

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.390 of 2015
& M.P.No.1 of 2015

S.Balakrishnan

.. Petitioner

Vs.

Kayalvizhi
rep. By the Power Agent,
T.S.Ragupathi,
(vide Court order dated 14.11.2017
made in C.M.P.No.6726 of 2016)

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 17.09.2014, made in I.A.No.816 of 2014 in O.S.No.81 of 2012 passed by the learned Subordinate Judge, Tiruchengode.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.N.Manokaran

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 17.09.2014, made in I.A.No.816 of 2014 in O.S.No.81 of 2012 passed by the learned Subordinate Judge, Tiruchengode.

2.The petitioner is second defendant and respondent is the plaintiff in O.S.No.81 of 2012 on the file of the Subordinate Court, Tiruchengode. Respondent filed the said suit for partition against the petitioner and eight others. The petitioner filed written statement and is contesting the suit. The respondent filed proof affidavit. The petitioner, after taking number of adjournments for cross examination of the respondent as PW1, filed present application I.A.No.816 of 2014 to decide the jurisdiction of the Court as the preliminary issue. According to the petitioner, he filed O.S.No.114 of 2007 on the file of the Principal District Judge, Namakkal against the first defendant and others for specific performance of agreement of sale and valued the suit at Rs.19,59,795/- for the extent of 14,517 sq.ft alone in the year 2007. When the respondent filed the suit in the year 2012, the value of the property is more than that of the value fixed by the petitioner. The respondent has not valued the suit properly. The question of jurisdiction is the question of law and it has to be decided as a preliminary issue.

3.The respondent filed counter affidavit and denied the averments made in the application. According to the respondent, the question of jurisdiction is only a mixed question of law and fact

and it is not a pure question of law. The question of jurisdiction has to be raised at the first hearing itself or immediately after framing of the issue. In the present case, after commencement of trial and after taking more than eight adjournments to cross examine PW1, the petitioner has filed present application only to drag on the proceedings. The earlier suit is collusive suit in order to deprive the respondent from enjoying her share.

4.The learned Judge, considering the averments in the affidavit, counter affidavit, Order XIV Rule 2 of C.P.C and judgments relied on by the learned counsel for the respondent, dismissed the application, holding that the respondent is not claiming share in the 'D' Schedule property and therefore, it is not necessary to decide the issue as a preliminary issue.

5.Against the said order dated 17.09.2014, made in I.A.No.816 of 2014, the present Civil Revision Petition is filed by the petitioner.

6.Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

7. **The point for consideration** in the present Civil Revision Petition is whether in the present case, the jurisdiction of the Court to entertain the suit is a pure question of law or mixed question of fact and law.

8. The petitioner filed application to decide the question of jurisdiction as a preliminary issue. According to the petitioner, the respondent has under valued the 'D' Schedule property. Since the value of the 'D' Schedule property is more than Rs.15,00,000/-, the Court has no pecuniary jurisdiction to entertain the suit. To substantiate this contention, the petitioner has referred to O.S.No.114 of 2007 on the file of the Principal District Judge, Namakkal, filed by him against the first defendant and others for specific performance of agreement of sale and valued the schedule of the present property as Rs.19,59,795/- in the year 2007. The respondent has under valued the suit and the Court has no pecuniary jurisdiction to entertain and decide the suit. This contention is without merits.

9. From the records, it is seen that the respondent is not claiming any share in the 'D' Schedule property. The respondent is claiming share only in the 'A' Schedule property. She valued the

property at Rs.15,00,000/- and for her 1/3rd share, she valued the property as Rs.5,00,000/-. The petitioner has not stated that valuation of 'A' Schedule property is not correct. Further, the petitioner has not taken the plea of lack of pecuniary jurisdiction at the earliest. After commencement of trial and after taking more than eight adjournments only, the petitioner has come out with the present application. This shows that the intention of the petitioner is only to drag on the proceedings.

10.As per the Order XIV Rule 2 of C.P.C, the Court has power to decide any issue as a preliminary issue. This power is only a discretionary power. The **Order XIV Rule 2 of C.P.C** reads as follows:

“2.Court to pronounce judgment on all issues:

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arises in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to --

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that

issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

11.The Court can exercise this discretionary power only when an issue can be decided based on the law. In the present case, the petitioner claims that respondent under valued the suit property. Whether the value given by the respondent is correct or whether she has under valued the suit property can be decided only after appreciating evidence let in by both the parties. It is not a pure question of law and it is only a mixed question of fact and law. In the circumstances, the order of the learned Judge dated 17.09.2014, made in I.A.No.816 of 2014 does not warrant any interference by this Court.

