



C.R.P.(MD)No.927 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.927 of 2024

and

C.M.P.(MD)No.5055 of 2024

1.Baskar

2.Padma

... Petitioners / Petitioners / Defendants 12 & 4

Vs.

1.Rajeswari Ammal

... 1st Respondent / 1st Respondent / Plaintiff

Vembu Ammal (died)

Kaliyaperumal (died)

Arumugam (died)

2.Meenambal

3.Rathinama

4.Ponraman

5.Anjalai

6.Karuppan

7.Chellammal

8.Chellaiyan

9.Chinnamani

... Respondents 2 to 12 / Respondents 2 to 12/
Defendants 1 to 3, 5 to 11 & 13



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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.02.2024 made in I.A.No.2 of 2024 in O.S.No.162 of 2010 on the file of the Additional Sub Court, Thanjavur.

For Petitioners : Mr.K.K.Senthil

For Respondents : Mr.M.Gnanagurunathan
for R1

: No appearance for R2, R5 & R8

ORDER

Heard both sides.

2. The defendants 12 & 4 in O.S.No.162 of 2010 on the file of the Additional Sub Court, Thanjavur are the revision petitioners herein. It is a suit for partition. Preliminary decree was originally passed. Questioning the same, the revision petitioners herein filed A.S.No.86 of 2018 before the Principal District Judge, Thanjavur. Before the Court, the revision petitioners adduced additional evidence to show that the plaintiffs are not in possession of the suit property and that valuation should be done under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. The first appellate Court vide Judgment and decree dated 25.08.2023 allowed the appeal and set aside the Judgment and decree passed by the trial Court and remitted the matter to the trial Court for fresh consideration. After the matter was remanded, the present



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IA.No.2 of 2024 was filed by the revision petitioners for appointing an advocate commissioner to assess the market value of the property. IA was dismissed. Questioning the same, this Civil Revision Petition came to be filed.

3. The purpose of remand was to find out if the plaintiffs are in possession / joint possession of the suit property which has a serious bearing on the valuation of the payment of court fees. If the trial court comes to the conclusion that the plaintiffs are not in possession / joint possession of the suit property, then, the court fees has to be paid on the market value of the property under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act. Therefore, assessment of the market value becomes relevant.

4. The learned counsel appearing for the revision petitioners draws my attention to Order XXVI Rule 9 of C.P.C which states that an advocate commissioner can be appointed for assessing the market value of any property. The court below has taken the view that the advocate commissioner cannot independently assess the market value. This reason given by the court below runs counter to the express language of Order XXVI Rule 9 of C.P.C. As already noted, the market value of the property would become a relevant factor if the Court comes to the conclusion that the plaintiffs are not in possession of the suit property.



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G.R.SWAMINATHAN, J.

rmi

5. In this view of the matter, the impugned order is set aside. The civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
rmi

To:

The Additional Sub Court, Thanjavur.

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