



CRP No.2612 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2025

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CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NO.2612 OF 2023
AND
CMP NO.16105 OF 2023

Raju Joseph

... Petitioner /

st
 Petitioner / 1 Defendant

Versus

1.Rosy Babu

2.Mary Josephin

... Respondents 1 & 2 /
 Respondents 1 & 2 / Plaintiffs

3.Peter Xavier

... rd 3 Respondent /
rd nd 3 Respondent / 2

Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950 praying to set aside the Fair and Decretal Order dated March 17, 2023 made in I.A.No.1 of 2019 in O.S.No.53 of 2016 on the file of the III Additional District & Sessions Court, Tiruvallur at Poonamallee by allowing this Civil Revision Petition.

For Petitioner : Mr.T.A.Shagul Hameed
 For Respondents 1 to 3 : Mr.K.Muthamilraja



ORDER

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Feeling aggrieved by the Fair and Decretal Order dated March 17, 2023 passed by 'the III Additional District & Sessions Court, Tiruvallur at Poonamallee' ['Trial Court' for convenience] in the Interlocutory Application filed under Section 12(2) of 'The Tamil Nadu Court-Fees and Suits Valuation Act, 1955' ['TNCF Act' for short] in I.A.No.1 of 2019 in O.S.No.53 of 2016, the Petitioner therein has preferred this Civil Revision Petition under Article 227 of the Constitution of India.

2.The Revision Petitioner herein is the First Defendant; Respondent Nos.1 and 2 herein are the plaintiffs; and Respondent No.3 is the Second Defendant in the Original Suit in O.S.No.53 of 2016 on the file of the Trial Court. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3.The Defendants 1 and 2 (sons) and the Plaintiffs (daughters) are the children born to the couple A.J.Mathew – Elizabeth Mathew. Elizabeth Mathew pre-deceased A.J.Mathew on October 22, 1997. A.J.Mathew passed away intestate on July 15, 2005. Admittedly, the parties to the suit and their parents belong to Christianity. Hence, the Hindu



Succession Act, 1956 is not applicable.

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3.1.The Plaintiffs filed a Suit for partition stating that the Suit Property was purchased by their father - A.J.Mathew vide Sale Deed dated November 10, 1997. A.J.Mathew passed away intestate on July 15, 2005 leaving behind the Plaintiffs and the Defendants as his surviving legal heirs / legal representatives to succeed his estate. According to the Plaintiffs, the Plaintiffs and the Defendants are co-owners and co-heirs entitled to equal share. The Plaintiffs sought for division of the Suit Property into four equal shares and allotment of one such share in favour of each of the Plaintiffs. They also sought for rendition of accounts under Order XX Rule 18 of 'the Code of Civil Procedure, 1908' ['CPC' for short] and for a permanent injunction restraining the defendants from alienating / encumbering the Suit Property.

3.2.The Plaintiffs valued the Suit as hereunder:

“11.The plaintiffs have valued the suit for their 2/4 share in the suit property for the purpose of the Court Fee and Jurisdiction as follows:

In respect of prayer “A” suit is for a preliminary decree for partition of the suit schedule property by metes and bounds and thereby divide the property by 4 shares and allot ½ share each to the plaintiff and the plaintiffs are in joint possession of



the property.

VALUE SCHEDULE PROPERTY:

Land as per guideline value	= 2137 x 2200	= 47,01,400/-
Building	= 750 x 500	= 3,75,000/-
Total (Approx.)		<u>Rs.50,76,400/-</u>
Value of Plaintiff's share	= 50,76,400/4x2	= 2538200/-

In respect of mesne profits, the value of the same has to be ascertained, the same is presently valued at Rs.100/- and pays a court fee of Rs.8/-.

<u>For Prayer</u>	<u>Value</u>	<u>Court Fee</u>	<u>u/sec.</u>
"A"	Rs.2538200/-	Rs.750.00	37(2)
"B"	Rs.100/-	Rs.8.00	44(1)
"C"	Rs.1,000/-	Rs.75.50	27(c)

of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. The plaintiff may be deemed in possession of the schedule property."

4.The First Defendant filed written statement stating that the defendants' father was a mere name lender. The First Defendant was working in Saudi Arabia and earning money. The Suit Property was purchased from and out of his own earnings in the name of his father - A.J.Mathew. Therefore, the plaintiffs have no right over the Suit Property. Further, the First Defendant filed an Interlocutory Application under Section 12(2) of the TNCF Act praying to appoint an Advocate



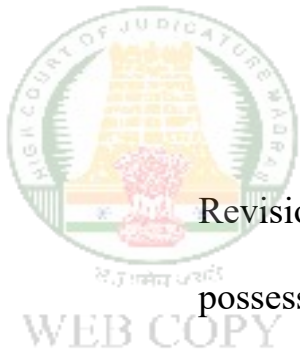
Commissioner to visit / inspect the Suit Property and fix the market value of the Suit Property, claiming that the Plaintiffs did not properly value the Suit and that the Suit ought to have been valued under Section 37(1) of the TNCF Act.

