

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.2034 of 2014

and

M.P.No.1 of 2014

Lakshmi Ammal

.. Petitioner

Vs

1.Dhanam Ammal

2.Govindammal

3.Pangaru Ammal

4.Prakash

5.Dhansu

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.03.2014 made in I.A.No.69 of 2012 in O.S.No.125 of 2010 on the file of the III Additional District and Sessions Court, Vridhachalam.

For Petitioner : Mr.P.Vasanth

For Respondents : Mrs.R.Meenal (For R1 to R3)

ORDER

The Civil Revision Petition is filed against the order dated 05.03.2014 made in I.A.No.69 of 2012 in O.S.No.125 of 2010 on the file of the III Additional District and Sessions Court, Vridhachalam.

2.The petitioner as a plaintiff filed a suit for declaration of title and injunction in respect of 5 items of the suit properties. The defendants resisted the same by filing a written statement. The suits in O.S.Nos.1/2010, 2/2010, 3/2010, 4/2010 and 13/2010 has been ordered to be tried jointly along with O.S.Nos.124/2010 and 125/2010. At this juncture, the defendants filed an application under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act. The Trial Court after considering the objection has allowed the application on payment of Rs.500/- to the plaintiff. The petitioner/plaintiff is not willing to receive the cost and challenging the impugned order, the above Civil Revision Petition has been filed.

3.Learned counsel for the petitioner submitted that the impugned order passed by the Trial court contains ambiguity whether the Trial Court has decided a preliminary issue that the valuation of Court fee paid is correct or it has to be decided at the time of the trial. He further submitted that the petitioner has not filed any application under Order 14 for deciding the preliminary issue. Hence, he prayed for setting aside the order passed by the Trial Court.

4.Resisting the same, the learned counsel for the respondents submitted

that the plaintiff has not properly valued the property and the Trial Court has not taken any steps to value the property. Hence, they filed an application under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act. He further submitted that originally the suit was filed before the District Munsif Court, Virudhachalam. Since they filed transfer application by stating that the District Munsif Court has no pecuniary jurisdiction to decide the case, on that basis case has been transferred to the District Court. Hence, that issue has to be decided as a preliminary issue. So, he prayed for dismissal of the revision petition.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The petitioner as a plaintiff filed a suit for declaration of title and injunction in respect of five items of the properties and all are vacant sites, plots and non-agricultural lands. So, while assessing the Court fees under Section 25(b), the plaintiff has to decide the market value of the properties. The respondents in their written statement in paragraph No.11 at early point of time raised the plea that the market value assessed by the petitioner is not correct. It is also admitted by both sides that the defendants filed an application for transfer and on that basis only case has been transferred from

the District Munsif Court to the District Court where the Court has pecuniary jurisdiction to decide the matter and where the other suits are also pending. But once the suit was filed for declaration of title and injunction, the Court fee has to be paid on the basis of the market value. Even though application under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act, the Trial Court in its order has stated as follows:

“10.....But in view of the decision by the Honourable High Court as relied on by the learned counsel for the petitioners/defendants, the issue of Court Fee and Valuation is to be decided as preliminary issue. Since the petition is filed after long time when cases are posted for joint trial with O.S.1/2010, O.S.2/2010, O.S.3/2010, O.S.4/2010 and O.S.13/2010 and O.S.124/2010 this Court is inclined to allow the application on imposing cost.”

7. So, the order of the Trial Court is not specific wherein it was mentioned that this Court is inclined to allow the application on imposing cost. Whether the Court is appointing the Advocate Commissioner to ascertain the value of the property or to decide as a preliminary issue or whether the suit has been properly valued and Court fee was correctly paid and to clarify the ambiguity, instead of remitting back the matter to the Trial Court, this Court is of the view to give direction to the Trial Court to decide the preliminary issue.

Therefore, the Trial Court is directed to decide the preliminary issue as to whether the suit has been properly valued and the Court fee paid is correct and thereafter decide the matter jointly with other suits after letting oral and documentary evidence.

8.The Civil Revision Petition is ordered accordingly. No costs.
Consequently, connected Miscellaneous Petition is closed.

15.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The III Additional District and Sessions Court,
Vridhachalam.

R.MALA. J.,

cse

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