



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2015

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

TR.C.M.P.(MD) No. 200 of 2015 and
M.P.(MD).Nos. 1 and 2 of 2015

1. Asmathullah
2. Jegan Prasad
3. Noordeen
4. Rama Duraipandian
5. Satham Hussian

: Petitioners

Vs.

1. Syed Masook
rep. By its Power Agent
Syed Ahamed
2. Syed Ahammed
3. N. Kumaran Sethupathy

: Respondents

Prayer: This Transfer CMP is filed under Section 24 of CPC praying to withdraw the suit in O.S.No.46 of 2015 on the file of the Subordinate Court, Ramanathapuram and transfer the same to the file of any competent Court.

For Petitioners : Mr. G.R. Swaminathan
for Mr. T. Antony Arulraj

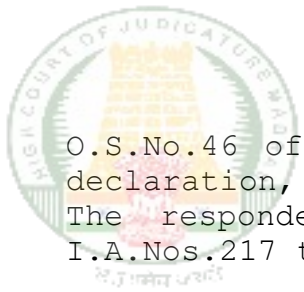
For R-1 and 2 : Mr. R. Yashod Vardhan
Senior Counsel for
Mr.P. Salmon Francis

For R3 : No appearance

O R D E R

This Transfer CMP is filed to withdraw the suit in O.S.No.46 of 2015, on the file of the Subordinate Court, Ramanathapuram, and transfer the same to the file of any other competent Court.

2. The case of the petitioners is that they purchased the property in T.S.No.24, GRS.No.325 / 672, Ward B, Block-7, Ramanathapuram Municipal Town, by the sale deed dated 09.04.2015, (Document No.207 / 2015), on the file of the Joint Sub Registrar, Ramanathapuram, from the third respondent herein, for a total sale consideration of Rs.2,17,80,000/-. The petitioner have stated that with regard to title and possession, both the petitioners and the respondents filed Writ Petitions in W.P.(MD).Nos.14394 of 2014, 21194 of 2014 and 8086 of 2015, and the same are pending before this Court. At this stage, the respondents 1 and 2 filed a suit in



O.S.No.46 of 2015, on the file of Subordinate Court, Ramanathapuram, for declaration, declaring the sale deed, dated 09.04.2015, as null and void. The respondents 1 and 2 filed three Interlocutory Applications in I.A.Nos.217 to 219 of 2015, along with suit in O.S.No.46 of 2015.

3. According to the petitioners, the value of the suit property is more than Rs.2,17,80,000/-. The respondents 1 and 2 deliberately valued the suit at Rs.1,01,000/- to bring it before the pecuniary jurisdiction of the Subordinate Court, Ramanathapuram. Therefore, the petitioners filed I.A.No.220 of 2015, questioning the pecuniary jurisdiction. The said I.A. filed by the petitioners is posted for notice of hearing and counter on 19.06.2015. Without deciding the pecuniary jurisdiction, the learned Subordinate Judge, Ramanathapuram, directed the petitioners to file counter and fixed the enquiry in I.A.Nos.217 and 218 of 2015. In the circumstances, the petitioners have come out with the present Transfer CMP contending that the learned Subordinate Judge, Ramanathapuram, has posted the Interlocutory Applications filed by the respondents for counter and enquiry. Whereas the Interlocutory Applications filed by the petitioners is posted for filing counter only.

4. This Court by order dated 23.06.2015, ordered notice and granted interim stay. The respondents filed M.P.(MD).No.2 of 2015, for vacating the interim stay granted by this Court. The respondent denied various allegations made by the petitioners. They have stated that the learned Judge did not act partially in favour of the respondent. They are not parties to the sale deed. Therefore, they have valued the suit as per Section 25(D) of Tamil Nadu Court Fees and Suit Valuation Act. The respondents have properly valued the suit and therefore, prayed for dismissal of this Transfer CMP.

5. Heard the learned counsel for the petitioners and the learned Senior Counsel for the respondents who reiterated the averments stated in the affidavit and counter affidavit.

6. The learned counsel for the petitioners relied on the judgment reported in (1992) 1 SCC 731 (Sujir Keshav Nayak Vs. Sujir Ganesh Nayak), para 3 reads as follows:-

3. The question however is if the disclosure of valuation is in absolute discretion or option of the plaintiff or it can be objected to by the defendants and adjudicated upon by the Court, and if so in what cases. It was left open in Chettiar's case (supra). Provisions of Central and State Act have already been extracted earlier. Sub-section (2) of Section 36 of Kerala Act amply safeguards the interest of revenue. Similar provisions exist in Central Act. But under Civil Procedure Code plaintiff is liable to be rejected under Order 7 Rule 11 if it is under-valued. How to reconcile the two provisions, the one leaving it to absolute discretion of plaintiff to value the suit as he considers proper and the other to reject a plaintiff if it is under-valued. For this it is necessary to examine the scheme disclosed in the Civil Procedure Code relating to filing of suit. Section 15 of the Civil Procedure Code (hereinafter referred to as 'C.P.C.'). provides that any suit shall be instituted in the court of the lowest grade competent to try it. What is a court of lowest grade and for what nature of suit has been determined and regulated by State enactments. Competency refers to jurisdiction territorial or pecuniary, of limited or

