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**(2017) 06 MAD CK 0079**

**In the Madras High Court**

**Case No : 1548 of 2017 and C M P No 7200 of 2017**

Divya Rayapati

APPELLANT

Vs

Sunitha Venkatram

RESPONDENT

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**Date of Decision : 02-06-2017**

**Acts Referred:**

[Code of Civil Procedure, 1908](#), [Order 7 Rule 11](#) Order 7 Rule 11(d) -  
[Family Courts Act, 1984](#), [Section 7](#) -  
Jurisdiction

**Citation : (2017) 06 MAD CK 0079**

**Hon'ble Judges : V.M.Velumani**

**Bench : SINGLE BENCH**

**Advocate : V.M.Velumani**

**Final Decision : Dismissed**

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## Judgement

1. This Civil Revision Petition is filed against the fair and decreetal order passed by the XV Asst. Judge, City Civil Court, Chennai in I.A.No.10731 of 2016 in O.S.No.4024 of 2016 dated 10.03.2017.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit in O.S.No.4024 of 2016 on the file of the XV Asst. Judge, City Civil Court, Chennai against the petitioner for permanent injunction restraining the petitioner or through her men, agents or representatives or any authority or any person/s claiming through the petitioner from in any manner interfering with the respondent's peaceful possession and enjoyment of the suit property.

3. The petitioner filed I.A.No.10731 of 2016 under Order 7 Rule 11 (d) of CPC to reject the plaint in O.S.No.4024 of 2016 on the ground that the suit is not maintainable and is barred under the provisions of Family Court Act, 1984. The petitioner has already filed O.S.No.246 of 2013 on the file of the I Additional Family Court, Chennai against the respondent and obtained an order of status

quo and the respondent has falsely executed Power of Attorney as though she is the owner of the property. It is further stated that the respondent has settled the property to her son Mr.Ashwant Akula Venkatram vide document No.431/2010 dated 04.03.2010 and only after seeing the settlement deed, the marriage between the petitioner and the son of the respondent was conducted. The property now belongs to the son of the respondent, as per the settlement deed dated 04.03.2010 and hence the respondent is not the owner of the suit property. Therefore, she cannot maintain the suit and prayed for rejection of the plaint.

4. The respondent filed counter affidavit through her Power of Attorney denying the various averments made in support of the petition. The respondent has stated that she settled the property to her son by settlement deed dated 04.03.2010 retaining the life interest with her with a right to reside in the suit property and to collect the rent by leasing out the property. The property does not belong to her son and only after her life time, her son becomes the owner of the suit property. It is further stated that the suit is not with regard to the property of spouse or spouses as contemplated by the provisions of Family Court Act. The order of status quo with regard to the property obtained by the petitioner is not binding on the respondent. After obtaining the exparte order with regard to marriage between the petitioner and the respondent's son in O.P.No.4028 of 2013, the petitioner had married one Srinivas s/o Ganeshwara Rao, even though the application to set aside the exparte order was pending. The exparte order obtained in MC.No.70 of 2013 was set aside in CrI.A.No.176 & 177 of 2014 and remanded the case for fresh trial. The petitioner has not challenged the said order by initiating any further proceedings. The property in the suit does not relate to the property of spouse and therefore the present suit is maintainable. The petitioner is not residing at Chennai and the suit property is not her matrimonial home.

5. The learned Trial Judge, considering the averments in the affidavit, counter affidavit, the judgments relied on by the parties and the fact that there is no marital relationship between the petitioner the respondent and that the respondent has retained life interest reserving her right to receive all the rents, profits from the property including right to reside therein, dismissed the application holding that the Court has jurisdiction to try the suit on the ground that there is no marital relationship between the petitioner and the respondent and the respondent has retained life interest reserving her right to receive all the rents, profit from the property including the right to reside therein.

6. Against the order of dismissal dated 10.03.2017 passed in I.A.No.10731 of 2016 in O.S.No.4024 of 2016, the petitioner has preferred the present civil revision petition.

7. The learned counsel for the petitioner submitted that as per Section 7 of the Family Court Act, 1984 Civil Court has no jurisdiction and as per the judgment reported in AIR 2003 SC 2525 [K.A. Abdul Jaleel vs. T.A. Shahida], even in case

where divorce has been granted, civil proceedings can be initiated only in the Family Court. The learned Judge failed to consider the fact that the suit in O.S.No.246 of 2013 initiated by the petitioner is pending in the I Additional Family Court, Chennai. The learned Judge has not properly appreciated the judgment reported in AIR 2010 Delhi 69 [Manita Khurana vs. Indra Kurana] and the judgment reported in 2013 (3) MLJ 814 [B.Rajendran vs. Adhilakshmi].

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. The only contention of the learned counsel for the petitioner is that in view of Section 7 of the Family Court Act, 1984 the present suit initiated by the respondent is not maintainable in Civil Court and the respondent ought to have filed the suit only in the Family Court where O.S.No.246 of 2013 filed by the petitioner is pending. The provisions relating to the suit to be filed in the Family Court is dealt with in Section 7, explanation (c) which reads as follows -

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.

10. A reading of this explanation shows that a suit or proceedings between the parties to the marriage with regard to the property of either of them should be initiated only in the Family Court. In the present case, the petitioner and the respondent are not parties to the marriage and the property in question does not relate to the exhusband of the petitioner. The property belongs to the respondent who has settled the same on her son who is the ex-husband of the petitioner. It is an admitted fact that the respondent has reserved her life time interest in the suit property with a right to reside and to collect the rents, profits from the suit property. In view of the above admitted fact, the contention of the learned counsel for the petitioner that the present suit is not maintainable in Civil Court and only Family Court has jurisdiction is untenable. The learned Judge has considered all the above facts in a proper and perspective manner by exercising the powers conferred upon him. Hence, I do not find any illegality or irregularity in the order passed by the Trial Court warranting interference by this Court.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.