IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.4727 of 2011
and
M.P.No.1 of 2011

1.C.A.Sivanandan

2.S.Tamilarasi .. Petitioners

Vs.

1.Rathna

2.D.Madhesh @ Madhu .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 08.08.2011 passed in I.A.No.158 of 2010 in O.S.No.121 of 2007, on the file of the learned Additional Special Court, Krishnagiri.

For Petitioner : Mr.P.Mani

For Respondents : Mr.J.Hariharan (for R1)
for Mr.V.Nicholas

Mr.S.P.Yuvankumar (for R2)

O R D E R

The defendants 2 and 3 in O.S.No.121 of 2007 are the Civil Revision Petitioners before this Court. Challenging the order passed in I.A.No.158 of 2010 in O.S.No.121 of 2007, dated 08.08.2011, on the file of the learned Additional Special Judge, Krishnagiri.

2.The case of the petitioners/defendants are that the 1st respondent/plaintiff filed the suit in O.S.No.121 of 2007 for declaration of her title to the suit properties and for permanent injunction and also for declaration declaring the sale deeds dated 19.08.2005 and 05.10.2015, executed by the 1st defendant in favour of the 1st defendant is null and void.

3.The further case of the defendants is that at the time of filing the suit, the 1st respondent/plaintiff (herein after called plaintiff) valued item No.1 of the suit schedule of property at Rs.1,60,000/- and item No.2 of the suit schedule of property at Rs.1,40,000/- and the valuation of the suit properties is deflated deliberately to avoid payment of proper Court fees and to avoid the higher Court having pecuniary jurisdiction.

4.This petitioners/defendants 2 and 3 (defendants 2 and 3) have filed their written statement and additional written statement in the said suit. In para-7 of the additional written statement, the defendants 2 and 3 were specifically pleaded that on the date of institution of the suit, the market value of the item No.1 of the suit property was not less than Rs.20,00,000/- and the market value of item No.2 of the suit property was not less than Rs.16,50,000/- and in all the total market value of the suit properties are comes around Rs.36,50,000/-.

5.It is also further case of the petitioners/defendants (hereinafter called defendants) that they have also taken a plea that for declaring the sale deeds dated 19.08.2005 and 05.10.2005, the suit should have been valued on the market value of the suit property shown in the sale deeds. The market value of the property shown in the sale deed dated 19.08.2005 is Rs.4,95,000/- and in the said sale deed dated 05.10.2005 is Rs.6,58,000/- and hence the plaintiff ought to have valued the suit on such value and paid the Court fees.

6.It is the further case of the defendants that even if the valuation of the suit under Section 25(b) of the Tamil Nadu Court Fees Act, is to be taken as putforth by the plaintiff, the market value of the suit properties as on the date of institution of the suit should have been correctly and truly given. When the sale deeds in favour of the defendants 2 and 3 which obtained in the year 2005 in respect of both items of the suit property were quoted as Rs.4,95,000/- and Rs.6,58,000/- and certainly the same should have been raised more than to the tune of Rs.16,50,000/- in the year 2007.

7.The defendants also states that the market value of item No.1, which is having more extent than Item No.2 should be more than Rs.20,00,000/-, so it is evident that market value of the suit properties was inflated by the plaintiff to avoid the Court having pecuniary jurisdiction namely, the District Court. As the pecuniary jurisdiction to try the suit is a preliminary issue, the same is to be tried first and other issues cannot be tried along with the preliminary issue relating to jurisdiction of the Court to try the suit.

8.Therefore, the defendants were filed I.A.No.158 of 2010 for a prayer to try the issue of pecuniary jurisdiction of the Court viz., the Special Judge, Krishnagiri, to try the suit as preliminary issue and dispose the suit accordingly.

9.On receipt of the notice in the petition in I.A.No.158 of 2010, a counter affidavit has been filed by the plaintiff and denied the allegations set out in the affidavit in I.A.No.158 of 2010 in O.S.No.121 of 2007.

