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CRP (PD) No.3672 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2024

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THE HON'BLE MR. JUSTICE V.LAKSHMINARAYANAN

CRP (PD) No.3672 of 2024  
and CMP No.19939 of 2024

1.Vasanthi  
2.Jayanthi Ethiraj  
3.Latha Mohan  
4.Prabhakaran  
5.Dhayanithi

... Petitioners/Defendants 2 to 5

Vs.

1.K.Shankar  
2.Muniammal

... 1<sup>st</sup> respondent/Plaintiff  
... 2<sup>nd</sup> respondent/1<sup>st</sup> Defendant.

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Order and Decretal Order dated 11.08.2023 in I.A.No.2/2022 in OS.No.5710/2021 passed by the learned XX Additional District and Sessions Judge, City Civil Court, Allikulam Court, Chennai.

For Petitioners :Mr.B.Nagarajan

**ORDER**

The defendants 2 to 6 are the Civil Revision Petitioners.

2. (i) The case of the plaintiff is that the property was obtained on 01.04.1978 by his father Thiru.Kanniappa Naicker. On 01.04.1978, the



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said Kanniappa Naicker had partitioned the property along with his brother Munusamy Naicker, which is evidenced by the registered document in Doc.No.592 of 1978. The plaintiff states that he succeeded to the estate on the death of Kanniappa Naicker on 21.11.2015 along with the defendants. He would plead that he issued a notice seeking for partition on 25.11.2019 and the defendants refused to handover his rightful share. He would plead that the defendants *inter se* presented the suit in O.S.No.1392 of 2019 and O.S.No.6510 of 2019 and obtained a decree behind the back of the plaintiff. Hence, he presented a suit for declaration that the decrees in O.S.No.1392 of 2019 and O.S.No.6510 of 2019 on the file of the XVII Additional City Civil Court, Chennai and XVI Additional City Civil Court, respectively, Chennai, are not binding upon him. He further sought for the relief of partition of the suit schedule mentioned property into four shares and for division of the same.

(ii) The plaint was taken on file as O.S.No.5170 of 2021 by the learned XX Additional City Civil Court Judge, Chennai. After service of summons, the defendants 2 to 6 took out an application for rejection of plaint on the ground that the plaintiff is not in possession of the property and therefore, would have to value the property only under Section 37(1)



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of the Tamil Nadu Court Fee and Suit Valuation Act, 1944 (hereinafter referred to as 'Act'] and not under Section 37(2) of the said Act. After receipt of a counter from the plaintiff, the learned trial Judge went on to dismiss the application on 11.08.2023. Hence, this revision.

3. Heard Mr.B.Nagarajan, learned counsel for the Civil Revision Petitioners.

4. Mr.B.Nagarajan, learned counsel for the Civil Revision Petitioners would invite my attention to paragraph No.10 of the plaint to state that the plaintiff has admitted that the defendants are in possession of the property and therefore, this implies that the plaintiff is not in possession and hence, the suit should be valued only under Section 37(1) of the Court Fees Act. He would state that the order of the learned trial Judge requires to be revised.

5. I have gone through the plaint and the connected records and also the impugned order.

6. For the purpose of Court Fee and jurisdiction, it is only the



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averments made in the plaint that alone matter. In order to get the benefit of Section 37(2) of the Act, the plaintiff would have to plead that he is in joint possession of the property along with the other co-owners. A perusal of paragraph No.10 would point out that in so far as item No.2(D) of the suit schedule mentioned property is concerned, the plaintiff pleads that he is in joint possession of the same along with the defendants. He would state that on the said property, he has put up a construction out of his funds and is residing therein.

7. Mr. B.Nagarajan, learned counsel would point out that instead of pleading that the plaintiff is the legal heir of Kanniappa Naicker and is in possession of the property, the line reads that the defendants are in possession and therefore this points out to the fact that the plaintiff is not in possession of the property. A careful reading of the entire plaint shows that the plaintiff has accepted that he is in actual possession of Item No.2(D) of the suit schedule mentioned property and claims to be in constructive possession of the remaining.

8. The fact that the plaintiff is the legal heir of Thiru.Kanniappa Naicker is not in dispute. Therefore, I am not inclined to accept the



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submission of Mr.B.Nagarajan that in paragraph No.10, the plaintiff has pleaded that he has been totally excluded from the property. In terms of Section 37(2) of the Act, if the plaintiff is in actual possession of a portion, it has to be treated as he is in joint possession of the entire property. This is because, a co-owner in possession of the property holds the property not only for himself but for and on behalf of the co-owners. If the defendants were to plead ouster of the plaintiff, then it is a matter which requires evidence and necessarily the parties have to be pushed to trial.

9. Apart from this fact in order to reject the plaint under Order VII Rule 11 (b) of the Code of Civil Procedure, there should be a prior order passed by the Court holding that the suit has been improperly valued. After such an order is passed and a direction should be given to the plaintiff to make good the valuation. If he still fails to do so, it is only on such failure, the plaint is liable to be rejected. An application under Order VII Rule 11 of the Code for rejection of plaint on the ground under valuation, is not maintainable at the first instance. Therefore, I am not inclined to admit the revision. The Civil Revision Petition is dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is



closed.

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Speaking / Non Speaking order

Index : Yes / No

Neutral Citation: Yes/No

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**V.LAKSHMINARAYANAN, J.**

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To

The XX Additional District Sessions Judge,  
City Civil Court,  
Allikulam, Chennai.

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