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

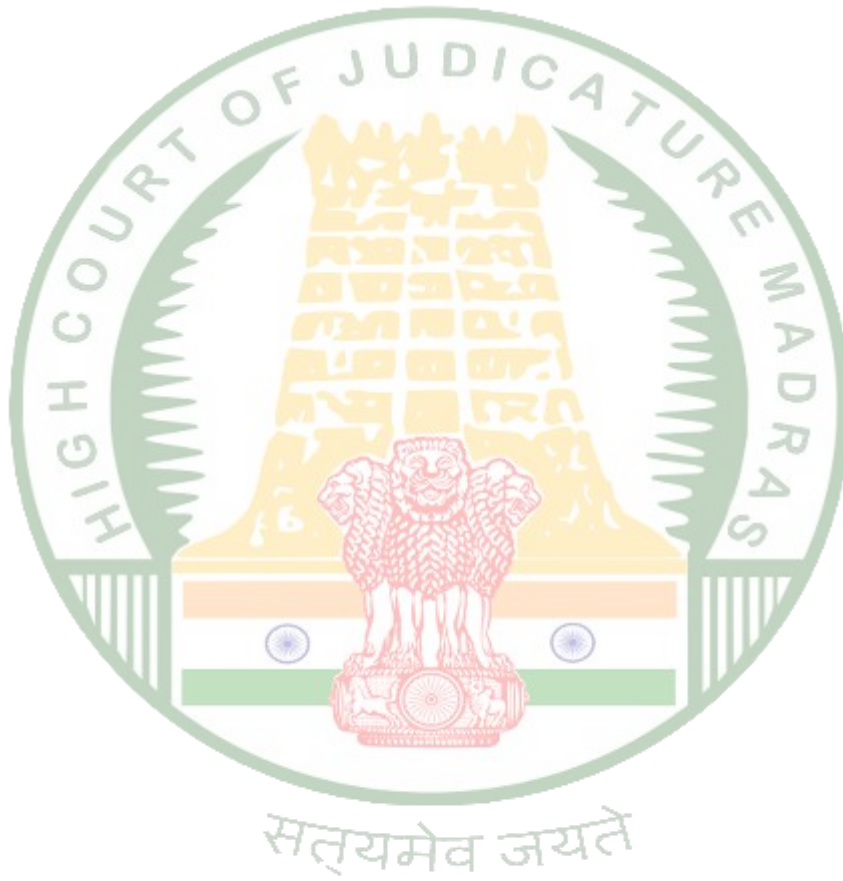
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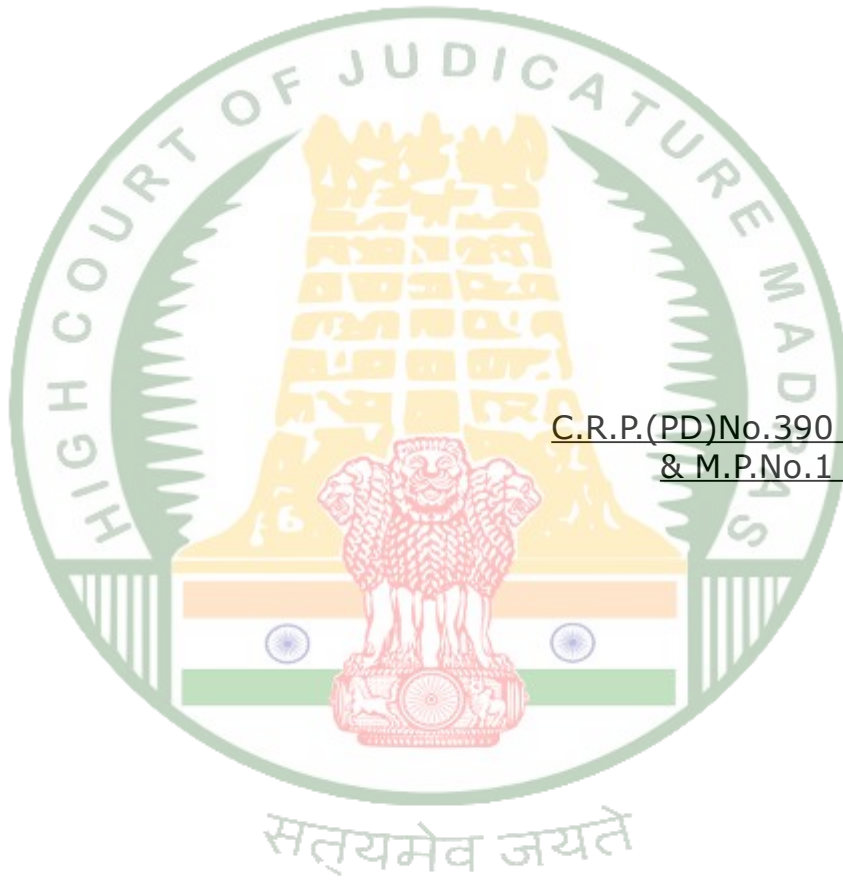
The Subordinate Judge,
Tiruchengode.



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V.M.VELUMANI, J.

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