

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

CMA.NO.1026/2017

Mr.Mani

..Appellant/Defendant

..Vs.

1.Mr.Loganathan
2.Mr.Shankaran
3.Mrs.Sakunthammal
4.Mr.Dhanasekaran
5.Mr.Shanmugam
6.Mrs.Kalavathy
7.Mrs.Dhara

..Respondents/Plaintiff

PRAYER:- Appeal filed under Order 43 Rule 1(u) of C.P.C, to set aside the Decree and Judgement passed in A.S.No.77 of 2012 on the file of Subordinate Judge, Poonamallee dated 30.10.2014, reversing the Decree and Judgement dated 29.06.2012 passed in O.S.No.951 of 2005 on the file of Principal District Munsif, Poonamallee.

For Appellant : Mr.P.R.Thiruneelakandan

For Respondents: Mr.S.N.Ravi Kumar

सत्यमेव जयते

JUDGEMENT

The suit was filed by the appellant seeking for declaration of a title of the 'B' schedule property and for consequential injunction. The said suit was valued at Rs.75,000/- [Rupees Seventy Five Thousand Only] and a Court Fee of Rs.5,625.50 [Rupees Five Thousand Six Hundred and Twenty Five and Paise Fifty Only] was paid under Section 25 (b) of The Tamil Nadu Court Fees and Suits Valuation Act, 1955 [TNCF & SV].

2.The defendant resisted the suit. One of the contentions raised by the defendant is that the Court Fee paid is not proper and the suit has not been properly valued. According to the defendant, the value of the suit property is about Rs.50,00,000/- [Rupees Fifty Lakhs Only].

3.An issue was framed by the learned Principal District Munsif regarding the valuation, as issue No.3, which read as follows:

"3.Whether the suit property has been properly valued by the plaintiffs?"

4.The said issue was answered by the learned Principal District Munsif as follows:

"So this court decides that court fee has not been paid on one half of the market value of the property because in the year 2002 itself the market value is Rs.1,40,000/- for 55 cents adjoining the 'B' schedule property. Hence the plaintiff has not properly valued the suit".

5.After recording this finding, the learned Principal District Munsif proceeded to discuss the merits of the case and dismissed the suit by answering the question of title also.

6.Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.77/2012 on the file of the Sub Court, Poonammallee.

7.The learned Subordinate Judge held that the suit has not been properly valued and proper Court fee has not been paid. It was also held that the learned Principal District Munsif was not right in proceeding with the suit on merits. Having recorded a finding that the suit has not been properly valued, the learned Principal District Munsif should have directed valuation of the property and directed the plaintiff to pay the proper Court Fee. Upon such valuation, if it is found that the value of the suit property is more than the pecuniary jurisdiction, the learned Principal District Munsif should have returned the plaint for presenting it before the proper Court. Since, the said procedure has not been adopted by the learned Principal District Munsif, the Appellate Court rightly set aside the order of the Trial Court and remitted the matter

to the District Munsif Court with a direction to the plaintiff to value the suit as per the value of the property prevailing on the date of the suit. If it is found that the value exceeds the pecuniary jurisdiction, the plaint shall be returned to the plaintiff to present it before the Court having jurisdiction. Aggrieved by the said remand order, the defendant has filed this appeal.

8.Mr.P.R.Thiruneelakandan, learned counsel appearing for the appellant would submit that the suit property being agricultural land, it can be valued by the plaintiffs at 30 times of the kist, as per Section 7 of the Tamil Nadu Court Fees and Suits Valuation Act, in that event, the learned District Munsif Court will have jurisdiction. According to him, the remand order is legally not sustainable. I do not think that the appellant is justified in raising such a plea. Having raised the plea of valuation before the Trial Court and having produced the documents to show that the value of the suit property is much more than the value given by the plaintiff in the plaint, the appellant cannot be allowed to go back on it and now contend that the suit property is an agricultural land and it is open to the plaintiff to have the suit valued at 30 times the kist payable.

9.Mr.P.R.Thiruneelakandan, learned counsel would rely upon Section 99 of the Code of Civil Procedure and contend that the Appellate Court shall not set aside a decree and remand a suit in appeal on the ground of any error, defect or illegality in any proceeding not affecting the merits of the case or the jurisdiction of the Court. Therefore, the Appellate Court was not right in setting aside the findings of the learned Principal District Munsif.

10.I do not think that this plea of the learned counsel could be countenanced. The question involved here is the valuation of the suit property. If on valuation, it is found that the value of the suit property exceeds the pecuniary jurisdiction of the Learned District Munsif, the findings rendered by the learned District Munsif on merits would be one without jurisdiction. Looked at from another angle, if the value of the suit property is found to be beyond the pecuniary jurisdiction of the learned District Munsif Court, the Court having original jurisdiction will be the Principal Sub Court which has now passed the order which is challenged in this appeal. Therefore, I do not think Section 99 could be invoked by the learned counsel. Hence, I do not find any error in the order of remand passed by the learned Subordinate Judge. Hence, the appeal is dismissed, confirming the order of remand. No

costs.

11.The learned counsel for the respondent would submit that he filed I.A.No.250/2013 seeking to produce additional documents before the Appellate Court and the same has not been disposed of by the Lower Appellate Court. Now that the suit itself has been remitted. It is open to the respondents/plaintiffs to seek return of those documents from the Appellate Court and produce them before the Trial Court, if he is legally entitled to do so. Considering the fact that the order of the remand has been made in 2014, the Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order and report such disposal to this Court.

s/d-
Assistant Registrar(CS.VI)

True Copy

Sub-Assistant Registrar

KP

To

1. The Subordinate Judge,
Poonamallee.
2. The Principal District Munsif Court,
The Principal District Judge,
Poonamallee.
3. The Section Officer
Judicial Section
High Court, Madras.
4. The Section Officer
V.R. Section officer
High Court, Madras.

+1 Cc to Mr. S. N. Ravikumar, advocate sr 53803.
+1 Cc to Mr.P.R. Thiruneelakandan, Advocate sr 53886

CMA.NO.1026/2017

SKV(CO)
sp(04/09/2017)