



C.R.P.(MD)No.1242 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1242 of 2024

and

C.M.P.(MD)No.7145 of 2024

1.M.N.Abdul Rahim

2.M.N.Mohamed Ali

3.M.N.Basheer @ Salamath

... Petitioners / Petitioners /

Defendants 2 to 4

Vs.

1.R.Saliha Beevi

... 1st Respondent / Respondent / Plaintiff

2.M.N.Kamaludeen

... 2nd Respondent / 1st Petitioner / 1st Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 02.02.2024 in I.A.No.04 of 2023 in O.S.No.283 of 2019 on the file of the Additional District and Sessions Judge, Palani and allow this civil revision petition.



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For Petitioners : Mr.H.Lakshmi Shankar
For Respondents : Mr.V.Meenakshi Sundaram
for Mr.M.Suri for R1
: No appearance for R2

ORDER

The defendants 2 to 4 in O.S.No.283 of 2019 on the file of the Additional District and Sessions Judge, Palani are the revision petitioners herein. The suit properties belonged to one M.K.Mohammed Nainar @ Abban Rowther. He was blessed with three daughters and five sons. The first respondent herein namely R.Saliha Beevi was one of the daughters. She filed O.S.No.283 of 2019 seeking the relief of partition and separate possession and for declaration that the plaint mentioned gift deeds executed by the father in favour of the sons are void. She also sought declaration for declaring the registered partition deeds executed among the brothers in the year 1991 & 1992 as void. The revision petitioners herein filed I.A.No.4 of 2023 for framing the issue of valuation of the suit and payment of court fee as preliminary issue under Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. IA was dismissed vide order dated 02.02.2024. Questioning the same, this civil revision petition came to be filed.



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2. The learned counsel appearing for the revision petitioners reiterated all the contentions set out in the memorandum of grounds of revision and called upon this Court to set aside the impugned order and grant relief as prayed for.

3. The learned counsel appearing for the plaintiff/R1 submitted that the impugned order is well reasoned and does not warrant interference. He called upon this Court to dismiss the civil revision petition.

4. I carefully considered the rival contentions and went through the materials on record. The first objection raised by the learned counsel appearing for the plaintiff is that the revision petitioners had earlier filed I.A.No.89 of 2020 under Order VII Rule 11 of C.P.C and that it was dismissed on 09.09.2022 by the trial court. C.R.P.(MD)No.351 of 2023 questioning the dismissal order dated 09.09.2022 was also dismissed on 31.07.2023. While dismissing the civil revision petition, direction was given to the trial court to expedite the trial and dispose of the suit as expeditiously as possible preferably within a period of twelve months. The first question that calls for consideration is whether in view of the aforesaid direction, IA can be said to be not maintainable. Section 12(2) of the Tamil Nadu Court-fees and Suits Valuation Act, 1955 is as



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follows:-

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“12. Decision as to proper fee in other Courts:-

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.”

5. When a statutory provision enables the party to the suit to raise a particular plea, such a right cannot be frustrated by citing the direction issued in connected proceedings. I therefore hold that the direction given in C.R.P. (MD)No.351 of 2023 for speedy disposal of the suit will not come in the way of the revision petitioners from maintaining I.A.No.4 of 2023. In the written statement filed by the revision petitioners, it has been pleaded as follows:-

“10.It is submitted by the defendants 1 to 4 that Abban Rowther died in the year 1988 but he did not die intestate as alleged Mr.M.K.Mohaed Nainar Rowther @ Abban Rowther validly executed a registered Gift Deed dated 18.01.1966 in favour of his four sons viz., Minor Kamal @ Kamaluddiin (1st defendant), Minor Abdul Rahim (2nd Defendant), Minor Mohamed Ali (3rd



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defendant) and Minor Basheer @ Salalmath (4th defendant). Though Mohameden Law does not stipulate delivery of possession as a condition precedent for a valid gift in case of gift by the father in favour of his minor sons, the said Abban Rowther had specifically indicated delivery of possession of the properties under the Gift Deeds by using the words in the Settlement Deed dated 18.01.1966 as “நான் கொடுத்துவிட்டபடியால் ” and in the settlement deed date 11.01.1974 as “சொத்துக்களை தங்கள் சுவாதீனத்துக்கும், அனுபோகத்திற்கும் விடப்பட்டது என்றும் உறுதி கூறி எழுதி வைத்த தான செட்டில்மென்ட் பத்திரமாகும்”- in the said documents and that the father had declared his intention to gift his property in favour of his four minor sons.

11. It is submitted by the defendants 1 to 4 that the enjoyment of the properties described in the Gift Deeds by the Donees was known to the plaintiff and other children of Abban Rowther. They never objected to the exclusive possession and enjoyment of the suit properties held by the donees, defendants 1 to 4. It is pertinent to note that the father himself had effected mutation of names in the revenue, municipal records as well as in the electricity board in favour of the donees after the execution of the above said Gift Deeds. Thereafter the donees have entered into partition by mutual agreement and executed registered partition deeds dated 03.06.1991 and 16.10.1991. After the said partition deeds, there was also consequential change of mutation of revenue records and municipal records in the names of the brothers separately and payment of tax and other dues have been remitted by the said sons of Abban Rowther in their names separately and the plaintiff and her sisters have never objected to the name.

24.

