

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2016

Pronounced on : 21.10.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

**CRP(PD)No.1117 of 2012 and
M.P.No.1 of 2012 and
Caveat No.138 of 2012**

1.S.Settu

2.S.Ramani

3.Lakshmi

... Petitioners

Versus

1.Krishnan

2.P.Sundaram

3.Sellammal

4.Rathinam

5.N.Arun Chakravarthi Guptha

... Respondents

(Respondents 2 to 5 are not necessary

Parties in above revision, hence the

Respondents 2 to 5 are given up)

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Final Orders dated 22.12.2011 passed in I.A.No.679 of 2011 in O.S.No.322 of 2006 on the file of the 1st Additional Subordinate Judge, Salem.

For Petitioners: Mr.R.Nalliyappan

For Respondents: Mr.Kalyanaraman (for R1)
R2 to R5 (Given up)

ORDER

The Civil Revision Petition has been filed against the Fair and Final Orders dated 22.12.2011 passed in I.A.No.679 of 2011 in O.S.No.322 of 2006 on the file of the 1st Additional Subordinate Judge, Salem.

2.The case of the petitioners is that the petitioners are the defendants 1 to 3 in O.S.No.322 of 2006 on the file of the 1st Additional Subordinate Judge, Salem.

3.Originally, the suit was filed by the 1st respondent / plaintiff against this petitioners / defendants for declaration and permanent injunction in respect of the 1st Item of the suit property and also for declaration and possession in respect of the 2nd Item of the suit property and for injunction and damages.

4. These petitioners / defendants 1 to 3 also filed their written statement stating that the valuation of the plaint in respect of 2nd Item of property is not proper and the 2nd Item has to be properly valued and if so the Court will not have jurisdiction to entertain the suit. Though an issue was raised regarding the Court fee and the valuation of the suit property, the parties proceeded with the trial and let in evidence.

5. After completion of evidence, when the above suit was posted for arguments, these petitioners / defendants 1 to 3 filed I.A.No.467 of 2009 under Order 7 Rules 10 and 11 of C.P.C for returning the plaint on the ground that the suit was not properly valued and even according to the admission by the plaintiff, the valuation of the 2nd Item of suit property exceeds Rs.20,00,000/- and therefore the Subordinate Court has no jurisdiction to entertain the suit and that application was rejected by the Lower Court on the ground that no proof has been filed by the revision petitioners / defendants 1 to 3 to prove that the 2nd Item of property is worth more than Rs.10,00,000/- and the petition was filed belatedly. Aggrieved by the same, this revision is filed against the said dismissal order in I.A.No.467 of 2009 in O.S.No.322 of 2006 dated 30.06.2010, the

petitioners / defendants 1 to 3 has approached this Court in filing CRP(PD)No.3123 of 2010 for setting aside the said petition.

6.The case of the petitioners are that when the plaintiff was examined he admitted in the cross examination that the second item of suit property will fetch a price of Rs.100/- per sq. ft. and it is not an agricultural land and building are there and the total extent is 25 cents and the total extent of property will be around 10,000/- sq. ft. and the property may fetch a value of more than Rs.10,00,000/- and even in the year 2006 it could have been sold for more than Rs.20,00,000/- and now it is not correct to state that the valuation of the property has come down. Relying upon the said admission of the plaintiff in cross examination, the learned counsel for the revision petitioner submitted that even according to the plaintiff, the second item is worth more than Rs.20,00,000/- and the suit was filed before Sub Court which is having jurisdiction only upto Rs.10,00,000/- and therefore, the lower Court ought to have returned the plaint to be presented before appropriate Court as under Order 7, Rules 10 and 11 C.P.C.

7.The case of the respondents / plaintiffs is that the petitioners have not raised this issue before evidence is recorded and also has

not pressed this issue regarding value of the suit before trial is commenced to try the same as a preliminary issue and at this stage no right to file this application indirectly raising the issue of value of the suit and pecuniary jurisdiction. Considering the case, this Court passed the following order dated 15.09.2010 is as follows:-

“...Considering the fact that the issue has to be framed regarding the pecuniary jurisdiction of the Court, I direct the lower court to frame the issue regarding the pecuniary jurisdiction of the Court, in the light of the averment made in the written statement and the evidence of PW1 and if the lower court comes to the conclusion that the Court has no jurisdiction to decide the issue, the lower court is directed to return the plaint to be presented before the proper court to enable the appropriate court to proceed further in this matter. If the lower court comes to the finding in favour of the plaintiff that the court has jurisdiction to entertain the suit then the lower court is at liberty to proceed with the other issues on merit and pass appropriate orders.

5. With this observation, the Civil Revision Petition is disposed of. No costs. Consequently, connected M.P.No.1 of 2010 is closed.”