10.The plaintiff states that in fact for the reliefs to declare the documents dated 19.08.2005 and 05.10.2005 according to Section 25(d) of the Tamil Nadu Court Fees Act, Court fee to be paid only on the notional value and not on the value of the document, as this plaintiff is a stranger to the documents. Therefore, only Section 25(d) of Tamil Nadu Court Fees Act to be adopted and not under Section 40 of Tamil Nadu Court Fees Act. If the plaintiff is a party to those documents she has to pay the Court fee under Section 40 of Tamil Nadu Court Fees Act to cancel or set aside the documents. Stranger to the document can claim a relief of declaration of null and void under Section 25(d) of the Tamil Nadu Court Fees Act. Therefore, the Court fee already paid for the relief is correct under law. Supporting his case, the plaintiff has filed the judgment in a case of ***V.S.Jagadeesan v. Madarsaheb and others*** reported in ***2005 II MLJ 467***.

11.The plaintiff also states that she has valued the relief of declaration of her title and for injunction under Section 25(d) of the Tamil Nadu Court Fees Act, so valued the properties as she estimated the value, thus, she valued it at Rs.3,00,000/- and on the half of the value of Rs.1,50,000/- the Court fee has been paid. This aspect of valuation was proper and the Court has also satisfied the valuation in the year 2007 and the suit was taken on file. Therefore, the matter of determination of Court fees is between the Court and the plaintiff and being the defendant in the suit they have no right to question the same through their written statement or to influence the Court in this aspect. Court fees has to be determined in the light of the allegations contained in plaint, and its decision cannot be influenced either by the plea in written statement or by the final decision of the suit on merit. To support his case, the plaintiff has also produced the judgment reported in ***1996 II CTC 523***. Therefore, the plaintiff states that the suit's valuation and payment of the Court fee are correct and hence the pecuniary jurisdiction is also correct. Therefore, the plaintiff prays the Court for dismissal of the petition in I.A.No.158 of 2010.

12.Considering both side cases, the learned Additional Special

Judge, Krishnagiri was pleased to dismiss the I.A.No.158 of 2010 in O.S.No.121 of 2007, on 08.08.2011, on the ground that the Court Fee payable is to be decided on the basis of the plaint averments and not on the basis of reliefs found in the plaint. The learned Judge also states that the plaintiff is not a party to the sale deeds which are sought to be declared as null and void. Relief of declaration is sought and there is no prayer for cancellation of the sale deeds. Therefore, the suit valued under Section 25(d) of the Tamil Nadu Court Fees Act, is in order, challenging the said order, the present Civil Revision Petition has been filed before this Court.

13.I heard Mr.P.Mani, learned counsel appearing for the petitioners and Mr.J.Hariharan for Mr.V.Nicholas, learned counsel appearing for the 1st respondent and Mr.S.P.Yuvankumar, learned counsel appearing for the 2nd respondent and perused all the material available on records.

14.It is the case of the defendants 2 and 3 that the suit has been filed by the plaintiff for declaration of title, permanent injunction and also for declaration the sale deeds dated 19.08.2005 and 05.10.2005 as null and void. The plaintiff filed the suit for the prayer as follows:

"(a)by declaring the title of the plaintiff to the suit properties;

(b)by granting permanent injunction against the 2nd and 3rd defendants, restraining them from in any way alienating or creating any documents in favour of 3rd parties;

(c)by declaring the sale deed dated 19.08.2005 executed by the first defendant in favour of 2nd defendant is null and void;

(d)by declaring the sale deed dated 05.10.2005 created by the 2nd defendant in favour of the 3rd defendant is null and void;

(e)by awarding the costs of the suit to the plaintiff;

(f)by granting such other reliefs as the Honourable court may deems just and fit under the circumstances of the case and render justice."

15.For the above prayer, the plaintiff has valued the item No.1 of the suit property at Rs.1,60,000/- and item No.2 of the suit property at Rs.1,40,000/- and paid the Court fees as per the total valuation of Rs.3,00,000/- under Section 25(d) of the Act and the Court has taken the suit on file and issued summons to the defendants.

16.On receipt of the summons, the defendants were filed their written statement in which the valuation of the suit property for the pecuniary jurisdiction of the Court namely, the Additional Special Court, Krishnagiri, is not proper. In para-8 of the written statement, it is stated as follows:-

