

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 29.11.2017

ORDER PRONOUNCED ON: 13.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application No.8409 of 2014
in CS No.633 of 2010

- 1.K.Ravi
- 2.Ranjan
- 3.Chandran
- 4.Rajendran
- 5.Umapathy
- 6.Ponnammal
- 7.M.Raj
- 8.Abiraman
- 9.Jayaraman
- 10.P.Gopal
- 11.Sagadevan
- 12.Daisy @ Jayashree
- 13.Leelakumari
- 14.M.Robert
- 15.Leelakumari
- 16.Mary
- 17.Vembuli
- 18.Ambika
- 19.Muthulakshmi
- 20.Samundeeswari
- 21.P.Leemarose
- 22.P.Leemarose
- 23.Muthulakshmi
- 24.Lavanya
- 25.Krishnakumar
- 26.Ranjithkumar
- 27.Gomathi
- 28.Menakadevi
- 29.Lakshmi
- 30.Jayaraman



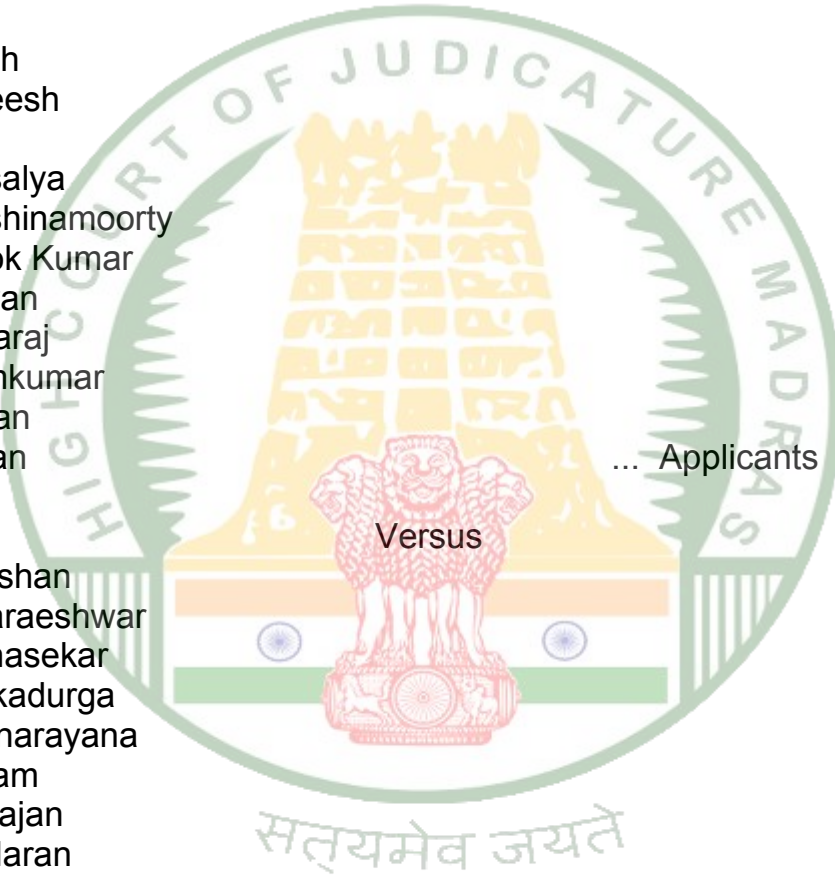
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31.Chinnaponnu
 32.N.Murugasen
 33.N.Manoharan
 34.N.Sethu
 35.Padmavathy
 36.G.S.Anandhan
 37.G.Jagadeshwaran
 38.G.Kandanraj
 39.S.Rajammal
 40.Suresh
 41.Ramesh
 42.Jagadeesh
 43.Mythili
 44.B.Kousalya
 45.V.Dakshinamoorthy
 46.D.Ashok Kumar
 47.D.Vijayan
 48.D.Selvaraj
 49.D.Premkumar
 50.N.Mohan
 51.E.Gugan

