

APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 25.09.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE P.DHANABAL**

**APPLICATION No.2956 of 2024**

**in**

**C.S.No.730 of 2019**

1.N.Madhava Rao  
2.M.Aravind Kumar  
3.M.Gopinath

Applicants/Defendants 1 to 3

Vs.

S.Nirmala Devi

Respondent/Plaintiff

**Prayer:** Application filed under Order XIV Rule 8 of O.S.Rules read with Section 151 C.P.C, to direct the respondent/plaintiff to value the suit as per Section 37(1) of the Tamil Nadu Court Fee and Suit Valuation Act, 1955 and to consequently direct the respondent/plaintiff to pay the Deficit Court Fees, failing which, it is most humbly prayed that this Court may be pleased to dismiss the present suit.

For Applicants : Mr.T.N.Rajagopalan

For Respondent : Mr.Sirish Chowdhary  
for T.M.Naidu and Co



APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

WEB COPY

## **ORDER**

This application has been filed to direct the respondent/plaintiff to value the suit as per Section 37(1) of the Tamil Nadu Court Fee and Suit Valuation Act, 1955 [hereinafter referred to as 'the Act'] and consequently, direct the respondent/plaintiff to pay the deficit Court fees, failing which, this Court may be pleased to dismiss the suit.

2. The learned counsel appearing for the applicants would submit that the applicants are the defendants 1 to 3 in the main suit. The present suit was filed by the respondent/plaintiff for the relief of partition and initially, the main suit was filed for Schedule Nos.I to X of the properties. During the pendency of the suit, the respondent/plaintiff filed Application Nos.4770, 4771 and 4772 of 2021 to include the properties and to amend the plaint and to implead the respondents 5 to 39 as the defendants 5 to 39 in this suit and to file additional documents as plaint documents and the same were allowed. A perusal of the copy of the amended plaint shows that prayer No.1 is to grant preliminary decree by dividing the suit schedule properties by metes and bounds and to allot 1/3 share to the plaintiff. The respondent who is the plaintiff in the suit has

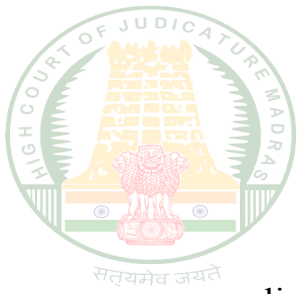


APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

WEB COPY

amended the plaint by admitting the fact that she is not in possession of the suit properties. The respondent admitted non-possession of Schedule Nos.XI to XLII of the properties and therefore, she has been excluded from the possession and she is not in joint possession of the property and therefore, she has to pay the Court Fee under the Tamil Nadu Court Fees and Suit Valuation Act, 1955. But the plaintiff has not paid the Court fee under Section 37(2) of the Act and therefore, the present application has been filed.

3. The learned counsel appearing for the respondent/plaintiff would submit that the respondent/plaintiff has filed the suit for partition and separate possession and thereafter, she filed Application No.4770 of 2021 to implead the respondent Nos.5 to 39 as the defendants and filed Application Nos.4771 and 4772 of 2021 to file additional documents and for amendment of the plaint. The applicants have executed Document No.3832/2021 in respect of Schedule No.IX of the suit properties and have been attempting to alienate the property during the pendency of the suit. The allegation is that the respondent is not in possession of the properties which were said to have been sold by the



APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

WEB COPY

applicants and thus, the suit ought to have been valued under Section 37(1) of the Act, but the applicants never raised any objections in Application Nos.4770 to 4772 of 2021. The applicants having admitted that Schedule Nos.I, IV, V and VI of the properties are in joint possession and they are ready for partition cannot allege that the respondent/plaintiff was not in joint possession of the suit schedule properties. It is enough that the respondent is in possession of one of the suit properties. The respondent/plaintiff did not execute the alleged sale deeds and therefore, Section 40(1) of the Act is not applicable. The applicants having executed the sham and nominal sale deeds, have sought for the present relief. Section 37(1) of the Act, has to be read along with Section 25(d) of the Act. The fourth defendant has not been added as a party in this application and therefore, this application is liable to be dismissed.

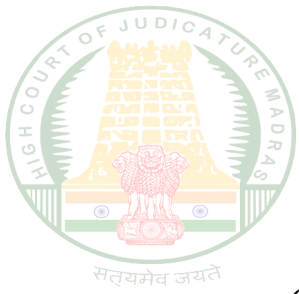
4. This Court heard the submissions made by both sides and perused the materials available on record.



APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

WEB COPY

5. The applicants have filed this application to direct the respondent/plaintiff to pay the Court fee and value the suit under Section 37(1) of the Act. In fact, the plaintiff has filed the suit for partition stating that she is in joint possession of the suit properties with the defendants and therefore, paid the Court fees under Section 37(2) of the Act. Initially, the plaintiff has filed the suit for Schedule Nos.I to X of the properties by impleading the defendant Nos. 1 to 4 as parties and thereafter, the plaint has been amended and Schedule Nos.XI to XLII of the properties have been included and the defendant Nos.5 to 39 were also impleaded. Initially, prior to amendment, the defendants have not raised any objection in respect of joint possession and after amendment, the present applicants being the defendants Nos.1 to 3 have filed this application for payment of Court fee under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. It is an admitted fact that Schedule Nos.I, IV, V and VI of the properties are under joint possession and available for partition. As far as the other properties are concerned, the defendants raised objections that those properties are not under joint possession and therefore, the Court fee has to be paid under Section 37(1) of the Act.



APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

WEB COPY

6. At this juncture, the learned counsel appearing for the applicants would submit that as far as the payment of Court fee is concerned, as per Section 12(3) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, the issue has to be decided before the commencement of trial, at the earliest point of time. To support his contentions, he relied the following judgments:-

*“(i) S.N.S.Sukumaran vs. C.Thangamuthu reported in (2012) 5 CTC 705;*

*(ii) Tajender Singh Ghambhir and another vs. Gurpreet Singh and others reported in (2014) 10 SCC 702;*

*(iii) Radhika and another vs. Ashokan and others reported in 2024 SCC Online Mad 7396;*

*(iv) Neelavathi and others vs. N.Natarajan and others reported in (1980) 2 SCC 247;*

*(v) S.Gurunathan vs. Thenmozhi in C.R.P.No.1050 of 2017 dated 29.04.2022.”*

7. On a careful perusal of the above judgments, it is clear that 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

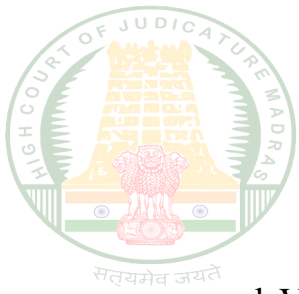


APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

WEB COPY

decide it first before deciding the suit on merits, then a duty is cast upon the Court under Section 12(2) of the Act, to first decide the objection before deciding the suit on merits. However, before proceeding to decide the objections with regard to Valuation and Court Fee as provided under Section 12(2) of the Act, the Court shall *prima facie* satisfy itself, on perusal of pleadings of the parties and the materials brought on record, that the objection raised by the defendants has substance. Such objection with regard to improper valuation of the suit and insufficiency of Court fee shall be entertained by the Court only before hearing of the suit on merits commences and the witnesses are examined. Section 12(2) of the Act makes it clear that such objection shall be heard and decided before the evidence is recorded on the merits of the case. Further, it is clear that what could be done by the Trial Court in the proceedings of the suit can always be done by the Appellate Court in the interest of justice.

8. In the case on hand, the applicants filed an application stating that the respondent/plaintiff is not in joint possession along with the other defendants in respect of Schedule Nos.VI to XLII of the suit properties, however, admitted that in respect of Schedule Nos.I, IV, V



APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

WEB COPY

and VI of the suit properties, the plaintiff is in joint possession of the properties with the defendants. It is a well settled law that the possession of one coparcener has to be presumed as the possession of other coparceners. It is true that if any dispute with regard to the payment of Court fee, the same has to be decided before recording the evidence under Section 12(2) of the Act and the same was also confirmed by the Hon'ble Division Bench of this Court as stated above.

9. In the case on hand, initially the defendants have not raised any objection in respect of joint possession of the property. After amendment only, they have raised objections and filed this application. As far as the joint possession is concerned, the pleadings itself is sufficient and once the defendants admitted the joint possession of the plaintiff in respect of certain properties, it is sufficient to pay the Court fee under Section 37(2) of the Act and the Court need not go into the details of the item-wise properties and therefore, after amendment, if any property is out of possession of the plaintiff, that can be decided only after the trial and the possession of the property cannot be decided without trial. Since some of the properties are under joint possession and the same was admitted by



APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

WEB COPY

the defendants, there is no merit in this application. However, if any properties are out of possession and the same is established by the defendants, then the Court has power to order for payment of Court fee under the appropriate relevant provisions of the Act. Therefore, the applicants are at liberty to establish their case during the time of final adjudication of the suit. It is true that as far as the Court fee is concerned, the Court can also frame the preliminary issue, but in this case, it is an admitted fact that the some of the properties are under joint possession and the dispute is with regard to the other properties which were included later by way of amendment. Therefore, after trial, the possession of the parties can be decided and if any evidence is available to establish out of possession, then the Court can pass appropriate orders at the time of final adjudication of the case. Without ascertaining the nature of possession, the Court cannot pass any orders in this application.

10. As far as the judgments relied on by the applicants are concerned, they are relating to the payment of Court fee and the suit being for partition, the Court fee payable is based on the possession of the parties and the possession cannot be decided at this stage. Therefore,



APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

WEB COPY

mere pleadings and submissions are sufficient to make a *prima facie* case for payment of Court fee. As per pleadings, the properties are under joint possession and the plaintiff is in joint possession with the defendants. The defendants also admitted the joint possession in respect of some suit properties. Therefore, there is no merit in this application and it deserves to be dismissed and the payment of Court fee can be decided at the appropriate time, after ascertaining the nature of possession.

11. With the above observations, this application is disposed of.

There shall be no order as to costs.

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**25-09-2025**  
(<sup>1</sup>/<sub>2</sub>)



WEB COPY



APPLICATION No.2956 of 2024  
in  
C.S.No.730 of 2019

**P.DHANABAL, J.**

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**APPLICATION No.2956 of 2024**  
**in**  
**C.S.No.730 of 2019**

**25.09.2025**

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