



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 01.06.2016

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(MD)No.841 of 2016

and

C.M.P.(MD)No.4277 of 2016

S.Saibullahkhan

.. Petitioner

vs.

1.Hairunisha Beevi

2.Nagoor Gani

3.Gurumani Kandan

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 24.03.2016 made in I.A.No.259 of 2016 in O.S.No.26 of 2008 on the file of the Subordinate Court, Ramanathapuram and return the plaint for presentation in the Court.

For Petitioner :Mr.V.Sitharanjandas

For Respondents :Mr.J.Barathan

for R.1

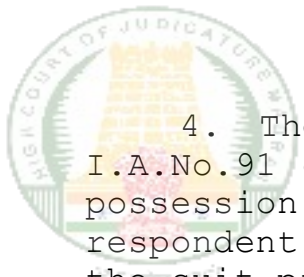
ORDER

Heard Mr.V.Sitharanjandas, learned Counsel appearing for the petitioner and Mr.J.Barathan, learned Counsel appearing for the first respondent.

2. This Civil Revision Petition is filed challenging the order passed by the learned Subordinate Judge, Ramanathapuram in I.A.No.259 of 2016 in O.S.No.26 of 2008. The third defendant in the suit is the petitioner in this Civil Revision Petition.

3. Facts in brief:

The first respondent had instituted the suit on 09.04.2008 against the respondents 2 and 3 herein for declaration and permanent injunction. At the time of institution of the suit, the suit property was valued for a sum of Rs.2,70,000/- and a sum of Rs.10,125/- was paid for declaratory relief and a sum of Rs.75.50/- was paid for bare injunction. The petitioner purchased the suit property on 29.09.2014 under a registered sale deed in Document No.4692/2014 for a sum of Rs.14,80,000/-.



4. The first respondent/plaintiff filed an application in I.A.No.91 of 2016 seeking amendment of the prayer for recovery of possession and after the amendment was allowed, the first respondent paid a sum of Rs.20,250/- towards the court fee valuing the suit property at Rs.2,70,000/-.

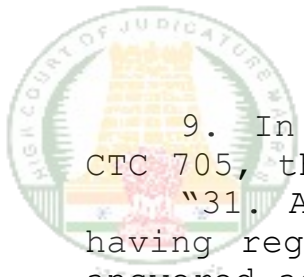
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5. The petitioner filed an application in I.A.No.259 of 2016 under Section 12(2) of Tamil Nadu Court Fees and Suit Valuation Act to value the suit property for a sum of Rs.14,80,000/- and for payment of court fee under Section 25(A) of the Tamil Nadu Court Fees Act by contending that the suit was amended in the year 2016 and on the date of amendment, the value of the suit was Rs.14,80,000/-. The application was resisted by the first respondent by filing a detailed counter.

6. The learned Subordinate Judge, Ramanathapuram dismissed the application holding that once amendment is allowed, it relates back to the date of institution of the suit, by relying on the judgment of the Honourable Supreme Court in *Sampath Kumar Vs. Ayyakannu and another* reported in AIR 2002 SC 3369 and it was also observed that the property valued for a sum of Rs.2,70,000/-, on the date of the suit, was not challenged by the defendants and only when the suit is posted for arguments, this application was filed belatedly.

7. Mr.V.Sitharanjandas, learned Counsel appearing for the petitioner would submit that though the first respondent filed the suit in the year 2008 for declaration and injunction, she filed the application for amendment seeking recovery of possession only in the year 2016. The petitioner was also impleaded as the third defendant only in the year 2015, after commencement of the trial in the suit. Since the prayer for recovery of possession was allowed in the year 2016, the plaintiff is liable to pay Court fee for the market value on the date of amendment of the prayer.

8. Mr.J.Barathan, learned Counsel appearing for the first respondent would submit that admittedly the petitioner is a *Lis pendens* purchaser and he purchased the property only in the year 2014 and he has no independent right to question the valuation of the suit property, that when the suit was instituted in the year 2008, the market value of the suit property was Rs.2,70,000/- and the same was not questioned by the original defendants 1 and 2. It is further contended that once the amendment application is allowed, it relates back to the institution of the suit and therefore, the petitioner cannot ask for payment of the court fee based on the market value in the year 2016. The learned Counsel further submitted that the application filed under Section 12(2) of Tamil Nadu Court Fees and Suit Valuation Act after commencement of trial itself is not maintainable in view of the decision of the Division Bench of this Court in *S.N.S.Sukumaran Vs. C.Thangamuthu* reported in 2012(5) CTC 705.



9. In S.N.S.Sukumaran Vs. C.Thangamuthu reported in 2012(5) CTC 705, the Division Bench of this Court has observed 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 :-

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(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.

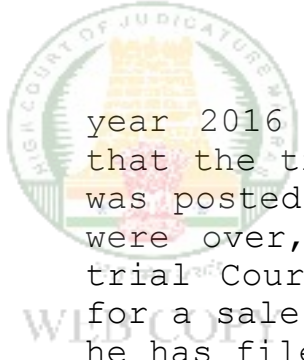
(2) When a defendant comes forward with a case pleaded in the written statement questioning the correctness of the valuation of the suit property and payment of court fee and asks the Court, by an application, to decide it first before deciding the suit on merits, then a duty is cast upon the Court under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

10. It is seen from the records that the first respondent filed the suit in the year 2008 valuing the suit property at Rs.2,70,000/-. Though the suit is filed for declaration and for consequential permanent injunction, the prayer was amended in the



year 2016 seeking recovery of possession. It is not in dispute that the trial in the suit was already commenced and when the suit was posted for arguments after the entire evidence of the parties were over, the present application came to be filed before the trial Court. The petitioner purchased the property on 29.09.2014 for a sale consideration of Rs.14,80,400/- and based on his sale, he has filed the present application.

11. The learned Subordinate Judge, Ramanathapuram dismissed the application holding that the amendment would relate back to the institution of the suit and the petitioner cannot ask to value the suit property on the date of amendment of the plaint. The Division Bench of this Court has categorically held that after commencement of the trial, the application under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act is not maintainable. Further it is not the case of the petitioner, the prayer for recovery of possession is barred by limitation.

12. In the light of the above facts, I do not find any irregularity or illegality in the order impugned in this Civil Revision Petition. In fine, this Civil Revision Petition is dismissed. Consequently, the connected Civil Miscellaneous Petition is also dismissed. However, no order as to costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

The Subordinate Judge, Ramanathapuram.

+One cc to Mr.V.Sitharanjandas, Advocate, SR.No.27288

+One cc to Mr.T.R.Jeyapalam, Advocate, SR.No.27269

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