... Applicants

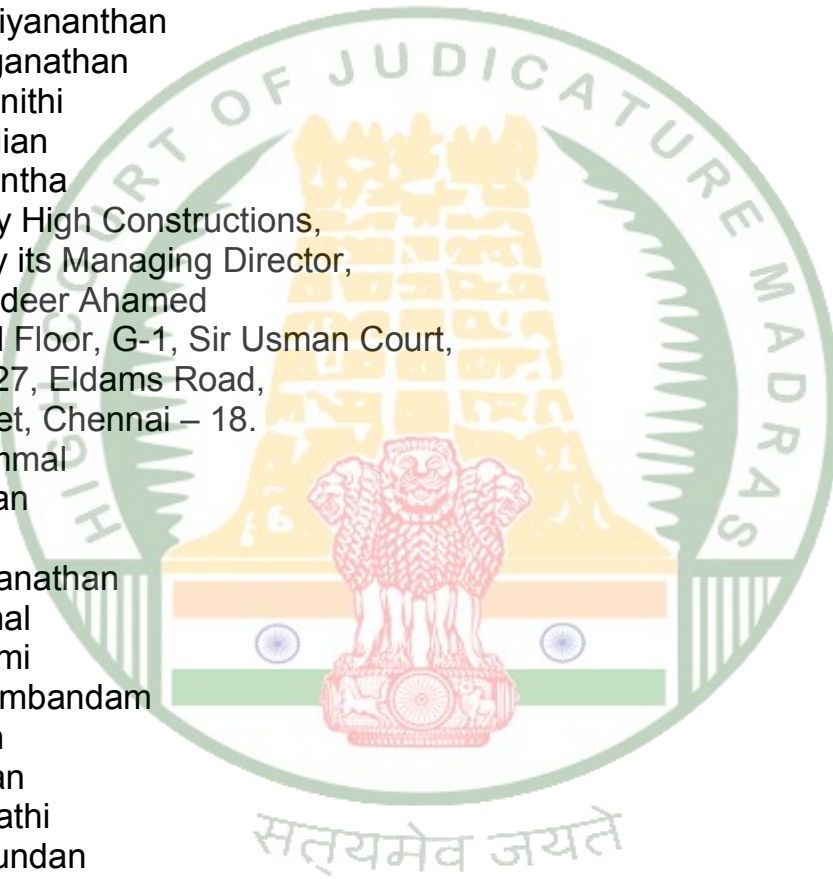
Versus

1.P.Sudarshan
 2.P.Sundaraeshwar
 3.P.Sugunasekar
 4.M.Kanakadurga
 5.P.Suryanarayana
 6.G.Dhanam
 7.R.Devarajan
 8.Thulasidaran
 9.Lakshmikutty
 10.Muralidaran
 11.Mariammal
 12.Devaraj
 13.Perumal
 14.Samuel
 15.Jayakumar
 16.A.Ganesan
 17.Govindammal
 18.Velankanni
 19.Raja



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- 20.A.Ganesan
- 21.Jesupatham
- 22.S.Varghese
- 23.Murthy
- 24.A.Raji
- 25.Somu
- 26.Sivakami
- 27.Rajendran
- 28.Ramadoss
- 29.P.Bakkiyananthan
- 30.P.Ranganathan
- 31.Karunanithi
- 32.K.Pandian
- 33.S.Vasantha
- 34.M/s.Sky High Constructions,
Rep. by its Managing Director,
Mr.Khadeer Ahamed
Ground Floor, G-1, Sir Usman Court,
No.63/27, Eldams Road,
Alwarpet, Chennai – 18.
- 35.Muniammal
- 36.Ganesan
- 37.Mohan
- 38.K.Viswanathan
- 39.Ellammal
- 40.Sivagami
- 41.V.R.Sambandam
- 42.Sathish
- 43.Murugan
- 44.R.Sumathi
- 45.G.Mukundan
- 46.G.Parthiban
- 47.Murthy
- 48.Murugesan
- 49.Manoharan
- 50.Sankari
- 51.Duraisundaram
- 52.Dharman
- 53.Subramaniam
- 54.The Assistant Commissioner,
Corporation of Chennai, Zone X,
Dr.Muthulakshmi Road,