The defendants 2 to 4 and the brother by name Jamal Mohammed had sold some of their share 25 years ago and the purchasers are enjoying the same by building pucca house and effecting mutation in revenue records and paying kist, house taxes etc.,

26. It is submitted by the defendants 1 to 4 that neither the plaintiff nor her sisters have ever been in joint possession of the suit property with the



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defendants 1 to 4 either deeming or factually. When the father himself has alienated the suit properties by various gift deeds during his life time no question of joint possession of the properties will arise in favour of the plaintiff or her sisters to contend or justify payment of court fee under Section 37(2) of the Tamil Nadu Court Fees & Suit Valuation Act. If at all the plaintiff has any right the suit should have been valued on ad valorem basis on the market value of the suit. The plaintiff's deficit court fee should be tried primarily before taking up the trial of the suit. The plaint is liable to be rejected on the issue of improper and under valuation of the suit properties and insufficient court fee paid by the plaintiff.

30. The valuation of the suit properties for the prayers relating to gift deed under Section 25(d) of the Tamil Nadu Court Fee & Suit Valuation Act, especially for the prayers (b) to (f) are incorrect and the court fee should have been paid under Section 40 of the Tamil Nadu Court Fee & Suit Valuation Act. The suit is liable to be dismissed on the ground also, since such a relief cannot be valued under Section 25(d) of the Tamil Nadu Court Fee Act.”

6. By putting forth such averments in the written statement, the revision petitioners have taken a categorical plea that the plaintiff is not in possession of the suit property and that therefore, valuation has to be made only under Section 37(1) of the Act and not under Section 37(2) of the Act. My attention is drawn to the decision of the Hon'ble Division Bench reported in **2012 (5) CTC 705 (S.N.S.Kumaran Vs. C.Thangamuthu)**. Paragraph No.31 of the said decision reads as follows:-

“31. After giving our anxious consideration to the matter and having regard to the law discussed hereinabove, the reference is answered as under :-



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(1) The Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Section 12) enacted by the State Legislature on a subject covered by the Concurrent List, albeit inconsistent with the provisions of the Code of Civil Procedure (Order XIV, Rule 2) and being in compliance with the requirement of Article 254 of the Constitution of India, having been given assent by the President of India, shall prevail over the provisions of the Code of Civil Procedure.

(2) When a defendant comes forward with a case pleaded in the written statement questioning the correctness of the valuation of the suit property and payment of court fee and asks the Court, by an application, to decide it first before deciding the suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before deciding the suit on merits.

(3) However, before proceeding to decide the objection with regard to valuation and court fee as provided under Section 12(2) of the State Act, the Court shall prima facie satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the defendant has substance.

(4) Such objection with regard to improper valuation of the suit and insufficiency of court fee shall be entertained by the Court only before the hearing of the suit on merits commences and witnesses are examined. Section 12(2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merits of the case.

(5) Exercise of right by the defendant as contained in Section 12(2) of the Act must be bona fide and not with an ulterior motive of dragging the suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such application, and in the event the Court finds that the defendant is not diligent or co-operating with the Court in the disposal of such objection expeditiously, then the Court shall proceed with the hearing of the suit on merits and decide all issues, including the one relating to the valuation of the suit and the adequacy or otherwise of court fee, together.”



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7. As already noted, the revision petitioners are having statutory right to raise the question of suit valuation and payment of court fee. The learned counsel appearing for the plaintiff would of-course contend that this has no bearing on the pecuniary jurisdiction of the court as such and that if there is under valuation and subsequent payment of deficit court fee, it can be collected at the end of the trial. According to the learned counsel for the plaintiff, the suit will not in any event go out of the court below. It is true that the suit has been instituted before the District court and not before the Sub Court or Munsif Court. But Section 12(2) has a larger object. If the payment of the correct court fee is not insisted upon at the threshold, it may encourage filing of frivolous and vexatious suits. I only wondered whether for deciding the issue raised under Section 12(2) of the Act, One has to go only by the plaint averments. It is not so. The Hon'ble Division Bench in the aforesaid case has held that the court below must take into account the pleadings of both the parties and the materials brought on record. It is always open to the petitioners under Section 12(2) of the Act to furnish documents to show that the plaintiff is not in possession of the suit property. The court below erroneously held that I.A.No.4 of 2023 filed by the revision petitioners herein is not maintainable. When a statutory provision enables filing of a petition, the court can dismiss it on merits, it can never label such a petition as not maintainable. It had come to



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such a conclusion on the ground that recording evidence is just and necessary.

Nothing prevented the court below from even recording evidence even at the stage of enquiry. The court below had completely misdirected itself. In the plaint, the plaintiff had averred in para 10 that her brothers had effected partition by the registered partition deeds dated 03.06.1991 and 09.03.1991 in respect of the gifted properties. She had also further averred that they had grabbed the share of the sister. These averments *prima facie* indicate that possession is with the defendants. I however refrain from giving any finding on this issue.

8. In this view of the matter, the impugned order is set aside. The matter is remitted to the file of the court below. Enquiry shall be concluded within a period of eight weeks from the date of receipt of a copy of this order. The parties are at liberty to place the relevant materials on record. It is for the court below to *prima facie* satisfy itself whether the plaintiff is in joint possession. If the court below is still satisfied that the plaintiff is in joint possession, I.A.No.4 of 2023 shall be dismissed. If the court below comes to the conclusion that the plaintiff is not in joint possession with the defendants, direction shall be issued for valuation of the suit under Section 37(1) of the Act.



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G.R.SWAMINATHAN, J.

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9. The Civil Revision Petition is allowed on these terms. No costs.

Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
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To:

The Additional District and Sessions Judge, Palani.

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