unlimited limits. In courts of limited pecuniary jurisdiction valuation assumes great importance. A plaintiff may over or under-value the suit for purposes of avoiding a court of a particular grade. In the former the plaint may be returned under O.7 Rule 10 for presentation in proper court but in latter it is liable to be rejected. Since under-valuation goes to the root of maintainability of the suit a defendant is entitled to raise the objection irrespective of the nature of the suit. That is why this Court in Abdul Hamid Shamsi v. Abdul Majid And Ors. while upholding the right of the plaintiff to value the suit for accounting according to his own estimate held that he "has not been given the absolute right or option to place any valuation whatever in such relief." But that was a case of limited pecuniary jurisdiction in which the defendant could object as arbitrary under-valuation could result in rejection of the plaint. Such right should be denied in suits of unlimited jurisdiction for more than one reason. A defendant, as observed by the Privy Council in R.S.Jadhav Desai v. S.V.Jadhav Desai, 1918 PC 188, is not entitled to use it as a weapon to non suit the plaintiff. Then, by very nature of the suit a defendant is, normally, interested in delaying its adjudication which at times may frustrate the very purpose of the suit. Further, the provisions in Central Act and State enactments ensure that interest of State may not suffer by providing that no decree shall be passed or executed unless the court fee is paid on difference between the valuation disclosed and amount for which the suit is decreed. In Meenakshisundaram Chettiar v. Venkatachalam Chettiar it was observed that even though in suit for accounting the loss of revenue is ensured by statutory provision yet a plaintiff has a duty to give a fair estimate of the amount for which he sues. Reason for it obviously was insistence on being honest and just when approaching a court of law. The observation was made because of the duty cast on court by O.7 Rule 11 of C.P.C. But there is no indication if the suit was filed in a court of limited pecuniary jurisdiction. It can thus be resolved that in suits for accounting or for dissolution of partnership and accounting filed in courts of limited pecuniary jurisdiction the plaintiff must take every care to disclose valuation which is not arbitrary as the plaint is liable to be rejected on objection of the defendant. But in suits of such nature filed before courts of unlimited jurisdiction the valuation disclosed by the plaintiff may be accepted as correct. This, however, does not mean that the courts power to examine the correctness of valuation is taken away. If on perusal of plaint the court is prima facie satisfied that the plaintiff has not been fair and valued the suit or relief arbitrarily it is not precluded from directing the plaintiff to value it properly and pay court fee on it. In Tara Devi v. Sri Thakur Radha Krishna Maharaj this Court observed, "It is now well settled by the decisions of this Court in Sathappa Chettiar v. Ramanathan Chettiar and Meenakshisundaram Chettiar v. Venkatachalam Chettiar that in a suit for declaration with consequential relief falling under Section 7 (iv) (c) of the Court Fees Act, 1870, the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the court can examine the valuation and can revise the same." But the defendant has no right to raise such objection nor the court should dwell



into the matter after filing of written statement on evidence. The law on this aspect, thus, should be taken to be as under:

(1) Where the question of court fee is linked with jurisdiction a defendant has a right to raise objection and the court should decide it as a preliminary issue.

(2) But in those cases where the suit is filed in court of unlimited jurisdiction the valuation disclosed by the plaintiff or payment of amount of court fee on relief claimed in plaint or memorandum of appeal should be taken as correct.

(3) This does not preclude the court even in suits filed in courts of unlimited jurisdiction from examining if the valuation, on averments in plaint, is arbitrary.

7. Section 6 of CPC deals with pecuniary jurisdiction of Court. As per this Section, no Court will have jurisdiction over suit, if the amount or value of the subject matter exceeds pecuniary limits if any of its ordinary jurisdiction.

8. In the present case, the petitioners have filed I.A.No.220 of 2015 praying for a decision with regard to pecuniary jurisdiction of the Subordinate Court to entertain and decide the suit filed by the respondents. In view of Section 6 of CPC, without deciding the rival contention on merits, the learned Subordinate Judge, Ramanathapuram, is directed to hear and dispose the I.A.No.220 of 2015 filed by the petitioners on merits and decide the pecuniary jurisdiction of the Court as a preliminary issue, before hearing and deciding applications filed by respondents. The learned Subordinate Judge, Ramanathapuram, is directed to hear and dispose the I.A.No.220 of 2015, within a period of four weeks from the date of receipt of a copy of this order.

8. With the above direction this Transfer CMP is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To.

The Subordinate Judge, Ramanathapuram.

+1cc to M/S. T.Antony Arul Raj, Advocate in SR.No 35252

+1cc to M/S. P. Salmon Francis, Advocate in SR.No 34761

TS/02.07.2015/4P -4C