.5,00,000/- and accordingly, the Court Fees have been paid under Section 37(2) of TNCF Act.

7. The learned Counsel for the Defendant Nos. 12 & 13 submitted that the plaintiffs are not in joint possession of the property with Defendant Nos.12 & 13. Hence, the Court Fees paid under Section 37(2) of TNCF Act is not correct. He further submitted that the respondents/plaintiffs have suppressed the real market value of the Suit Property and paid lessor Court Fee. He further submitted that if calculated based on guideline value, the market value of the Suit Property would be more than Rs.50,00,00,000/- [Rupees Fifty Crore Only]. The plaintiffs' alleged share alone would come



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for more than one Crore. If the Suit is valued correctly, the Subordinate Court (Trial Court) would not have pecuniary jurisdiction to try this Suit.

The Trial Court without considering the above aspects, dismissed the petition filed by the Defendant Nos.12 & 13 under Order VII Rule (11) of CPC & Section 12 of TNCF Act. Accordingly, he prays to allow this Civil Revision Petition.

8. In response to the above arguments, Mr.K.Shakespeare, learned Counsel for the respondents/plaintiffs would contend that while delay with the petition under Order VII Rule (11) of CPC petition, the Court has to look into the plaint and plaint documents alone and see whether the plaint disclose a cause of action, and whether the Suit is barred by law. He further submitted that the plaintiffs and the defendants are the co-heirs of co-owners. Hence, the plaintiffs are entitled to 1/11 share in the Suit



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Property. Hence, the law presumes that the plaintiffs and the defendants are in joint possession and enjoyment of the Suit Property. Therefore, the Suit has been valued correctly under Section 37(2) of TNCF Act. The Trial Court after considering the facts and circumstances dismissed the petition filed by the Defendant Nos. 12 & 13. Hence, there is no warrant interference in the Order passed by the Trial Court. Accordingly, he prays to dismiss the above Civil Revision Petition.

9. This Court has considered both side submissions and perused the materials available on record.

10. The case of the plaintiffs is that the Suit Property originally owned by one Ayyavoo @ Ramasamy Udayar. He died in the year 1993 intestate leaving behind the plaintiffs and the defendants as his legal-



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heirs/legal representatives of the deceased. Hence, the plaintiffs and the defendants are the co-heirs of co-owners of the Suit Property. The law presumes that all the co-owners are in joint possession over the Suit Property unless they are excluded from such possession. Hence, the Valuation of Suit under Section 37 (2) of TNCF Act, is proper and correct. In this regard, it is sufficed to cite the decision of the Hon'ble Supreme Court in **Neelavathi and Others v. M.Natarajan and Others**, dated **30.11.1979**, reported in **AIR 1980 SC 691**, at Paragraph No. 8, has held as follows:-

“(8) Section 37 of the Tamil Nadu Court Fees and Suit Valuation Act relates to Partition Suits. Section 37 provides as follows:-

“37(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

37(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common by a plaintiff who is in joint possession of such property, fee shall be paid at the rates prescribed.”

It will be seen that the court fee is payable under S. 37(1) if the plaintiff is 'excluded' from possession of the



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property. The plaintiffs who are sisters of the defendants, claimed to be members of the Joint Family, and prayed for partition alleging that they are in joint possession Under the proviso to S.6 of the Hindu Succession Act, 1956 (Act 30 of 1956) the plaintiffs being the daughters of the male Hindu who died after the commencement of the Act, having at the time of the death an interest in the Mitakshara coparcenary property, acquired an interest by devolution under the Act. It is not in dispute that the plaintiffs are entitled to a share. The property to which the plaintiffs are entitled is undivided 'joint family property!'; though not in the strict sense of the term. The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that, he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under Section 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been "excluded" from joint possession to which they are entitled in law. The averments in the plant that the plaintiff could not remain in joint possession as he was not given any income from the joint family property would not amount to his exclusion from possession. We are unable to read into the plaint a clear and specific admission that the plaintiff had been excluded from possession."

(Emphasis supplied by this Court)



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Further, it is well settled that while considering the application under Order VII Rule 11(b) of CPC, the Trial Court shall not examine the plea taken by the defendants in his written statement. The Court has to examine the averments made in the plaint documents only. In this case, it is learnt that the defendants have not filed their written statement. Hence, this Court is of the view that the defendants does not make out a case under Order VII Rule 11(b) of CPC. The defendants are at liberty to raise all plea available at law including Court Fee and Suit Valuation in their written statement. In such case, the Trial Court shall examine the Defendants case in accordance with without any influence with this Order.

11. In fine, this Civil Revision Petition is dismissed. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.



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MSM

To

The Subordinate Judge, Attur, Salem District.

R. SAKTHIVEL, J

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