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C.R.P.(MD)No.2326 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.10.2024

PRONOUNCED ON : 08.05.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2326 of 2024 AND

C.M.P.(MD)No.13188 of 2024

1. S.Subramanian

2. S.Swaminathan

... Petitioners / Petitioners

Vs.

1. S.Jeyalakshmi

2. S.Padmavathi

... Respondents / Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 10.01.2023 in I.A.No.3 of 2021 in O.S.No.151 of 2020 pending on the file of the II Additional District Court, Trichy.

For Petitioners : Mr.S.Ramesh

For R-1 & R-2 : Mr.S.K.Mani

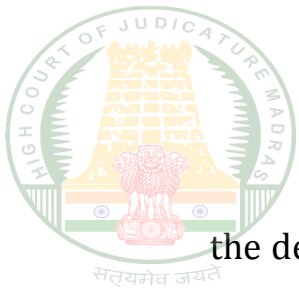
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**ORDER**

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The defendants in O.S.No.151 of 2020 on the file of the II Additional District Court, Trichy are the revision petitioners herein. The respondents herein filed the said suit for partition. The revision petitioners herein filed I.A.No.3 of 2021 under Order 7 Rule 11 (b) CPC r/w. Section 12(2) of Tamil Nadu Court Fees and Suits Valuation Act. According to the revision petitioners, the plaintiffs must be called upon to pay the deficit court fee of Rs.33,38,420.88/- within a time frame, failing which the suit should be rejected. According to the revision petitioners, the plaintiffs are not at all in possession of the suit property and they had been excluded from joint possession of the suit property. The Court below however vide order dated 10.01.2023 dismissed the IA. Challenging the same, this civil revision petition has been filed.

2.The learned counsel for the revision petitioners submitted that the suit properties belonged to their father Sangilimuthu Chettiar. Sangili Muthu Chettiar got married to Rajamani Ammal and through the wedlock, the plaintiffs as well as



the defendants were born. Sangilimuthu Chettiar died on 29.04.2006 after executing a Will. Rajamani Ammal passed away on 07.05.2018.

According to the revision petitioners, Sangilimuthu Chettiar executed two registered Wills dated 09.09.1999 and 09.02.2000. Under the first Will, he had bequeathed seven items of property in favour of his wife Rajamani Ammal. The second item in the Will is the house property and was settled by Sangilimuthu Chettiar on 19.02.2003 in favour of the first plaintiff Jeyalakshmi. Sangilimuthu Chettiar constructed buildings and they have also been let out in favour of the tenants and the revision petitioners are collecting rental income. The present plaintiff had earlier litigated unsuccessfully against the revision petitioners. The revision petitioners pointed out that even going by the plaint averments, the court fee must have been paid only under Section 37(1) of the Tamil Nadu Court-Fees and Suits Valuation Act.

3. The learned counsel for the revision petitioners reiterated all the other contentions set out in the memorandum of grounds of revision and called upon this Court to set aside the impugned order and allow the I.A.No.3 of 2021 as prayed for by them.



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4. Per contra, the learned counsel for the plaintiffs / respondents submitted that the impugned order does not call for interference.

5. I carefully considered the rival contentions and went through the materials on record.

6. The issue as to whether the Court fee must be paid under Section 37(1) or 37(2) of the Act was considered by the Hon'ble Supreme Court in the decision reported in **(1980) 2 SCC 247 (Neelavathi V.N.Natarajan and Others)**. The Hon'ble Supreme Court in the said case had held as follows:-

“ 8. Section 37 of the Tamil Nadu Court Fees and Suits Valuation Act relates to partition suits. Section 37 provides as follows:

“37. (1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.



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(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the rates prescribed.”

It will be seen that the court fee is payable under Section 37(1) if the plaintiff is “excluded” from possession of the property. The plaintiffs who are sisters of the defendants, claimed to be members of the joint family, and prayed for partition alleging that they are in joint possession. Under the proviso to Section 6 of the Hindu Succession Act, 1956 (Act 30 of 1956) the plaintiffs being the daughters of the male Hindu who died after the commencement of the Act, having at the time of the death an interest in the Mitakshara coparcenary property, acquired an interest by devolution under the Act. It is not in dispute that the plaintiffs are entitled to a share. The property to which the plaintiffs are entitled is undivided “joint family property” though not in the strict sense of the term. The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property.