8. Pursuant to the above order passed in the said CRP(PD).No.3123 of 2010 dated 15.09.2010, the petitioners / defendants has filed an application in I.A.No.679 of 2011 in

O.S.No.322 of 2006 that the trial Court viz., the 1st Additional Subordinate Judge, Salem ought to have order first of all to frame the preliminary issue regarding the valuation and pecuniary jurisdiction point and then pass further proceedings regarding the other issues. Since this Court has already passed the order in the above civil revision petition directing the trial Court to frame the issue regarding the pecuniary jurisdiction of the Court, in the light of the averment made in the written statement and the evidence of PW1 and if the lower Court comes to the conclusion that the Court has no jurisdiction to decide the issue, the lower Court is directed to return the plaint to be presented before the proper court to enable the appropriate court to proceed further in this matter.

9.Counter also filed by the respondent / plaintiff denying the above allegations of pecuniary jurisdiction of the Court and sought for the dismissal of the I.A.No.679 of 2011.

10.Considering both side arguments, the learned 1st Additional Subordinate Judge, Salem has dismissed the above application on 22.12.2011 on the ground that on perusal of the papers and after receipt of the order of this Court, the trial Court has framed additional issue on 28.10.2010 is as follows:

"3."Whether this court has pecuniary jurisdiction to entertain this suit" and posted the case for evidence on this issue. Since this court has already framed additional issue as per the directions of High Court this petition to frame additional issue as per the Order of High Court in C.R.P. is misconceived."

11.The learned Judge has also states that however, this Court finds that the additional issue framed is not proper. So the said additional issue is recast as follows:

"Whether the suit has been properly valued for the purpose of court fees and Jurisdiction?"

12.Therefore, the trial Court cannot come to the conclusion that this Court has not directed the trial Court to frame additional issue regarding valuation and pecuniary jurisdiction and try the same as preliminary issue. But this Court has directed the trial Court to frame additional issue regarding the point and decide all issues and if the Court finds that the trial Court has no pecuniary jurisdiction to return the plaint for presentation to proper court. Therefore, the learned Judge states that the evidence has been let in all issues and arguments were also advanced on all issues the question of trying any

issue as Preliminary Issue does not arise. Hence, the learned Judge has dismissed the application by stating that the additional issue cannot be tried as Preliminary Issue.

13. Heard Mr.R.Nalliyappan, learned counsel appearing for the petitioners and Mr.Kalyanaraman, learned counsel appearing for the 1st respondent and perused the records.

14. On perusal of the order of this Court in CRP(PD)No.3123 of 2010 dated 15.09.2010, this Court very clearly held that directed the lower Court to frame the issue regarding the pecuniary jurisdiction of the Court, in the light of the averment made in the written statement and the evidence of PW1 and if the lower Court comes to the conclusion that the Court has no jurisdiction to decide the issue, the lower Court is directed to return the plaint to be presented before the proper Court to enable the appropriate Court to proceed further. Therefore, the trial Court viz., the 1st Additional Subordinate Judge, Salem has to decide the issue in respect of the pecuniary jurisdiction of the Court for the averment made in the written statement and the evidence of PW1 and thereafter, only to proceed the case. But, the learned 1st Additional Subordinate Judge, Salem has misconstrued and rejected the application by saying that the evidence has been let in all

issues and arguments were also advanced on all issues the questions of trying any issue as Preliminary Issue does not arise, so the additional issue is totally against the order of this Court in CRP(PD)No.3123 of 2010 dated 15.09.2010.

15. When this Court has directed to consider the petitioners' case in respect of the pecuniary jurisdiction of the Court, if the same is decided first, definitely it would be proper to the Court below to decide the entire issue. Apart from this, even otherwise no direction is given by this Court to decide this issue of pecuniary jurisdiction, it is the bounden duty of the Courts below that whenever an issue of pecuniary jurisdiction is arose, it should be decided first and thereafter only gone in to the other issue. But, the learned Judge has failed in his duty to consider the pecuniary jurisdiction first and simply dismissed the application, since if the Trial Court has considered the pecuniary jurisdiction first, the multiple proceedings will be avoided. Therefore, the very dismissal of Interlocutory Application filed by the petitioners in I.A.No.679 of 2011 to be set aside.

16. Accordingly, I am inclined to pass the following orders:-

(a) this civil revision petition is allowed by setting aside the order passed in I.A.No.679 of 2011 in O.S.No.322 of 2006 dated 22.12.2011 on the file of the 1st Additional Subordinate Judge, Salem.

(b) Further, the 1st Additional Subordinate Judge, Salem is hereby directed to try the issue regarding the pecuniary jurisdiction of the Court as Preliminary Issue and thereafter to proceed the case as per the issue decided in the issue of pecuniary jurisdiction.

(c) the trial Court is directed to complete the said exercise within a period of one month from the date of receipt of a copy of this order and both the parties viz. the plaintiffs and the defendants are hereby directed to co-operate for early disposal of the issue in respect of pecuniary jurisdiction.

17. Accordingly, the civil revision petition is allowed. No cost.

Consequently, connected miscellaneous petitions are closed.

21.10.2016

vs

Index:Yes.

Internet:Yes.

To

The 1st Additional Subordinate Judge,
Salem.

M.V.MURALIDARAN,J.

VS

**Pre-Delivery Order made in
CRP(PD)No.1117 of 2012 and
M.P.No.1 of 2012 and
Caveat No.138 of 2012**

21.10.2016