



C.R.P.(PD).No.4020 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.4020 of 2019
and C.M.P.No.26395 of 2019

P.Anai Gounder (Died)

2.A.Balasubramanian

3.A.Sivalingam

4.A.Vairavel

5.A.Raja Gounder

... Petitioners

(Sole Petitioner died. Petitioners 2 to 5 are brought on record as LR's of the deceased Sole Petitioner viz., Anai Gounder vide Court order dated 23.01.2024 made in CMP.Nos.57, 59 and 62/2024 in CRP.No.4020/2019 by SSJ)

VS

1.Bakkiam (Died)

2.Santhi

... Respondents

(Respondent - 1 died. Respondent - 2 who is already on record is recorded as LR's of the deceased R-1-Bakkiam as per the memo dated 13.12.2023 and vide Court order dated 26.02.2024 made in CRP.No.4020/2019 and CMP.No.26395/2019 by SSJ (Recorded))



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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 24.09.2019 made in I.A.No.92 of 2017 in O.S.No.267 of 2014 on the file of the III Additional District Court, Salem.

For Petitioners : M/s.Zeenath Begum

For R1 : Died

For R2 : M/s.J.Prithivi

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the deceased 1st petitioner under Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965 for considering the court fee question as a preliminary issue.

2. The respondents herein filed a suit for partition claiming joint possession of the suit properties. The deceased 1st petitioner herein filed written statement denying the averment in the plaint that respondents were in joint possession of the suit properties. It is the specific case of the petitioner



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that the respondents are completely excluded from the suit properties and petitioner also pleaded ouster. After filing of the written statement, the instant application has been filed under Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965 for deciding the question of court fee issue as a preliminary issue. It was the specific case of the deceased 1st petitioner that since the respondents were not in joint possession of the suit properties, court fee should be paid under Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965 and not under Section 37 (2) of the said Act. The Trial Court came to the conclusion that question of possession of the parties could be decided only at the time of trial and hence, dismissed the application by observing that objection raised by the petitioner with regard to the court fee would be decided along with the other issues. Aggrieved by the same, the petitioner is before this Court.

3. The learned counsel appearing for the petitioners vehemently contended that the respondents are not in joint possession of the suit properties and court fee paid by the respondents under Section 37 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965 is not correct and the



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respondents should have paid court fee under Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1965. In support of her contention, the learned counsel relied on the decision of the Division Bench of this Court in S.N.S.Sukumaran vs. C.Thangamuthu reported in 2012 (5) CTC 705.

4. The learned counsel appearing for the respondents brought to the notice of this Court that trial in the suit is already over and the matter is posted for arguments of defendants tomorrow. The learned counsel also produced e-court print out in this regard.

5. Whether the respondents/plaintiffs are in joint possession of the suit properties or not is a matter for evidence and therefore, the same can be decided along with other issues as rightly mentioned by the Trial Court. The judgement relied on by the learned counsel for the petitioners will not help the petitioners in this case in view of the fact the trial in the suit is already over and the matter is posted for arguments of defendants's side.



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6. In such circumstances, I do not want to interfere with the order passed by the Court below and accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

26.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The III Additional District Court,
Salem.



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S.SOUNTHAR, J.

dm

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