



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRP (MD) No.2774 of 2015

1.Minor.R.Prabhakaran
2.Minor. R.Sudhakaran
Both rep. through Guardian
Sarithadevi

.. Petitioners/Plaintiffs

Vs.

1.G.Rajagopal
2.Rajalakshmi
3.Rajeshkannan
4.Minor.Nagulan
rep. through Guardian & Father
Rajeshkannan

.. Respondents/Defendants

Prayer: This Civil Revision Petition is filed under Section 227 of the Constitution of India, praying to direct the Principal District Munsif, Srivilliputhur to number the unnumbered suit bearing A.No.8947 filed on 04.12.2015.

For Petitioners : Mr.M.Vijayarathinam

O R D E R

Questioning the order of return dated 05.12.2015 made by the learned Principal District Munsif, Srivilliputhur in an unnumbered original suit, this revision petition is filed by the petitioners, who are the plaintiffs in the suit after invoking the provisions of Article 227 of Constitution of India. The petitioners are the daughters of the first respondent. They have filed the above said unnumbered suit through their mother Sarithadevi as a guardian, seeking the following relieves:

- "1. to declare that the plaintiffs are the exclusive absolute owners of the suit property and recovery and vacation of possession,
2. permanent injunction as against the defendants not to make any encumbrance in respect of the suit property,
3. to declare that the sale deed dated 12.09.2013 executed by the first defendant in favour of the second defendant not binding upon the plaintiffs, and
4. to declare that the will dated 22.07.2015 executed in favour of the fourth defendant by late Krishnasamy is not binding upon the plaintiffs and



also for cost."

2. It is significant to note here that the plaintiffs have valued the relief sought for at Rs.83,000/-in total and paid the court fee under Section 25A,25D and 27C of the Tamil Nadu Court Fee and Suits Valuation Act. The learned Principal District Munsif while scrutinizing the suit had returned the plaint with the following three queries:

"1. as per the will dated 09.02.2009 dated will, it will come in to force only after the demise of the husband of Dhanalakshmi, i.e., Krishnasamy, date of death 08.08.2015. If so, how plaintiff could question the 22.07.2015 dated will, which is executed by Dhanalakshmi's husband Krishnasamy. Hence, how the plaintiffs can seek declaration against the defendant in respect of 09.02.2009 dated will and how this suit is maintainable.

2. If at all the suit is represented, for the same relief, the court fee has to be paid on the market value of the suit property as per Section 7 of Tamil Nadu Court Fee Act.

3. How the plaintiff has valued the suit for Rs.40,000/- for court fee to be explained."

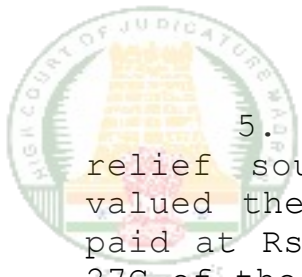
3. By way of representation of the plaint, the plaintiffs have made the following endorsements. The learned Principal District Munsif had once again on the next day had returned the plaint in the following queries;

"1. Plaint is once again returned for non compliance of earlier second correction.

2. Admittedly, the suit properties are not ryotwari lands, therefore Section 7(2) g of TNCF & SV Act applies. Therefore court fee paid on the market value. What is mean by market value is clean defines by Hon'ble High Court in Chidambara Suryarayee @ Karuppan and other Vs. Sankareeswari ECS 1417/2009 RBIJ, by which market value is valued which the property would fetch in the market on the presentation, plaint u/s 25(a) or 30 of the said Act, the plaintiff court fee to make his own estimation of the value and relief sought for in the plaint.

3. Hence plaintiff is directed to comply the direction as per the above ruling of 1988(2) MLJ437:1988(2)LW161- Pattammal vs. Kalyanasundaram (AIR 1973 SC 2384)."

4. Heard Ms.Vijayarathinam, learned counsel appearing for the petitioners. This Court has also perused the grounds of



5. As submitted by the learned counsel in respect of the relief sought for in the plaint, the plaintiffs have totally valued the suit at Rs.83,000/- and court fee seems to have been paid at Rs.6,227/- as per the provisions of Sections 25A, 25D and 27C of the Tamil Nadu Court Fee and Suits Valuation Act.

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6. As it appears from the return made by the learned Principal District Munsif and the answers submitted by the plaintiffs, the plaintiff was returned. This court finds that the question of court fee seems to have been satisfactorily repaid and if any deficit un-payment of court fee and that could be paid even during the time of trial also and therefore the learned Principal District Munsif may be directed to take the unnumbered suit on his file and after numbering the same and after inviting the written statements from the opposite parties, if it is necessary, necessary issues may be framed. In this connection, the cause of question of the jurisdiction as settled by several High Courts as well as the Hon'ble Apex Court, the mixed issue of question of fact and law and hence this Court is of a considered view that the impugned order of return dated 05.12.2015 may be set aside and this Civil Revision Petition may be disposed of with the direction to the learned Principal District Munsif, Srivilliputhur as above stated.

7. Accordingly, this Civil Revision Petition is disposed of after setting aside the order of return dated 05.12.2015 made by the learned Principal District Munsif, Srivilliputhur that the unnumbered plaint shall be taken on his file after numbering the same and after inviting the written statements from the opposite parties, necessary issues with regard to the court fee as well as the jurisdiction of the court may be framed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

PJL

To

The Principal District Munsif, Srivilliputhur.

Copy to : The Section Officer, ER Section,
Madurai Bench of Madras High Court,
Madurai.

GJM/SKS/RR/SARI-29.1.16-3p-3c