

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:09.09.2015

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.R.P.PD.No.128 of 2012

and

M.P.No.1 of 2012

1.Jayanthilal G.Bafna
2.Arunkumar G. Bafna
...Petitioners

Versus

V.Dharaj(died)
Easwari(died)

1.Jayanthi
2.Anusha
respondents

...

Prayer: Revision petition is filed to set aside the fair and decretal order of the
III Additional District Munsif Court at Coimbatore, dated 08.08.2011 and made
in I.A.No.384 of 2009 in O.S.No.1554 of 2004.

For Petitioners :Mr.P.Valliappan

For Respondents :No appearance

ORDER

This civil revision petition has been filed challenging the fair and decreetal order dated 08.08.2011 and made in I.A.No.384 of 2009 in O.S.No.1554 of 2004, on the file of the III Additional District Munsif Court at Coimbatore.

2.The defendants 26 and 27 in the suit stand before this Court with this memorandum of civil revision. The respondents 1 and 2 herein are the plaintiffs 3 and 4 in the suit and the plaintiffs 1 and 2 in the suit have already been passed away.

3. It is revealed from the records that the respondents have filed the suit in O.S.No.1554 of 2004 as against the revision petitioners and other defendants seeking the relief of partition, directing division of the suit property into 35 equal shares and allot six of such shares to the plaintiffs and also direct the defendants to pay mesne profits.

4. This suit has been resisted by the revision petitioners being the defendants 26 and 27 by filing their written statement. During the pendency of the suit, it appears that the revision petitioners have taken out an application in I.A.No.384 of 2009, under Order XIV Rule 2 of the Civil Procedure Code read

with Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act, to take up the issue of valuation of the suit property at market value and payment of proper court fee, as a preliminary issue and to pass appropriate orders.

5. This petition was resisted by the respondents by filing their counter statement and after hearing both the sides, the learned Trial Judge has proceeded to dismiss that application on 08.08.2011, on the ground that the suit properties have been properly valued under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act and that since the question of actual or constructive possession is a matter to be decided after full trial of the suit, and the question of possession is a mixed question of law and facts, the validity of the sale deeds or the character of the suit properties as to whether self acquired or ancestral is a question not to be decided at this stage.

6. Heard Mr.P.Valliappan, learned counsel for the petitioners/defendants 26/27. Despite service of notice, the respondents have not chosen to appear. Hence, there is no other go for this Court excepting to hear Mr.P.Valliappan, learned counsel for the revision petitioners and dispose this revision petition on merits.

7. The plaint of the suit consisting of three schedules of properties viz., A,B,C.

In so far as the properties described under 'C' schedule are concerned, Mr.P.Valliappan, learned counsel for the revision petitioners has submitted that the revision petitioners/defendants 26 and 27 have purchased the said property even during the life time of Mr.Veera Boyan, who was the original owner of the properties.

8. Mr.P.Valliappan, has drawn the attention of this Court to paragraph no.11 of the written statement of the revision petitioners, wherein they have stated that;

"plaintiffs have deliberately and grossly undervalued the properties. Even a portion of 'C' schedule property has been purchased by these defendants for a sum of Rs.6,15,000/-, even in the year 1996, but the plaintiffs in the year 2003 have deliberately undervalued the same as Rs.1,00,000/-. This fact alone establishes the speculative nature of the present suit. The proper value of the suit property will take away the pecuniary jurisdiction of this court to entertain and try the present suit. Further, "C" schedule property has been under exclusive possession and occupation of these defendants ever since from the year 1996. The plaintiffs are neither in possession nor in the joint possession of this property. The property having been sold much prior to the suit, the plaintiffs cannot claim joint possession. The plaintiffs are not entitled to pay fixed court fee

under Section 37(2), but will have to pay Advalorem court fee under section 37(1), on the correct and property market value of the suit property.

9. This Court finds that the averments made in paragraph no.11 of the written statement filed by the revision petitioners / defendants 26 and 27, are absolutely right because there is no reference in the plaint that the plaintiffs are also in joint possession of "C" schedule properties. When no such averments are made in the plaint and in the absence of specific pleadings that they have been in the joint possession in respect of "C" schedule of the plaint, the plaintiffs are not entitled to value the suit property under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act, instead the suit in respect of "C" schedule of property ought to have been valued under Section 37(1) of the Act.