> "8.The allegations in Para 8 of the plaint are false and incorrect. It is false to say that the 2nd defendant and others misguided the 1st defendant and made the 1st defendant as addict of drinking and the 2nd defendant somehow obtained a sale deed on 19.08.2005 from the 1st defendant for 1000 sq. ft. in the suit properties. The 1st defendant executed the sale deed in favour of 2nd defendant for valuable consideration amount of Rs.4,95,000/- in respect of 1800 sq. ft. of lands in S.No.697 within specified boundaries i.e. North of Chennai Road, West of the site and house of C.Periasami, South of the lands retained by 1st defendant and East of the shop of Thakkali Arumugam. The house site purchased by the 1st defendant is entirely different from the suit property described in item No.2 of plaint schedule. The item No.2 of plaint schedule lies opposite to SETC Shed. But what defendants 2 and 3 purchased lie west of the properties of C.Periasamy and Umapathi property. So the plaintiff has

no cause of action to question the sale deeds contained by Defendants 2 and 3 because she claim title under the gift deed for different property. If at all the sales in favour of defendants 2 and 3 are to be questioned it is for the 1st defendant to question the same. The 3rd defendant purchased 6580 sq. ft. of land in S.No.697 within the following boundaries for a valuable consideration amount of Rs.6,58,000/- under a registered sale deed dated 05.10.2005 executed by 1st defendant. The boundaries are North of site of the 2nd defendant and site and house of C.Periasami; West of the site of Dr.Umapathi; South of Road; East of the site and mandi of Thakkali Arumugam and site of K.P.K. Giddu Bai. The property purchased by the 3rd defendant does not lie in the boundaries mentioned in the suit properties. So the plaintiff cannot question the sale deeds executed by the 1st defendant in favour of defendants 2 and 3. As the 1st defendant was the absolute owner of properties conveyed in favour of defendants 2 and 3 and the plaintiff has no title or interest in the same, the plaintiff has no locus standi to question the sale deeds executed by 1st defendant in favour of defendants 2 and 3.

As the suit properties did not belong to Thamba @ Duraisamy the plaintiff cannot set up any right through her divorced husband and further 1st defendant got the properties sold in favour of defendants 2 and 3 from Adhilakshmi, it is for the 1st defendant to question the sale deeds in favour of defendants 2 and 3 if at all there are any grounds existing."

17.Therefore, it is made clear that this petitioners/defendants were raised the pecuniary jurisdiction of the Court in the written statement itself and the plaintiff's valuation of the suit schedule of property is very low and the Court fee should have been paid as per Section 40(1) of the Tamilnadu per Act on such amounts. The valuation under Section 25(d) of the Tamilnadu as per Act is not sustainable in law.

18.The defendants also states that when the sale deed itself was mentioned as Rs.4,95,000/- and Rs.6,58,000/-, by totally Rs.11,53,000/- in the year 2007 itself. When the suit property was valued in the year 2007 itself at the rate of Rs.16,50,000/-, the market value of item No.1 which is having more extent than item No.2

should be more than Rs.20,00,000/-. Therefore, it comes by totally Rs.36,50,000/-, but the plaintiff is valued the suit property at Rs.3,00,000/- for both the item of suit schedule of properties.

19.Considering both side cases, the learned Judge was dismissed the said application in I.A.No.158 of 2010 in O.S.No.121 of 2007 dated 08.08.2011, on the ground that the Court fee payable is to be decided on the basis of the plaint averments and not on the basis of reliefs found in the plaint. The learned Judge also states that the plaintiff is not a party to the sale deeds, which are sought to be declaration as null and void. The learned Judge further states that the relief of declaration is sought and there is no prayer for cancellation of the sale deeds. Therefore, the learned Judge says that the suit schedule of property valued under Section 25(d) of the Tamil Nadu Court Fee Act is in order and considering the judgment passed by this Court in a case of ***A.Manivannan and others v. Sivaraj and others*** reported in ***(2001) 3 MLJ 403***, the learned Judge dismissed the said application. Challenging the said order, the petitioner has filed the present Civil Revision Petition before this Court.

20.The order of the learned Judge that the Court fee is payable only on the basis of plaint averment and not on the basis of relief found in the plaint. This statement is totally unknown to law, since there are so many averments can be made in the plaint, but the Court should go into only the prayer of the particular suit and the Court fee is to be valued only based on the plaint.

21.Admittedly, the plaintiff in the suit in O.S.No.121 of 2007 sought the first prayer for declaration, declaring the title of the plaintiff to the suit properties. When the plaintiff sought for declaration of the title of the plaintiff, the must value of the suit properties and the value of the property on the filing date. As per the sale deeds, the market value of the property was mentioned as Rs.10,26,000/- for the 2nd defendant property and the 3rd defendant property was valued at market rate of Rs.6,58,000/-. If the suit property was valued at Rs.10,26,000/- and Rs.6,58,000/- the plaintiff ought to have paid the Court fee as per Section 40(1) of the Tamil Nadu Court Fee Act and not under Section 25(d) of the Act, since the plaintiff made claim for declaration of the title of the plaintiff.