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- Adyar, Chennai – 20.
- 55.The Assistant Engineer,
O & M/Besant Nagar, CEDC/South,
Tamil Nadu Electricity Board,
Chennai – 90.
- 56.The Area Engineer,
Chennai Metropolitan Water Supply
And Sewage Board,
No.42, Indira Nagar, 1st Main Road,
Adyar, Chennai – 20.
- 57.The District Collector,
Chennai District,
Singaravelar Maligai,
Chennai – 600 001.
- 58.The Tashildar,
Mylapore-Triplicane Taluk,
Chennai – 600 001.
- 59.The Sub-Registrar,
No.50, Kamaraj Avenue,
Second Street, Adyar, Chennai – 20. ... Respondents

PRAYER: This Application has been filed seeking an order rejecting the
plaint filed by the respondents 1 to 5/plaintiffs in C.S.No.633 of 2010 for not
disclosing the cause of action, for under-valuing the suit property, for being
barred by law and also for not complying with the provisions of Section 80(3)
of the Civil Procedure Code, 1908.

For Applicants : Mr.M.V.Seshachari
for M/s.Hari Radhakrishnan

For Respondents : Mr.V.Raghavachari for RR1 to 5
for M/s.S.Annamalai

Mr.T.Jayaramaraj
Govt Advocate (C.S.) for RR 57 to 59

ORDER

This application has been filed by the defendants 2 to 8, 14, 17, 23, 26, 27, 29, 30, 31, 33, 36, 38, 42, 45 to 55, 57, 61, 62, 64, 68, 71, 72, 73, 75, 77, 78, 79, 81 to 88 and 92 in the suit seeking rejection of the plaint on the ground that it does not disclose the cause of action, that the plaint has been undervalued and the provisions of Section 80 (3) had not been complied with.

2. In the affidavit filed in support of the application, it is contended that the suit has been filed for various reliefs and the main relief that is sought for in the suit is for recovery of possession in as much as prayer (a) in the suit reads as follows:

“(a): for a mandatory injunction directing the defendants 1 to 99 to remove the illegal construction put by them at Old No.181, New No.116, Urur Village (Oorur Village), Adayar, Chennai 20 measuring to an extent of 1.32 acres, comprised in old Survey No.78 and new Town Survey 65/1 Block No.25 morefully described in the schedule property and to handover vacant possession to the plaintiffs”

3. It is contended that the plaintiffs have adopted a notional valuation

of Rs.1,50,00,000/- for the suit property, whereas as per the guideline value, the value of the suit property is about Rs.11,50,00,000/-. It is contended that as per Section 30 of Tamil Nadu Court Fees and Suit Valuation Act 1955, the market value of the property should be adopted as the value of the suit property for the purpose of Court Fee and jurisdiction and therefore the plaintiffs have no right to adopt a notional valuation of Rs.1,50,00,000/-. Therefore, according to the applicants the suit has been undervalued and hence the plaint has to be rejected under Order 7 Rule 11 (b) and (c). It is also further contended that the suit against the official defendants, viz. defendants 103 to 105 is bad for want of notice under Section 80 (1) of the Code of Civil Procedure. Therefore, the suit is barred under the said provision. It is also claimed that the suit is barred by limitation.

4. The plaintiffs/respondents 1 to 5 would resist the application contending that they valued the property only after having obtained a valuation from the approved valuer and since the property has been encroached upon, the market value of the property was assessed to about Rs.1,13,500/- per cent by the valuer. It is based on such valuation, the plaintiffs have adopted the value of Rs.1,50,00,000/- in the plaint. It is also the contention of respondents 1 to 5 that clauses b and c of Rule 11 of Order 7 do not apply to the High Court exercising the jurisdiction in its

Original Side and therefore the question of valuation and nonpayment of deficit Court Fee cannot be a ground for rejection of the plaint after the same having been numbered.

5. I have heard Mr.M.V.Seshachari, learned counsel appearing for M/s.Hari Radhakrishnan for the applicants, Mr. Raghavachari, learned counsel appearing for M/s.S.Annamalai, for the respondents 1 to 5 and Mr.T.Jayaramaraj, Government Advocate (C.S.) appearing for the respondents 57 to 59.