10. Based on the averments made in para 11 of the written statement of the revision petitioners, this Court finds that even from the year 1996 i.e., from 20.02.1996 onwards the revision petitioners have been in possession and enjoyment of the "C" schedule of the property, as the absolute owners thereof, on the strength of two registered sale deeds dated 20.02.1996, when such being the case, how the plaintiffs could have been in possession that too in joint possession alongwith other defendants in respect of "C" schedule property?.

11. In this connection, it is imperative on the part of this Court to have reference of Order XIV, Rule 2 of the Code of Civil Procedure.

Order XIV, contemplates the **settlement of issues and determination of suit on issues of law or on issues agreed upon.**

Rule 1 envisages about framing of issues.

Rule 2 enacts as under:

Rule2: Court to pronounce judgement on all issues.

Sub Rule (1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub- rule(2) pronounce judgement on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance

with the decision on that issue.

Applying the principle laid down under Order XIV clause (a) in sub-rule 2, the jurisdiction of Trial Court, insofar as "C" schedule property is concerned, the application in I.A.No.384 of 2009 was filed before the Trial Court to take up the issue as a preliminary issue, so as to avoid the consumption of court time. However, without taking note of the contention of the petitioners, the Trial Court has proceeded to dismiss that application.

12.Further, Section 12, Sub Section (2) of the Tamil Nadu Court Fee and Suit Valuation Act also assume importance, which needs to be extracted, as under:

Section 12(2):Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date

before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit."

13. Insofar as the present suit is concerned, as submitted by Mr.P.Valliappan, at the time of purchase of the properties on 20.02.1996, the properties i.e., "C" schedule properties of the suit, as it appears from the xerox copies of two sale deeds dated 20.02.1996, were valued at Rs.6,15,000/-. As it appears from the plaint averments, it is obvious that the same properties have been valued at Rs.1,00,000/- only. It is an open secret that nowadays, the value of the landed properties has been increasing day by day.

14. Mr.P.Valliappan, learned counsel appearing for the revision petitioners has submitted that the value of "C" schedule property as on date would be more than Rs.2 crores. Keeping in view this fact, this Court is of the considered view that the jurisdiction of the trial court is very much affected and therefore, the suit property, particularly, "C" schedule property is to be valued as per Section 37(1), of the Tamil Nadu Court Fee and Suit Valuation Act, in accordance with the prevailing market rate, as contemplated under Section 7(1) of the Act.

15. As afore stated, the plaintiffs have never whispered any thing about their joint possession in respect of the "C" schedule property. In order to support this contention Mr.P.Valliappan, learned counsel appearing for the revision petitioners has placed reliance upon the following decisions:

(1) V.R.Gopalakrishnan Vs. Andiammal, 2002(2) CTC 513

(2) Selvaraj and two others Vs. Kannan, 1997(1) CTC 499

(3) T.R.Sengottaiyan and 2 others Vs. M.L. Sengottuvelappan and two others, 2010(3) MWN (Civil) 146.

(4)Regila Pram Vs. Chellappan and two others, 2010-5-L.W.334.

16. All the above cited decisions are on the same line in respect of taking up of issues of jurisdiction of the Court that too pecuniary jurisdiction as a preliminary issue. In V.R.Gopalakrishnan's case cited first in the above reference a learned single Judge of this Court has observed as under:

"Conflict between substantial law and procedural law-
Code of Civil Procedure is procedural law and Tamil Nadu
Court Fees and Suits Valuation Act is substantial law
-Substantial law will prevail over procedural law-Court has
to hear issue regarding valuation of suit property or

payment of court fee as preliminary issue if defendant files independent application to that effect and not otherwise- once such application is filed court has no discretion and it shall be heard as preliminary issue".

The other three decisions are also have been pronounced on the same line.

17. In view of the above fact and on the proposition laid down in the above cited decisions, this Court is of the considered view that the impugned order insofar as the plaint in "C" schedule property is concerned, is absolutely wrong and therefore liable to be set aside.

18. In the result, revision petition is allowed and the impugned order dated 08.08.2011 is set side and the application in I.A.No.384 of 2009 is allowed. The learned trial Judge is directed to take up the issue relating to the court fee in respect of the "C" schedule property as a preliminary issue and decide the matter as expeditiously as possible within a period of one month. Connected M.P. is also closed. No costs.

09.09.2015

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Index:Yes/No.
Internet:Yes/No.

Office to Note:

Issue order copy on 22.09.2015.

To

The learned III Additional District Munsif,
Coimbatore.

T. MATHIVANAN, J.
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