22.In my absolute view, the very valuation of the property in the suit and numbering of under value of the suit is totally wrong, since on the date of market value of the property which was comes around at Rs.16,50,000/- and the sale deed of the 2^{nd} defendant is Rs.10,26,000/- and the plaintiff ought to have valued the suit at the market value prevailing on the date of filing of the suit.

23.Apart from this, the judgment cited by the learned Judge in a case of ***A.Manivannan and others v. Sivaraj and others*** reported in ***(2001) 3 MLJ 403***, the learned Judge of this Court held that as per Order 14 Rule 2 CPC, the Court can give only two kinds of issues as preliminary issues and that too only if they are issues of law. Order 14 Rule 2 of CPC has clearly stated as follows:

"[**2.Court to pronounce judgment on all issues.-**

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment 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.]"

24.In Order 14 Rule 2 CPC, says framing of issues in Order 14 Rule 1(4)(a) says two kinds of issues one is issue of fact and another is issue of law. As per Order 14 Rule 1 of CPC, the Court can decide the matter by framing preliminary issues in regard to the maintainability or otherwise of the application. When the Order 14(2)(a) gives power to the Court to decide the jurisdiction of the Court, the Court can raise the preliminary issue in respect of the pecuniary jurisdiction, if the plaintiff has challenged only for the declaration of the sale deeds as null and void, he can very well to value the suit under Section 25(d), since the plaintiffs are not the signatory of the said sale deeds and they have also asked for cancellation of the sale. But, the plaintiff sought for the relief of declaration of title, then she must have valued the property under Section 40 of Tamil Nadu Court Fee and Suit Valuation Act 1955.

25.The learned counsel appearing for the petitioners has produced the following Judgments:

(1) ***M/s.Siddha Construction (P) Ltd. Rep. by its Power Agent, Anjay Sharma, No.32 Guruswamy Road, Chetpet, Chennai 600 031 v. M.Shanmugam & 5 others*** reported in 2006-4-L.W.176, has stated as follows:

> "Tamil Nadu Court Fees and Suits Valuation Act, Sections 25(d), 40, C.P.C., Order 7, Rule 11 – Suit was filed by Respondents 1 to 4 to declare that the sale deed executed by the 1st defendant (5th respondent herein) to and in favour of the 3rd defendant (Revision Petitioner) is null and void and also for consequential injunction – Third defendant filed I.A. under Order 7 Rule 11 to adjudicate on the two issues of limitation and valuation as preliminary issues and to dismiss the suit – I.A. was dismissed and this CRP under Art.227 was filed against the said order-Held: plaint contains averment that the plaintiffs are not parties to the sale deed, which is to be declared as null and void, and the plaintiff valued the suit for the purpose of the Court Fee under Sec.25(d) of the Tamil Nadu Court Fees Act – Trial court is right in coming to the conclusion that the suit has been rightly valued and the trial court has

pecuniary jurisdiction – Plaintiffs are not signatories to the impugned sale deed and they have also not asked for cancellation of the same – Therefore the plaint cannot be rejected even before conducting a trial on the issues – CRP under Art.227 dismissed."

(2) ***Kousalya Ramakrishnan v. B.S.Padmavathy & others*** reported in ***2014-1-L.W.322***, it is stated as follows:

"Challenge to check slip, for court fee payable – Suit for declaration of title – Petitioner, not a party to cancellation deed, need not pay court fee under Section 40(1) but section 25(d) only."

26.Per contra, the learned counsel appearing for the petitioner has produced two judgments in respect of Division Bench in ***S.N.S.Sukumaran v. C.Thangamuthu*** reported in ***2012 (5) CTC 705***, it is stated as follows:

"31. After giving our anxious consideration to the matter and having regard to the law discussed hereinabove, the reference is answered as under:-

(1) The Tamil Nadu Court Fees and Suits Valuation Act,

1955 (Section 12) enacted by the State Legislature on a subject covered by the Concurrent List, albeit inconsistent with the provisions of the Code of Civil Procedure (Order XIV, Rule 2) and being in compliance with the requirement of Article 254 of the Constitution of India, having been given assent by the President of India, shall prevail over the provisions of the Code of Civil Procedure.

