



C.R.P.No.1832 of 2023

WEB COPY

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 22.02.2024**

**PRONOUNCED ON: 15.03.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE V. SIVAGNANAM**

**Civil Revision Petition No.1832 of 2023**  
**and**  
**Civil Miscellaneous Petition No.11772 of 2023**

B. Maheswari ... Petitioner

Vs

1. Smt.S.Chitralekha

2. Dr. Krishna Kumar.K

3. Mr.Mohankumar

4. Ms.Priyadarshini

5. Mr.Mahendrakumar ... Respondents



C.R.P.No.1832 of 2023

**Prayer:** Civil Revision Petition has been filed under Article 227 of the Constitution of India to set-aside the fair and decreetal order of dismissal, dated 18.04.2023, passed in I.A.No.1 of 2022 in O.S.No.9666 of 2021 by the XVII Additional City Civil Court, Chennai and consequently allow the above I.A.No.1 of 2022 in O.S.No.9666 of 2021.

For Petitioner : Mr M. Stanly Chellappa

### **ORDER**

Challenging the order of dismissal passed by the XVII Additional Judge, City Civil Court, Chennai in I.A.No.1 of 2022 in O.S.No.9666 of 2021 dated 18.04.2023, the present Civil Revision has been filed.

2. The revision petitioner is the 2<sup>nd</sup> defendant and the first respondent is the plaintiff and other respondents are defendants in O.S.No.9666 of 2021 on the file of the XVII Additional City Civil Court, Chennai. The first respondent/plaintiff had filed the suit against the revision petitioner and other respondents/defendants for partition of plaint schedule property into 6 equal shares and claim 1/6 shares to the first respondent/plaintiff. The plaintiff



C.R.P.No.1832 of 2023

WEB COPY

valued her 1/6 share in the suit schedule property at Rs.40,20,000/- and paid a fixed court fee of Rs.5000/- under Section 37(2) of the Tamilnadu Court Fee and Suit Valuation Act 1955. In the said suit, the Revision Petitioner herein, who is the 2<sup>nd</sup> defendant in the suit, had filed an application in I.A.No.1 of 2022 to reject the plaint on the ground that the plaintiff ought to have valued the suit under Section 37(1) of Tamil Nadu Court Fee and Suits Valuation Act 1955 and not under Section 37(2) of the Tamil Nadu Court Fee and Suits Valuation Act for the market value of her share as she is not in possession of the suit property. If the Court fees is paid in accordance with Section 37(1) of the Tamilnadu Court Fee and Suit Valuation Act 1955 for the market value of the property, the City Civil Court has no jurisdiction. The Trial Court, after considering the submission of the parties, dismissed the petition, which is under challenge.

3. The learned counsel for the petitioner submitted that the first respondent/plaintiff is not in possession of the suit schedule property after the death of her father, i.e., from the year 1984. Since she is not in possession of the plaint schedule property, she ought to have valued the suit under Section



C.R.P.No.1832 of 2023

WEB COPY

37(1) of the Tamil Nadu Court Fees and Valuation Act 1955 on the basis of the market value of the suit schedule property. But, she paid a fixed Court Fee of Rs.5000/-, as though she is in joint possession, under Section 37(2) of the Tamil Nadu Court Fees and Valuation Act 1955. However, the Trial Court failed to consider the said fact and erroneously dismissed the petition. Therefore, pleaded to allow the revision petition and to set aside the impugned order.

4. The learned counsel for the respondent supported the impugned order of the Trial Court and further contended that the first respondent/plaintiff is a co-owner, and possession of one co-owner is possession of all unless ouster or exclusion is proved. He further contended that it is not necessary that she should be in actual possession of the whole or part of the property. So long as her right to a share and the nature of the property is not disputed, the law presumes she is in joint possession and thus, pleaded to dismiss the revision as it has no merit. To support his argument, the learned counsel relied upon the judgment of this Court in **CRP(PD) No.2565 of 2015 ( Pichaiammal &**



C.R.P.No.1832 of 2023

WEB COPY

*others /vs/ Priya Aparna)* and another judgment of the Hon'ble Supreme Court in *Appeal (Civil) Case No.4739 of 2006 (Jagannath Amin /vs/ Seetharama(dead) by Lrs. & Ors. )* .

5. This Court considered the matter in the light of the submissions made by the learned counsel on either side and also perused the materials available on record carefully.

6. On perusal of records it is seen that admittedly the first respondent/plaintiff had filed the suit in O.S.No.9666 of 2021 on the file of XVII Additional City Civil Court, Chennai, against the revision petitioner and other respondents, who are her brothers and sisters, for partition of the plaint schedule properties into 6 equal share and allot 1/6 share to her. In the said suit, she being the co-owner had paid the Court of Rs.5000/- under Section 37(2) of Court Fees Act. The revision petitioner had filed the petition to reject the plaint in I.A.No.1 of 2022 on the ground that the plaintiff ought to have paid the Court Fee under Section 37(1) of the 37(1) of the Tamilnadu Court



C.R.P.No.1832 of 2023

Fee and Suit Valuation Act 1955 for the market value of the same since she is not in possession of the plaint schedule property.

7. Admittedly, there is no dispute with regard to the plaintiff's right to share and the nature of the property. Under these circumstances, the general principle of law is that in the case of co-owners, possession of one is possession of all unless ouster or exclusion is proved. The Hon'ble Supreme Court in the *Appeal (Civil) Case No. 4739 of 2006* observed the decision of the High Court of Karnataka in *T.K.Srinivasamurthy & others /vs/ T.Seetharamaiah and others* reported in *AIR 1990 Karnataka 149*. In para 4 of the said judgment it was noted as follows :

*“.....126. Court fees payable under S.37(1), T.N.Act, if the plaintiff is 'excluded' possession of the joint property. The general principle of law is that in the case of co-owners, possession of one is 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*



WEB COPY



C.R.P.No.1832 of 2023

*income from the property. So long as his right to a share and the nature of the property is not disputed, the law presumes that he is in joint possession. To apply S.37(1) there should be a clear and specific averment in the plaint that plaintiff has been excluded from joint possession. An averment that remain in joint possession would not amount to exclusion from possession. “*

8. In this case, the revision petitioner herein and other defendants have not disputed the plaintiff's right to share and the nature of the property. In view of the above legal possession, Court Fee is paid under Section 37(2) of the Tamilnadu Court Fee and Suit Valuation Act 1955 is correct. The Trial Court rightly dismissed. I find no infirmity in the order passed by the Trial Court and there is no ground to interfere with the impugned order and I find no merit in this revision the same is liable to be dismissed.

9. Accordingly, this Civil Revision Petition is dismissed. Consequently,



C.R.P.No.1832 of 2023

connected miscellaneous petition is closed.

WEB COPY

**15.03.2024**

Index: yes/no  
Internet:yes/no  
mrp

To

1. XVII Additional Judge,  
City Civil Court,  
Chennai.



WEB COPY



C.R.P.No.1832 of 2023

**V. SIVAGNANAM, J.**

mrp

**C.R.P.No.1832 of 2023**

**15.03.2024**