



CRP No.5047 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.5047 of 2023 and
CMP No.29349 of 2023

Fareeda Sultana

... Petitioner

Vs.

1. Syed Zaheda Begum
Qhudshia Begum (died)
 2. Syed Nawaz Ahamed
 3. Syed Imtiaz Ahamed
 4. Syed Riaz Ahamed
- ...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to allow the civil revision petition and reject the plaint in O.S.No4510/2019 pending on the file of III Additional City Civil Court, Chennai.

For Petitioner

: Mr.S.Parthasarathy

for Mr.Iyengar Shubharanjani Ananth



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ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned III Additional Judge, City Civil Court, Chennai in I.A.No.1/2019 in O.S.No.4510/2019, dated 23.12.2022.

2. The petitioner herein is the 5th defendant in O.S.No.4510/2019 and the first respondent herein has filed the above suit against the defendants 1 to 5 for declaration of the settlement deed dated 18.02.2011 and partition deed dated 22.8.2017 as null and void and also for partition of the suit property to allot 21/144 share thereon to the respondent/plaintiff.

3. The petitioner has filed an application in I.A.No.1/2019 to reject the plaint on the ground that the suit is barred by limitation and also the court fees paid is incorrect. Further, he has filed another application in I.A.No.2/2020 under Section 12 of the Tamil Nadu Court Fees and Suits Valuation Act, to decide the issue of payment of court fee as preliminary



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issue. The Trial Court, heard the I.A.No.2/2019 along with I.A.No.2/2019, however, without deciding the I.A.No.2/2020 first, vide impugned order dated 23.12.2022, has dismissed the I.A.No.1/2019. Therefore, challenging the Order passed in I.A.No.1/2019, this civil revision petition has been filed.

4. The learned counsel for the petitioner/5th defendant submitted that the first respondent herein/ plaintiff, has omitted to seek possession of the property, while seeking declaratory relief, so as to avoid payment of court fee. However, a conjoint reading of the plaint clearly shows that the plaintiff has sought for partition, which ensured possession and hence, she has to pay court fee for declaration, as per Section 25(a) and not under 25(d). Likewise, the plaintiff has valued the suit, as though she is in possession of the property, but she is not a member of the joint family of late Syed Basheer Ahamed. Further, the Muslim Law has not recognized such joint possession, as recognized to Hindus. Therefore, the first respondent/ plaintiff has to prove that she is jointly living in the suit property and enjoyed the property in common, however, in the plaint averments, she has



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not pleaded anything to say that, she is in joint possession of the property.

To support his contentions, the learned counsel for the petitioner has relied upon the decision of this Court in ***Mohammed Ibrahim Vs. Syed Muhammad Abbubakker and others in Appeal Nos.533/1969 and 203/1970, dated 18.02.1975, reported in AIR 1976 Madras 84.*** Therefore, the contention of the petitioner is that, for seeking partition, court fees has to be paid, as per Section 37(1) and not under Section 37(ii). Therefore, each relief ought to have valued separately under Section 25(a) and 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act and aggregate Court fee, as per each head is payable by the first respondent/plaintiff.

4.1. The another ground raised by the learned counsel for the petitioner/5th defendant for rejection of the plaint is that the suit schedule property was allotted to his father viz., Syed Basheer Ahamed in the year 1962 and he died on 29.03.1968, who survived by his legal heirs, the defendants 1 to 5; and subsequently, the first defendant viz., Qhudshia Begum (died), the mother of the defendants 2 to 5, had obtained sale deed



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in her favour from the Tamil nadu Housing Board on 08.06.1984, which was not challenged at any point of time by the first respondent/ plaintiff. After the settlement deed executed on 18.09.2011 by the first defendant in favour of the defendants 2 to 5, a partition deed was executed on 22.08.2017 among the defendants 2 to 5. Therefore, when the first respondent/plaintiff stated that she approached the defendants for partition in the year 2006 itself, the suit filed in the year 2018 for partition is barred by limitation.

4.2. The main contention of the learned counsel for the petitioner/5th defendant is that, the Trial Court ought to have decided the I.A.No.2/2020 first, which is filed to decide the preliminary issue with regard to the payment of court fees and then only, the application for reject the plaint in I.A.No.1/2019, ought to have been decided.

5. Heard the learned counsel for the plaintiff and the learned counsel for the respondent and I have perused the materials on record.



