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C.R.P.No.3875 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3875 of 2024
and C.M.P.No.21257 of 2024

1.T.Radhabai
2.T.Srinivasan

... Petitioners

-Vs-

1.M.Uma Maheswari
2.B.Hemalatha
3.S.Ammu

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 01.07.2024 in I.A.No.5 of 2024 in O.S.No.9368 of 2024 on the file of the Hon'ble XVII Additional City Civil Court, Chennai.

For Petitioners : Mr.G.S.Prabu

ORDER

This Civil Revision Petition arises against the order passed by the learned XVII Additional City Civil Court at Chennai in I.A.No.5 of 2024 in O.S.No.9368 of 2021 dated 01.07.2024. The Civil Revision Petitioners are the defendants in the suit.

2. O.S.No.9368 of 2021 is a suit for partition and separate possession. It is



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the contention of the petitioners that the plaint should have been treated under Section 37(1) and not under Section 37(2) of the Tamil Nadu Court Fees and Suit valuation Act.

3. I have carefully considered the arguments of Mr.G.S.Prabu.

4. It is settled position that for the purpose of court fee and jurisdiction, it is the averments that are made in the plaint alone that matters. A careful perusal of the plaint shows that the plaintiffs have specifically pleaded that they are in joint possession of the property along with the defendants 1 and 2. If the plea of Mr.G.S.Prabu, even if it is accepted at face value, that an additional floor above the two floors was already put up by the plaintiffs' father Mr.Thirunavukkarasu, the defendants would have to let in evidence to prove that he had put up the third floor. In case the suit is decreed, the defendant can seek for allotment of the third floor at the time of passing of final decree. The fact that the additional floor has been put up over the property which belonged to the deceased father of plaintiffs cannot be construed to push the plaintiffs out of their constructive possession. This is because the plaintiffs have specifically pleaded to that effect in Para 3 of the plaint.

5. Furthermore, valuation cannot be a subject matter of rejection of plaint.

The defendants had an opportunity before filing of the written statement to take



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out an application under Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act. They did not do so. Having left the time go by, they cannot put the clock back after recording of evidence has commenced in the said proceedings.

6. In the light of the above discussion, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

The XVII Additional City Civil Court,
Chennai.



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V. LAKSHMINARAYANAN, J.

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