5.The Trial Court, after hearing both sides, observed that the Suit had been filed in the year 2016 and required expeditious disposal. Further, the question as to whether the Plaintiffs are in joint possession and enjoyment of the Suit Property or whether they have been excluded therefrom, can be decided only at the time of trial. Accordingly, the Trial Court dismissed the Interlocutory Application.

6.Feeing aggrieved, the Revision Petitioner / First Defendant therein has preferred this Civil Revision Petition.

7.Heard the submissions made by Mr.T.A.Shagul Hameed, learned Counsel appearing for the Revision Petitioner / First Defendant and Mr.K.Muthamilraja, learned Counsel appearing for the Respondent Nos.1 to 3.

8.Mr.T.A.Shagul Hameed, learned Counsel appearing for the



Revision Petitioner would submit that the Plaintiffs are not in joint possession and enjoyment of the Suit Property. Hence, valuing the Suit under Section 37(2) of the TNCF Act was incorrect and it ought to have been valued under Section 37(1) of the TNCF Act. Consequently, the market value should have been determined by appointing an Advocate Commissioner and the Plaintiffs ought to have paid the Court-Fee as directed by the Court. The Revision Petitioner / First Defendant filed the Interlocutory Application under Section 12(2) of the TNCF Act along with the written statement. Hence, the Trial Court ought to have decided this issue as a preliminary issue under Section 12(2) of the TNCF Act. However, without considering the entire facts and circumstances, the Trial Court dismissed the Interlocutory Application, which is erroneous. Accordingly, he prays to allow this Civil Revision Petition.

9.Per contra, Mr.K.Muthamilraja, learned Counsel appearing for the Respondent Nos.1 to 3 would submit that the Plaintiffs and the Defendants are co-heirs and co-owners of the Suit Property after the demise of A.J.Mathew (intestate) on July 15, 2005. He would further submit that the Plaintiffs rightly valued the Suit as per the guideline value and paid the Court-Fee in accordance with Section 37(2) of the TNCF Act. The Trial Court, rightly dismissed the Interlocutory Application and there is no error in the Order passed by the Trial Court. Accordingly, he prays to



dismiss the Civil Revision Petition.

10.This Court has considered both side submissions.

11.Admittedly, the Sale Deed in respect of Suit Property stands in the name of A.J.Mathew, who is the father of the Plaintiffs and the Defendants who passed away intestate on July 15, 2005. Hence, *prima facie*, A.J. Mathew was the owner of the Suit Property. After his demise, the Plaintiffs and the Defendants are co-heirs / co-owners, each entitled to one-fourth share in the Suit Property. It is settled law that possession of one co-heir / co-owner is deemed to be possession of other co-heir / co-owners as well. The case of the First Defendant is that the Suit Property was purchased partly or wholly with his funds and was registered in the name of A.J.Mathew. In other words, the First Defendant's case is that A.J. Mathew is merely a name-lender. The question whether the Suit Property was purchased by First Defendant in the name of his father A.J.Mathew, or whether it was purchased by A.J.Mathew himself, and whether the first defendant's plea is sustainable in law, can be decided only at the time of trial. The Plaintiffs, in Paragraph No.11 of the plaint, have valued the Suit appropriately and paid the Court-Fee under Section 37(2) of the TNCF Act. As stated supra, possession of one co-heir is deemed to be possession of



CRP No.2612 of 2023

other co-heir/co-owner as well and hence, the Court Fee paid is also *prima facie* correct [See *Neelavathi -vs- N.Natarajan*, reported in *AIR 1980 SC 691*]. Consequently, there is no need to determine the market value of the property under Section 12(2) of the TNCF Act. The Trial Court, after considering the entire facts and circumstances, has rightly dismissed the Interlocutory Application and there is no warrant to interfere with it. Therefore, the Civil Revision Petition does not have any merits and deserves to be dismissed.

12.In the result, the Civil Revision Petition is dismissed.

Considering the facts and circumstances, there shall be no order as to costs.

Consequently, connected Civil Miscellaneous Petition is closed.

15.12.2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

To

The III Additional District & Sessions Court
Tiruvallur at Poonamallee.



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CRP No.2612 of 2023

R.SAKTHIVEL, J.

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CRP NO.2612 OF 2023

15.12.2025

Page No.9 of 9