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6. In the plaint, it is the contention of the first respondent/ plaintiff that, the suit property was allotted to her father late Syed Basheer Ahamed in the year 1962 by the Tamil Nadu Housing Board under lease cum sale agreement scheme for 20 years and he had paid the EMI and after obtaining approval from the authorities concerned, he had constructed the building. Subsequently, he died on 29.03.1968. According to her, after death of her mother, namely Mrs.Rajia Bagum, her father married one Qhudhisa Begum, who is the first defendant in the suit, now she died, and defendants 2 to 5 are their children. After demise of her father, sale deed was registered in the name of the first respondent on 08.06.1984. Thereafter, the plaintiff had approached the defendants seeking partition in the year 2006 and they assured to give one share in the suit property to her. However, the first defendant, without giving any share to the first respondent/ plaintiff had executed a settlement deed in favour of her sons and daughter, viz., defendants 2 to 5 on 18.02.2011 and thereafter, a partition deed was executed among the defendants 2 to 5 on 22.8.2017. Therefore, the first respondent/plaintiff has filed the above suit.



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7. The first respondent/plaintiff has filed the above suit seeking following prayers.

- a. for declaration of the settlement deed document No.165 of 2011, dated 18.02.2011, executed by the first defendant in favour of the 2nd to 5th defendants null and void and not binding the rights of the plaintiff.
- b) for declaration of the partition deed document No.1028 of 2017 dated 22.08.2017 executed by the 2nd to 5th defendants in their favour as null and void and not binding the rights of the plaintiff.\
- c) to pass preliminary decree of partition of the suit property of land and building by metes and bounds and allot 21/144th share to the plaintiff.
- d) based upon the preliminary decree pass, an final decree and appoint an advocate commissioner to divide and allot the 21/144 shares each to the plaintiff and the defendants,
- e) for costs of the suit.

8. On perusal of records, it shows that, the learned Judge has observed in his order that, the question of court fee must be considered by the court in the light of allegations in the plaint and its decision cannot be influenced either by the pleading in the written statement or by the final decision in the suit on merits; all the material allegations contained in the plaint should be construed and taken as a whole. The learned Trial Judge



further observed as follows.

The general principle of law is that in the case of co-owner, the possession of one co-owner in the eye of law, is possession of all , unless ouster or exclusion is pleaded and proved. Whether the property left behind is ancestral or self acquired property, the daughter, as a legal heir, will be presumed to be in joint possession, until the property is divided by metes and bounds. To continue the suit, 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 she should be getting a share of some income from the property.

9. In the impugned order, the learned Judge has also observed that, for the application of Court Fees, the pleadings in the plaint alone to be considered and as such, Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation is applicable to the case in hand and hence, the suit valuation and the court fee paid thereon by the plaintiff is held to be correct. It is also observed that, even assuming that the court fees paid is not correct, for non payment of sufficient court fees, the plant cannot be rejected, which is premature, and as per Order VII Rule 11(a), (b) and (c) , the rejection of plaint will come into play, only after the plaintiff fails to correct the valuation



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and pay the court fee or stamp paper within the time fixed by the Court.

10. While deciding the issue of limitation, the learned Judge, has observed that, with regard to the sale deed, which is not in the name of Syed Basheer Ahamed, the father of the plaintiff and the defendants 2 to 5, the nature of purchased property has to be considered, only after letting evidence. As such, the question of limitation also can be considered only after letting evidence.

11. Therefore, the learned Judge, after considering all the facts and law of Limitation, has passed the well reasoning order, and I do not find any reason to interfere the same. Hence, the civil revision petition is liable to be dismissed as it has no merits.

12. At this juncture, the learned counsel for the petitioner seeks direction to the learned Trial Judge to consider the application in I.A.No.2/2020 to decide the preliminary issue with regard to insufficient court fee, filed by the petitioner/5th defendant, which is pending without



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passing any order.

13. At request of the learned counsel for the petitioner, the learned Trial Judge is directed to consider and pass order in the above I.A.No.2/2020, as early as possible.

14. With the above direction, this civil revision petition is dismissed. and the impugned order passed by the Trial Court is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

11.01.2024

Index: Yes/No
Internet: Yes/No
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To

The III Additional Judge,
City Civil Court, Chennai.



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V.SIVAGNANAM, J.,

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