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Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under Section 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been “excluded” from joint possession to which they are entitled in law. The averments in the plaint that the plaintiffs could not remain in joint possession as they were not given any income from the joint family property would not amount to their exclusion from possession. We are unable to read into the plaint a clear and specific admission that the plaintiffs had been excluded from possession.”

This decision was followed in ***Jagannath Amin V. Seetharama, (2007) 1 SCC 694***. The Hon'ble Supreme Court apart from citing ***Neelavathi*** case, also referred to the decision reported in ***(1988) 3 SCC 423 (Commercial Aviation and Travel Co. V. Vimla Pannalal)*** in which it was held as follows:-



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"8. Similar provisions were examined by this Court in *Commercial Aviation and Travel Co. v. Vimla Pannalal* [(1988) 3 SCC 423 : AIR 1988 SC 1636] and it was noted as follows : (SCC pp. 427-28, paras 11-12)

"11. In this connection, we may refer to a five-Judge Bench decision of this Court in *S. Rm. Ar. S. Sp. Sathappa Chettiar v. S. Rm. Ar. Rm. Ramanathan Chettiar* [1958 SCR 1024 : AIR 1958 SC 245] (SCR at pp. 1036-37 : AIR at pp. 251-52) Gajendragadkar, J. speaking for the Court observed as follows:

'If the scheme laid down for the computation of fees payable in suits covered by the several sub-sections of Section 7 is considered, it would be clear that, in respect of suits falling under sub-section (iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court fees. The theoretical basis of this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness. Take for instance the claim for partition where the plaintiff seeks to enforce his right to share in any property on the ground that it is joint family property. The basis of the claim is



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that the property in respect of which a share is claimed is joint family property. In other words, it is property in which the plaintiff has an undivided share. What the plaintiff purports to do by making a claim for partition is to ask the court to give him certain specified properties separately and absolutely on his own account for his share in lieu of his undivided share in the whole property. Now it would be clear that the conversion of the plaintiff's alleged undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. That is why legislature has left it to the option of the plaintiff to value his claim for the payment of court fees. It really means that in suits falling under Section 7(iv)(b) the amount stated by the plaintiff as the value of his claim for partition has ordinarily to be accepted by the court in computing the court fees payable in respect of the said relief. In the circumstances of this case it is unnecessary to consider whether, under the provisions of this section, the plaintiff has been given an absolute right or option to place any valuation whatever on his relief.'

12. In the above decision, this Court took the view that the conversion of the plaintiff's



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undivided share in the joint family property into his separate share cannot be easily valued in terms of rupees with any precision or definiteness. It is true that the court did not consider whether the plaintiff had been given an absolute right or option to place any valuation whatever on his relief under the provision of Section 7(iv) of the Court Fees Act, but the difficulty that would be felt by the court in exercising its power under Order 7 Rule 11(b) of the Code of Civil Procedure is that if it is unable to determine the correct value of the relief, it cannot direct the plaintiff to correct the valuation. Order 7 Rule 11(b) contemplates correct valuation and not approximate correct valuation and such correct valuation of the relief has to be determined by the court. If the court cannot determine the correct valuation of the relief claimed, it cannot require the plaintiff to correct the valuation and, consequently, Order 7 Rule 11(b) will not be applicable.”

7.A learned Judge of this Court in ***Sivathanulingam V. Sankaralingam and Others (2020 SCC OnLine Mad 262)*** had followed ***Neelavathi*** case.



8.Let me apply the ratio laid down in the aforesaid decision

to the facts on hand. In Paragraph Nos.37 and 39 of the plaint, the plaintiffs have pleaded that they are deemed to be in joint possession of the entire suit properties. The defendants are tracing their title and rights only from Sangilimuthu Chettiar. The plaintiffs are none other than the sisters of the revision petitioners and daughters of Sangilimuthu Chettiar. Subject to the defendants / revision petitioners proving their defences, the plaintiffs as co-owners are deemed to be in joint possession of the suit property. The Court below adopted the right approach. Interference with the same is not warranted. This civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.05.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To:



The II Additional District Judge,
Trichy.

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G.R.SWAMINATHAN,J.

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