(2) When a defendant comes forward with a case pleaded in the written statement questioning the correctness of the valuation of the suit property and payment of court fee and asks the Court, by an application, to decide it first before deciding the suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before deciding the suit on merits.

(3) However, before proceeding to decide the objection with regard to valuation and court fee as provided under Section 12(2) of the State Act, the Court shall prima facie satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the defendant has substance.

(4) Such objection with regard to improper valuation of the suit and insufficiency of court fee shall be entertained by the Court only before the hearing of the suit on merits commences and witnesses are examined. Section 12(2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merits of the case.

(5) Exercise of right by the defendant as contained in Section 12(2) of the Act must be bona fide and not with an ulterior motive of dragging the suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such application, and in the event the Court finds that the defendant is not diligent or co-operating with the Court in the disposal of such objection expeditiously, then the Court shall proceed with the hearing of the suit on merits and decide all issues, including the one relating to the valuation of the suit and the adequacy or otherwise of court fee, together."

(2)***V.R.Gopalakrishnan v. Andiammal*** reported in ***2002 2 CTC 513***, it is stated as follows:

"Code of Civil Procedure, 1908, Order 14, Rule 2 – Preliminary issue – Tamil Nadu Court Fees and Suits Valuation Act, 1955, Section 12(2) – 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 -

13. There is also a provision in the Tamil Nadu Court Fees and Suits Valuation Act, 1955 viz., Section-12 which lays down that the Court shall decide on the materials and allegations available in the plaint, the proper court fee payable thereon. Section 12(2) of the Act reads thus:-

"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."

According to the above provision, all questions arising as such pleas shall be heard and hence no discretion is vested with the Court. If on the basis of the materials and allegations contained in the plaint, the Court comes to the conclusion that the suit has not been properly valued or that the fee paid is not sufficient, the Court can call upon the plaintiff to amend the plaint and also pay the deficit court fee. If the plaintiff fails to do that, the Court shall reject the plaint and pass appropriate orders. Once the Court decides that the subject matter of the suit has not been properly valued or that the court fee paid is not sufficient, the Court has no option except to fix a date and call upon the plaintiff to comply the defect viz., by amending the plaint and also by paying necessary court fee. It has to be noticed that in this Section, the word "shall" has been employed as against the word "may" that occurs in Order-14 Rule-2 CPC. Of course, it is the settled legal position that the question of valuation must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits and further all the material allegations contained in the plaint should be construed and taken as a whole. It is the substance and not the form matters (vide Neelavathi v. N.Natarajan, 980 SC 691 and Tara Devi v. Thakur Radha Krishna Maharaj, AIR 1987 SC 2085.

14.There appears to be some conflict between the provisions in C.P.C. (ie) Order 14 Rule 2 when read with Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act with reference to deciding the pecuniary jurisdiction of the Court. Suppose in a given case, the defendant comes forward with an application requesting the court to decide an issue relating to valuation of the suit property or the payment of court fee as a preliminary issue, the Court may applying the provision Order 14 Rule 2, decide to consider along with other issues and not as a preliminary issue. Then the defendant may file an application to consider the issue as per the provisions of Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, then the Court will have no discretion and it has to consider the same. The Tamil Nadu Court Fees and Suits Valuation Act is a substantial law while C.P.C is a procedural law. The substantial law will prevail over the procedural code and consequently, it follows whenever the defendant files an application, requesting the court to decide the issue of valuation of the suit property or the payment of court fee and all questions arising on such pleas as a preliminary issue, the Court has to necessarily consider as per the provisions of Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act. Not in all cases where the defendant has disputed in the written statement, the valuation of the suit property or contended that the suit has not been properly valued, the court has to consider it as a preliminary issue. Only where the defendant makes an application, the Court is bound to consider under Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act.

19. To sum up, the legal position is:

{a) As per the amended Order-14 Rule-2, though a case may be capable of being disposed of on a preliminary issue, the Court is given a mandate to try all the issues together.

{b} However, an exception is made to this mandate by giving discretion to try an issue as to jurisdiction or a statutory bar to the suit as a preliminary issue.

{c} In a given case, the Court may decline to try even an issue relating to its jurisdiction or to a statutory bar to the suit as a preliminary issue if it considers expedient to do so.