6. Though, several grounds have been urged for rejection of the plaint Mr.M.V.Seshachari, learned counsel would confine his submission only to two grounds, viz.,

1. The valuation of the suit property and
2. The bar under Section 14 of the Tamil Nadu Patta Pass Book Act.

Insofar as the bar under Section 14 of the Tamil Nadu Patta Pass Book Act is concerned, the said Section itself allows a suit for declaration of title being filed and makes entries in the Patta Pass Book subject to the decision of the Civil Courts. Under Section 14 what is prohibited is only a suit challenging the entries as such. Of course Mr.M.V.Seshachari, would contend that the

prayers, viz. for mandatory injunction directing the defendants 103 and 104 to cancel the patta illegally issued in favour of defendants 1 to 5, 9, 20, 21, 22, 25, 27, 29, 32, 33, 44, 48 to 53, 57, 61, 62, 71 to 74, 80, 81 to 83, 88, 89, 92, 95 to 97 and such a prayer is barred under Section 14 of the Tamil Nadu Patta Pass Book Act.

7. Per Contra, Mr. V. Raghavachari, learned counsel appearing for the respondents 1 to 5 would point out that the suit is one for possession and the prayer for cancellation of the patta is only a consequential relief that is sought for. The learned counsel would submit that he is not challenging the issuance of patta on any of the grounds under the Act. The learned counsel would also point out that in a suit for possession the court can go into the question of title and decide disputed questions of title also. Therefore, according to the learned counsel, the bar would apply only to a suit simplicitor for modification or cancellation of the entries made under the Act and not a suit in which larger relief is prayed for and a relief of modification is sought as a consequential relief.

8. I am inclined to agree with the contentions of Mr.V.Raghavachari, learned counsel appearing for the respondents 1 to 5. Of course a suit simplicitor for modification or cancellation of entries made under the Act is

barred under Section 14 of the Tamil Nadu Patta Pass Book Act. But, the present suit is not only for the said relief. It is a suit for recovery of possession, which encompasses in itself a determination of the question of title. Section 14 specifically enables a person, whose request grant of patta has been rejected by the authorities, to file a suit for declaration of the title and any such declaration made by a Civil Court is made binding on the Authorities acting under the Tamil Nadu Patta Pass Book Act. Therefore, the question of determination of title and the jurisdiction to decide title is always within the powers of the Civil Court and the said powers have not been interfered with or stripped by the provisions of the Tamil Nadu Patta Pass Book Act. Therefore, in my considered opinion, the bar enacted under Section 14 of the Act should be limited to suits in which the proceeding taken under the Act are Challenged and not all clauses of suits where a declaratory relief is sought for or a relief of recovery of possession is sought for, where the Court is empowered to go into the question of title also. After all it is settled law that the entries in the Revenue records cannot be treated as evidence of title. May be, they serve as proof of certain facts and the conclusiveness attached to certain entries will always be subject to the decision of the Civil Court on the question of title. Hence, I do not think the plaint in the present suit could be rejected on the ground that it is barred under the provisions of Section 14 of the Tamil Nadu Patta Pass Book Act.

9. On the question of valuation, Mr.M.V.Seshachari, learned counsel would contend that the guideline value of the property is about Rs.1233/- per sq. ft., therefore the value of the property of an extent of 55,200 Sq.ft. as per the guideline value is about Rs.6,80,61,600/-. As per the valuation report of the Chartered Engineer dated 19.06.2010 which has been filed along with the plaint, the market value of the property is assessed by him as Rs.1,50,00,000/-, since it has been encroached by several persons. It is true that the property has been encroached by several persons will not fetch the same price in the open market as the other properties as such. However, whether a plaint could be rejected by this Court in exercise of its original jurisdiction under Order 7 Rule 11 (b) and (c) is a question that has to be decided before I go into the merits of the case.

10. Order 7 Rule 11 (b) and (c) enable the Court to decide the valuation of the property and to direct the plaintiff to pay deficit Court fee. If the plaintiff fails to pay the deficit Court Fee within the time granted, it is open to the Court to reject the plaint. Order 7 Rule 11 (b) reads as follows:

Order 7 Rule 11: **Rejection of plaint:**

The plaint shall rejected in the following cases:-

(a)

(b) *Whether the relief claimed under-valued, and the plaintiff,*

on being required by the Court to so correct the valuation within a time fixed to be fixed by the Court, fails to do so.

There can be no doubt that the case on hand falls Order 7 Rule 11 Clause (b).

11. Mr.Raghavachari, learned counsel appearing for the respondents 1 to 5 would draw my attention to the provisions of Order 49 Rule 3 of the code of Civil Procedure, which reads as follows:

*Order 49 Rule 3: **Application of the Rules:***

The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, viz:-

(1) rule 10 and rule 11, Clause (b) and (c) of Order VII;

(the other portions of Rule 3 are not relevant for our purposes.)

