



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2542 of 2016 (PD)

and

C.M.P(MD)No.11958 of 2016

1.Vellaikannu @ Krishnasamy

2.Manisekar

.. Petitioners

Vs.

1.R.Ramanathan

2.Kaleeswari

3.Perumal

4.Mariappan

5.Tamilarasi

6.Ayyammal

.. Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Fair and Decretal Order made in I.A.No.584 of 2016 in O.S.No.407 of 2006 by the District Munsif Court, Palani, dated 19.09.2016.

For Petitioner : Mr.D.Venkatesh

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Fair and Decretal Order passed in I.A.No.584 of 2016 in O.S.No.407 of 2006 by the District Munsif Court, Palani, dated 19.09.2016.

2.The petitioners are the defendants 1 and 2 in O.S.No.407 of 2006. The first respondent is the plaintiff. The respondents 2 to 6 are the defendants 3 to 7. The first respondent filed O.S.No.407 of 2006 for declaration and injunction.

3.The petitioners 1 and 2 and respondents 2 to 6 have filed written statement on 10.01.2007 denying the various averments made in the plaint. In the written statement itself, the petitioners 1 and 2 and the respondents 2 to 6 have taken a plea that the first respondent has not properly valued the suit and not paid the proper court fee. Therefore, the petitioners 1 and 2 along with respondents 2 to 6 filed I.A.No.584 of 2016 to frame the issue



with regard to pecuniary jurisdiction of the trial Court as a preliminary issue and decide the same. The petitioners stated that the first respondent has admitted in the cross-examination that suit property is a vacant land and it is treated as vacant land only.

4.The first respondent filed counter affidavit and resisted the same and submitted that the suit property is a Punja land and he has correctly valued the suit property and paid the correct court fee and prayed for dismissal of the I.A.No.584 of 2016. The learned Judge considered the rival submissions and materials available on record, dismissed the application on the ground that after framing issues, the trial commenced, plaintiff side evidence was closed on 06.01.2015 and it is posted for defendant side evidence. From that date onwards, the petitioners have taken number of adjournments upto 07.09.2016 and have come out with the present application and held that the Court can deliver the judgment on all the issues and issue of pecuniary jurisdiction, ought to have taken before the commencement of the trial. Against that order, the present Civil Revision Petition has been filed.

5.The learned counsel for the petitioners submitted that the learned Judge erred in dismissing the application holding that the documents filed by the petitioners are not acceptable. The learned Judge failed to see that the first respondent admitted in his cross-examination that suit land is a vacant land. The learned Judge erred in holding that after trial commenced, the application filed is devoid of merits and it is discretion of the Court to decide the pecuniary jurisdiction as the preliminary issue.

6.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

7.The petitioners have raised a plea of lack of pecuniary jurisdiction to the trial Court. Before commencement of trial, they did not raise that such issue to be decided as a preliminary issue. After plaintiff/first respondent side evidence was closed and after taking number of adjournments for letting evidence on behalf of the petitioners/defendants 1 and 2, they filed I.A.No.584 of 2016 to decide the issue with regard to pecuniary jurisdiction as a preliminary issue. The petitioners claim that based on the admission of the first respondent in the cross-examination and two documents filed by them clearly shows that trial court has no pecuniary jurisdiction.

8.The learned Judge has considered the fact and dismissed the I.A.No.584 of 2016 on the ground that question of jurisdiction to be decided as a preliminary issue ought to have raised before the trial and court can deliver the judgment on all the issues after conclusion of the trial. Only a pure question of law can be decided as a preliminary issue. In the present case,



issue raised by the petitioner is mixed question of fact and law. Therefore, the learned Judge by giving cogent and valid reason dismissed the I.A.No.584 of 2016 and there is no illegality or irregularity warranting interference by this Court.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Deputy Registrar

/True Copy/

Sub Assistant Registrar

am

To

The District Munsif ,
Palani,

COPY TO:

THE SECTION OFFICER,
V.R.SECTION,
MADURAI BENCH OF MADRAS HIGH COURT
MADURAI

+1cc to Mr.D.VENKATESH Advocate Sr.No. 81101

JAM/03.01.2017/SS 3/3P-4C

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