{d} The discretion vested with the court has to be exercised judiciously.

{e} The parties will be at liberty to adduce such evidence as they may desire only in relation to that issue.

{f} Ordinarily, no revision under Section 151 CPC will be entertained against the order of the trial court once such a discretion is used. But however, it is not an absolute one and in exceptional cases, the Court can entertain Revision and interfere.

{g} When the defendant comes forward with an application disputing the valuation of the property or contends that the suit has not been properly valued, the Court has to consider the same. Such consideration shall be as per Section 12 (2) of the Tamil Court Fees and Suits Valuation Act and the Court cannot choose to decide that issue along with other issues. This provision viz., Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation A ct 1955, which is a substantial law shall prevail over Order 14 Rule 2 CPC which is a procedural law.

{h} In the course of considering a preliminary issue, the Court is empowered to record such evidence as parties desire to let in only in relation to that issue/aspect.

{i} The allegations in the plaint have to be taken as a basis and the claim must be read as a whole. The accepted Rule is that substance alone matters and not the form.

{j} When a suit is filed seeking a decree to set aside the sale, Court Fee has to be paid on the market value of the property on the date of filing of the suit.

{k} But however, if a plea is raised that the signature was obtained in a blank paper or that some misrepresentation was made and thereby fraud was played on the executor, then Court fee need not be paid for setting aside the same."

27.As per the above judgment, it is made clear that the defendant comes forward with an application disputing the valuation of the property or contends that the suit has not been properly valued, the Court has to consider the suit value first and decide the issue as a preliminary issue and the Court cannot seize the issue along with the other issues, since the provision under Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, which is a substantial law shall prevail over Order 14 Rule 2, C.P.C., which is a procedural law.

28.Apart from this, the learned Judge of this Court states that in the course of considering a preliminary issue, the Court is empowered to record such evidence as parties desire to let in only in relation to that issue/aspect alone.

29.The Hon'ble Division Bench of this Court in the judgment cited in ***2012 (5) CTC 705*** very clearly held that when a defendant comes forward with a case pleaded in the written statement questioning the correctness of the valuation of the suit property and payment of Court-fee and asks the Court, by an application, to decide it first before deciding the Suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before deciding the Suit on merits.

30.Therefore, both the judgments rendered by this Court and by the Hon'ble Division Bench as well as the learned Single Judge very clearly held that the Court shall see prima facie case and satisfy itself on perusal of the pleadings of the parties in respect of objections made by with regard to the valuation of the Court fee and decide the same first and thereafter gone into merit of the case, but ignoring the above two judgments rendered by this Court, the learned Additional Special Judge, Krishnagiri had simply quoting the judgment rendered by the learned Single Judge reported in ***(2001) 3 MLJ 403*** and dismiss the application.

31.The order of the learned Judge is totally wrong, therefore, the Court has to decide the issue about valuation of the suit property or payment of Court fee as preliminary issue, and decide the other issues later on.

32.In the said circumstances, the order of the learned Judge dismissing the application in I.A.No.158 of 2010, is totally against the judgments referred above, when the defendant has filed the petition in I.A.No.158 of 2010, it is bounded duty of the Court as per Section 12(2) of the Act, the Court should heard the pecuniary jurisdiction of the Court as preliminary issue and thereafter to decide the case on merits. Therefore, in the above circumstances, this Court warranting interference in the order passed in I.A.No.158 of 2010 and the same is liable to be set aside.

33.In the result:

(a)this civil revision petition is allowed by setting aside the order passed in I.A.No.158 of 2010 in O.S.No.121 of 2007, dated 08.08.2011, on the file of the learned Additional Special Court, Krishnagiri;

(b)the learned Special Judge, Krishnagiri is hereby directed to try the issue of pecuniary jurisdiction of the Court as preliminary issue and thereafter to dispose the suit;

(c) the learned Judge is directed to decide the preliminary issue within a period of one month from the date of receipt of a copy of this order, by giving notice to both the parties. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2016

Note:Issue order copy on 03.08.2017
Internet:Yes
Index:Yes

vs

To

The Additional Special Court,
Krishnagiri.

M.V.MURALIDARAN, J.

vs

Pre-Delivery order made in
CRP(PD)No.4727 of 2011
and
M.P.No.1 of 2011

21.12.2016