

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1677 of 2017
& C.M.P.No.7872 of 2017

Devendiran

.. Petitioner

Vs.

Chellamuthu

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 01.03.2017 made in I.A.No.2953 of 2014 in O.S.No.134 of 2014 on the file of the District Munsif Court, Tiruvallur.

For Petitioner : Mr. M.R. Khapali

For Respondent : Mr. V.Lakshminarayanan

ORDER

The Civil Revision Petition has been filed to set aside the fair and decretal order dated 01.03.2017 made in I.A.No.2953 of 2014 in O.S.No.134 of 2014 on the file of the District Munsif Court, Tiruvallur.

2. The petitioner is the defendant and the respondent is the plaintiff in O.S.No.134 of 2014 on the file of the District Munsif Court, Tiruvallur. The respondent filed a suit for declaration, mandatory injunction and to demolish the superstructures in ABCD put by the petitioner and for recovery of Rs.2,500/- as damages. The petitioner filed written statement on 29.11.2014 and is contesting the suit.

3. The petitioner/defendant filed an application I.A.No.2953 of 2014 under Order VII Rule 11 of CPC for a direction to the respondent/plaintiff to correct the valuation of the plaint and if the respondent fails to do so within the time granted by the Court, the plaint filed by the respondent may be rejected. It is also contended in the affidavit filed in support of the said application that the respondent had not valued the suit property properly and moreover the trial Court does not have the pecuniary jurisdiction to entertain the suit filed before it. In addition to it, the respondent also prayed for the trial Court to order payment of additional court fee, and failure on the part of the respondent to pay the Court fee so directed by the trial Court, the plaint may be rejected.

4. The respondent/plaintiff filed counter affidavit and opposed the said application. It is submitted that the suit valued only in respect of the encroached portion and the respondent had paid the necessary court fee. It also contended that if the Court finds the value of the suit is above the pecuniary jurisdiction of the Court before which, the suit was filed, then in such case the plaint has to be returned to re-present the same before the competent Court and it cannot be rejected on the above said grounds.

5. The learned Judge after considering the rival submissions made by the parties, and on perusing the materials available on records, and on relying upon the judgments cited by the learned counsel for the respondent, dismissed the application vide order dated 01.3.2017 holding that the value of the suit property and the court fee payable are not merely question of limitation, but it is a mixed question of law and fact. The learned judge also held that necessary issues will be framed with regard to valuation of suit / Court fee and said issue can be even decided as a preliminary issue in the suit.

6. Against the order of dismissal dated 01.03.2017 passed by the learned District Munsif, Thiruvallur, the petitioner has filed the Civil Revision Petition.

7. The learned counsel appearing for the petitioner in support of his contention, relied on the judgment of the Hon'ble Supreme Court in **A.Nawab John & Ors. Vs. V.N.Subramaniam** reported in [**2012 (4) CTC 206**].

8. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondents/caveator and perused the materials available on records.

9. Considering the submissions made by the learned counsel on both sides and the materials available on record, this Court is of the view that the learned District Munsif, Thiruvallur has rightly dismissed the application by giving cogent and valid reason. The learned Judge also held that necessary issues will be framed with regard to court fee payable and the said issue will be decided as preliminary issue in the suit. In view of the above reason given by

the learned Judge and the fact that payment of court fee will be decided as preliminary issue, there is no irregularity or infirmity in the order dated 01.03.2017 passed by the learned District Munsif, Thiruvallur, in I.A.No.2953 of 2014, warranting interference by this Court. Further, the judgment relied on by the petitioner is not applicable to the present case and hence, it cannot be relied on in this Civil Revision Petition.

10 In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2017

Speaking order/Non-speaking order
Index : Yes
ds/av

To:

The District Munsif Court,
Tiruvallur.

V.M.VELUMANI, J.

ds/av

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