12. It is therefore clear that Rule 3 of Order 49 excludes application of Clauses (b) and (c) of Rule 11 of Order 7 to a Chartered High Court exercising its ordinary Original Civil Jurisdiction. However Order II Rule 3 of the Original Side Rules, reads as follows:

Order 2 Rule 3:

“ A plaint shall also contain a statement of valuation. Where it appears the suit is undervalued or that the stamp affixed to the

plaint is insufficient, the Registrar shall require the plaintiff to make good the deficiency within a period fixed by him. If default is made, the Registrar shall post the plaint before the Court for orders under Order VII Rule 11 Clause (b) and (c) of the Code.

If during the hearing of a suit, it appears to the Court that the suit is undervalued or that the stamp affixed to the plaint is insufficient, the Court may require the plaintiff to make good the deficiency within a time fixed by it and in default dismiss the suit”.

13. A reading of the aforesaid provision would show that a rejection of the plaint under Order 7 Rule 11 (b) and (c), insofar as the exercise of ordinary Original Civil jurisdiction by the High Court is concerned, cannot happen after the suit has been numbered. The first part of Rule 3 of order 2 of the O.S.Rules extracted above would show that it contemplates a situation where the Registrar of this Court finds that the suit has been undervalued or that the stamp affixed to the plaint is insufficient, he/she can require the plaintiff to make good the deficit stamp and in the event of failure, place the matter before the Court for being dealt with under Order 7 Rule 11 (b) and (c) of the code.

14. The second part empowers the Court to dismiss the suit if the plaintiff does not make good deficiency. The words “if during the hearing of a

suit” definitely indicates the hearing after the numbering and service of notice on the defendants.

15. Therefore, once the suit is numbered the power of the Court to reject the plaint Order 7 Rule 11 (b) or (c) ceases and it can only be a dismissal at the hearing of the suit after giving the plaintiff an opportunity to pay the Court Fee. A similar situation arose before this Court in **G.V.S. Naidu and others v. Brinda and Others** in Application No.5019 of 2014 in CS No.409 of 2014. In the said decision, this Court had, after analyzing the provisions of Order 49 Rule 3 of the Code of Civil Procedure as well as the Order 2 Rule 3 of the Original Side Rules had concluded that the nonpayment of proper Court fee cannot be a ground to reject the plaint at the threshold without evidence being recorded. This Court went on to hold that whether the stamp affixed on the plaint is sufficient or not to decided only during the hearing of the suit by framing appropriate issues and the same cannot be a ground for rejection of the plaint. I am in respectful agreement to the views expressed by Hon'ble Justice R.Subbiah, in the said order dated 02.12.2014. A departure in the procedure has been made by the law makers insofar as the exercise of ordinary original jurisdiction of a Chartered High Court is concerned. It is but reasonable that this Court adheres to the procedure prescribed in the Original Side Rules in respect of

rejection of plaint.

16. Mr.M.V.Seshachari learned counsel however, would draw my attention to the judgment of Division Bench of this Court, ***R.P.O'Connor v. S.P.G.Sampath Kumar***, reported in ***AIR 1953 Madras 897***, wherein it was held that even though the provisions of Order 7 Rule 10 are not made applicable to the High Court in exercise of its original jurisdiction still this Court can return the plaint by exercising its inherent power under Section 151 of Code of Civil Procedure. Of Course, what is not prohibited can be done under Section 151 of Code of Civil Procedure, but in view of the specific language of Order 2 Rule 3 of the Original Side Rules, I find that a rejection of the plaint on the ground of non-payment of Court Fee cannot be done at the threshold and the same will have to await a full trial.

17. In view of the aforesaid conclusions, I do not see any merit in the application seeking rejection of the plaint. Hence the application is dismissed. It is open to the applicants in Application No.8409 of 2014 to raise all issues regarding valuation in the written statement and the same will be considered in terms of Order 2 Rule 3 of the Original side Rules.

13.12.2017

jv

R.SUBRAMANIAN,J.

jv

Index : Yes/No
Internet: Yes/No
Speaking order/Non Speaking order



Pre Delivery Order
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