

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.07.2010

CIRAM

THE HONOURABLE MR.JUSTICE A.SELVAM
CIVIL REVISION PETITION No.1061 of 2008

Thirumeniswam

:Petitioner/Plaintiff

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1.T.S.Govindasami
2.Shamila Biwi
3.Sekkubhai
4.Chandra
5.Gopalasami,
6.Muraili

:Respondents/Defendants

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and executable orders in cheque slip in O.S.No.31 of 2007 on the file of the Sub-Court, Aruppukottai dated 30.01.2008.

For petitioner :Mr.S.Natarajan
For Respondents :Mr.V.Parmal, For R1, R3 & R4
No Appearance For R2, R5 & R6

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The impugned order dated 30.01.2008 passed in Cheque Slip in O.S.No.31 of 2007 by the Sub-Court, Aruppukottai is being challenged in the present Civil Revision Petition.

2.The revision petitioner as plaintiff has instituted O.S.No.31 of 2007 for the reliefs of partition and separate possession of his share, wherein the present respondents have been shown as defendants. During pendency of the same a cheque slip has been issued wherein it has been directed the petitioner/plaintiff to pay additional Court fee of Rs.14,250.50 and accordingly an enquiry has been conducted and the Court below has passed the impugned order and thereby confirmed the cheque slip issued in O.S.No.31 of 2007. Against the order passed by the Court below the present Civil Revision Petition has been filed.

3.Before considering the submission made on the side of the revision petitioner, the Court has to look into the averments made in the plaint. In the plaint at Paragraph No.4, it has been clearly stated that the plaintiff and the defendants 1 & 2 are the partners of Real Agencies and the same is doing real estate business. With respect to joint business, they purchased the suit properties from the averments made in the plaint, it is made clear that the plaintiff has instituted the suit in question stating that he is one of the co-owners of the suit property.

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4.The plaintiff has paid Court fee under Section 37(2) of the Tamil Nadu Court Fees Act and the same reads as follows:

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

5.From the close reading of provisions of Section 37(1) of the Tamil Nadu Court Fees Act, it is made clear that if a property jointly owned by the joint owners or if a property is a common property, the plaintiff who is in joint possession is liable to pay Court fee under the said Section.

6.In the instant case, the specific contention of the plaintiff is that he is the joint owner of the suit property along with the other defendants. The Court below has come to the conclusion that the suit property is not a joint property and therefore Court fee paid under Section 37(2) of the Tamil Nadu Court Fees Act is erroneous and the plaintiff is bound to pay Court fee under Section 37(1) of the said Act.

7.Considering the fact that one plaintiff is one of the co-owners of the suit property he is bound to pay Court fee only under Section 37(2) of the said Act even if he is not in possession. It is well settled law that a person may deem to be in possession of common properties until he is ousted. Therefore, the view taken by the Court below is totally erroneous and the order passed by the Court below is liable to be interfered with.

8.In fine, the present Civil Revision Petition is allowed without cost and the order passed in Cheque slip in O.S.No.31 of 2007 by the Sub-Court, Aruppukottai is set aside and the cheque slip is ordered to be closed.

Sd/-
Deputy Registrar (LA)

-TRUE COPY /

S. Palani 29/7/10
Assistant Registrar (MD)

To:The Subordinate Judge, Aruppukottai.

+1CC to Mr.V.Perumal, Advocate, SR.No.26774.

+1CC to Mr.S.Matsavizhan, Advocate, SR.No.26166.

Copy To:The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai (For record if any)
C.P.P.(MD)No.1061 of 2008

PM
RP/28.07.2010/ZP/SC.

21.07.2010.

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