



C.R.P.(PD)No.5104 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.01.2025**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.5104 of 2024
and C.M.P.No.28604 of 2024

1. C.Nandagopal
2.G.Geetha
3.J.Pushpalatha

.. Petitioners

Vs.

1. M.Revathy
2. D.Sumathi

C.Jayashankar (deceased)

3.J.Manjula
4.Pavithra
5.Diviiya

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 25.09.2024 in I.A.No.11 of 2023 in O.S.No.6540 of 2018 on the file of the learned III Additional Judge, City Civil Court at Chennai.

For Petitioners : Mr.D.Murugan

For Respondents : Ms.Vasudha Thiagarajan,



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for Mr.R.Thiagarajan, caveators

ORDER

This civil revision petition arises against the order of the learned III Additional Judge, City Civil Court at Chennai in I.A.No.11 of 2023 in O.S.No.6540 of 2018.

2. The civil revision petitioners are the defendants and the respondents are the plaintiffs. O.S.No.6540 of 2018 is a suit for partition filed by two daughters and one son, of one, Chengaiya Naidu. The defendants are the other son and daughters of the said Chengaiya Naidu.

3. The plaintiffs pleads that they are in joint possession of the property along with the defendants on and from the date on which Chengaiya Naidu died i.e. to say 05.11.2001. They add that their mother Kushala Bai passed away on 28.07.2014. Hence, each of the parties are entitled to 1/6th share in the suit schedule mentioned properties.

4. Summons were served on the defendants. They have also filed a detailed written statement. Issues were framed and the parties were pushed to trial.

5. It is the admitted case of both sides that the trial has commenced,



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evidence has been recorded and as on today, the matter is posted for further evidence on the side of the defendants. At this stage, the defendants took out an application in I.A.No.11 of 2023. This was an application under Order VII Rule 11(c) of the Code of Civil Procedure. According to the defendants, the suit should have been valued under Section 37(1) of the Tamil Nadu Court-Fees and Suits Valuation Act (TNCF Act) and not under Section 37(2). They urged the Court fee should have been paid on the market value of the property and each of the plaintiffs would have to pay a sum of Rs.5,000/- in terms of Section 37(2).

6.This application was resisted by the plaintiffs pleading that since they are in joint possession of the property, Section 37(2) alone will apply and since the plaintiffs have not admitted that they are out of possession, Section 37(1) is inapplicable. The learned Trial Judge considered the application and counter and dismissed the application. Hence, this revision.

7.I heard Mr.D.Murugan for the civil revision petitioners.

8.The respondents have entered appearance through Ms.Vasudha



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Thiagarajan as caveators.

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9.Mr.D.Murugan pleads that the appropriate charging Section should be Section 37(1) and not Section 37(2). In any event, he argues that since the plaintiffs have filed the suit for partition, even if it were to be considered each of them has a share, then each of them, has to pay a Court fee of Rs.5,000/-. As the suit has not been properly valued, it is liable for rejection under Order VII Rule 11(c) of the CPC.

10.I have carefully considered the submissions of both sides. I have gone through the entire records.

11.In order to invoke Order VII Rule 11(c) of the CPC on the grounds of under valuation, the Code demands that there should be a prior order of the Court holding that, the suit has been undervalued. Once such an order is passed, the Court should adjourn the matter to enable the plaintiff/s to make good the value fixed by the Court. If despite such an order and opportunity, the plaintiffs do not make good the difference of the Court fee, then the suit is liable to be rejected.

12.A perusal of the papers shows that no where has the Trial Court



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held that the suit has been undervalued. When the condition precedent for Order VII Rule 11 (c) of the C.P.C. has not been satisfied, the issue of applying the said section to the facts of the case does not arise.

13.Furthermore, in terms of Section 12 of the TNCF Act, an issue of valuation should be raised before the “first date of hearing” in the suit. The Civil Rules of Practice and Circular Standing Orders framed by this Court for guidance of the Subordinate Courts in exercise of the powers under Section 122 of the C.P.C. holds that the “date of first hearing” is the day on which issues are framed in the suit. It is not in dispute, issues have been framed and the parties are in trial. Therefore, by virtue of Section 12 of the TNCF Act, the application filed at the stage of evidence is not maintainable.

14.Even on the merits of the plea under Section 37(2), the plaint should be valued for Rs.5,000/-. The valuation does not depend upon the number of plaintiffs, but on the averments made in the plaint. If I were to accept the argument of Mr.D.Murugan, if there were more than one plaintiff, then the plaint should be valued as according to the number of plaintiffs who have presented the plaint. Such a manner on valuation is



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unknown to the TNCF Act.

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15. Hence, the civil revision petition is dismissed. The learned III Additional Judge, City Civil Court at Chennai is requested to dispose of the suit in O.S.No.6540 of 2018 within **three months** from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

08.01.2025

Index:Yes/No

Internet:yes/No

Neutral Citation:Yes/No

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To

III Additional Judge, City Civil Court at Chennai.

V.LAKSHMINARAYANAN,J.



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