

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.10.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P.(PD) No.169 of 2013
and M.P.No.1 of 2013**

Ezhilarasi

.. Petitioner

Vs

Murugesan

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.08.2011 made in I.A.No.573 of 2009 in O.S.No.30 of 2005 on the file of the Additional District Munsif Court, Chidambaram.

For Petitioner : Mr.S.Sounthar

For Respondent : Mr.A.Muthukumar

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 04.08.2011 made in I.A.No.573 of 2009 in O.S.No.30 of 2005 on the file of the Additional District Munsif Court, Chidambaram.

2. The petitioner is defendant and respondent is the plaintiff in O.S.No.30 of 2005. The respondent filed the said suit for injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the suit property. Subsequently, he filed an application for amendment of the plaint to include the prayer for declaration to declare the title of the respondent to the suit property and consequential permanent injunction. The petitioner filed written statement and is contesting the suit. The petitioner filed I.A.No.573 of 2009 under Section 12(5) of the Tamil Nadu Court Fees and Suits Valuation Act, for determination of the Court fee payable by the respondent and pecuniary jurisdiction of the Court before recording evidence in the suit.

3. According to the petitioner, the suit property is not an agricultural land, but it is only a house site. The respondent originally filed suit for permanent injunction and subsequently, amended the plaint to include the relief of declaration. The market value of the suit property is Rs.7,67,180/- and the Court fee payable is Rs.53,340/- and prayed for determination of Court fee paid and pecuniary jurisdiction.

4. The respondent filed counter affidavit and denied all the averments made in the said application. The respondent submitted that the suit property is only an agricultural land and it is not reclassified as house site and the Government has no authority to convert agricultural land as house site. Till date, the property is continued to be used as cultivable land and therefore, there is no change in the valuation given by the respondent. The respondent specifically denied the value of the property as Rs.7,67,180/- and the Court fee payable is Rs.53,340/-.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, averments in plaint and materials on record, dismissed the application holding that the petitioner has not produced any document to show that the suit property is house site and value of the property is Rs.7,67,180/- and if any further decision is to be made, it can be decided only after appreciating the evidence let in by the parties.

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6. Against the said order of dismissal dated 04.08.2011 made in I.A.No.573 of 2009, the present Civil Revision Petition is filed by the petitioner/defendant.

7. The learned counsel for the petitioner submitted that the Court must decide the Court fee payable by the plaintiff as per Section 12(5) of the Tamil Nadu Court Fees and Suits Valuation Act, before the evidence is recorded. The petitioner was not given any opportunity to prove the contention that the property in question is house site and value of the property is Rs.7,67,180/-. The Court fee payable is Rs.53,340/-. If the application filed by the petitioner is decided, then only the petitioner will have an opportunity to file the document to prove her contention. In support of his contention, he relied on the judgment of this Court reported in **2002 (2) CTC 513 (V.R.Gopalakirshnan v. Andiammal)**, wherein it has been held as follows:

"14. There appears to be some conflict between the provisions in C.P.C. (ie) Order 14 Rule 2 when read with Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act with reference to deciding the pecuniary jurisdiction of the Court. Suppose in a given case, the defendant comes forward with an application requesting the court to decide an issue relating to valuation of the suit property or the payment of court fee as a preliminary issue, the Court may applying the provision Order 14, Rule 2, decide to consider along with other issues and not as a preliminary issue. Then the defendant

may file an application to consider the issue as per the provisions of Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, then the Court will have no discretion and it has to consider the same. The Tamil Nadu Court Fees and Suits Valuation Act is a substantial law while C.P.C is a procedural law. The substantial law will prevail over the procedural code and consequently, it follows whenever the defendant files an application, requesting the court to decide the issue of valuation of the suit property or the payment of court fee and all questions arising on such pleas as a preliminary issue, the Court has to necessarily consider as per the provisions of Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act. Not in all cases where the defendant has disputed in the written statement, the valuation of the suit property or contended that the suit has not been properly valued, the court has to consider it as a preliminary issue. Only where the defendant makes an application, the Court is bound to consider under Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act.

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19. To sum up, the legal position is :

{a} As per the amended Order 14, Rule 2, though a case may be capable of being disposed of on a

preliminary issue, the Court is given a mandate to try all the issues together.

{b} However, an exception is made to this mandate by giving discretion to try an issue as to jurisdiction or a statutory bar to the suit as a preliminary issue.

{c} In a given case, the Court may decline to try even an issue relating to its jurisdiction or to a statutory bar to the suit as a preliminary issue if it considers expedient to do so.

{d} The discretion vested with the court has to be exercised judiciously.

{e} The parties will be at liberty to adduce such evidence as they may desire only in relation to that issue.

{f} Ordinarily, no revision under Section 151 CPC will be entertained against the order of the trial court once such a discretion is used. But however, it is not an absolute one and in exceptional cases, the Court can entertain Revision and interfere.

{g} When the defendant comes forward with an application disputing the valuation of the property

or contends that the suit has not been properly valued, the Court has to consider the same. Such consideration shall be as per Section 12(2) of the Tamil Court Fees and Suits Valuation Act and the Court cannot choose to decide that issue along with other issues. This provision viz., Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act 1955, which is a substantial law shall prevail over Order 14, Rule 2, CPC which is a procedural law.

{h} In the course of considering a preliminary issue, the Court is empowered to record such evidence as parties desire to let in only in relation to that issue/aspect.

{i} The allegations in the plaint have to be taken as a basis and the claim must be read as a whole. The accepted Rule is that substance alone matters and not the form.

{j} When a suit is filed seeking a decree to set aside the sale, Court Fee has to be paid on the market value of the property on the date of filing of the suit.

{k} But however, if a plea is raised that the signature was obtained in a blank paper or that some misrepresentation was made and thereby fraud

was played on the executor, then Court fee need not be paid for setting aside the same.”

8. The learned counsel appearing for the respondent relied on the Division Bench judgment of this Court reported in **2012 (5) CTC 705 (S.N.S.Sukumaran v. C.Thangamuthu)**, wherein it has been held 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 :-

(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."

9. In the judgments relied on by the learned counsel for the petitioner, the following principles are laid down -

(a) As per Order XIV Rule 2A CPC, the Court has to pronounce judgment in all issues. The Court has discretion to decide an issue with regard to jurisdiction and bar of suit first, if the same can be decided on issue of law only.

(b) If the defendant files application under Section 12 (2) of the Tamil Nadu Court Fees and Suit Valuation Act alleging that the plaintiff has undervalued the suit and has not paid proper court fee, the Court has to decide the said issue first.

(c) Section 12 (2) of the Tamil Nadu Court Fees and Suit Valuation Act is substantial law and it prevails over Order XIV Rule 2A CPC which is procedural law. When an application is filed under Section 12 (2) of the Tamil Nadu Court Fees and Suit Valuation Act, it is mandatory on the part of the Court to decide the said issue first and Court

cannot choose to decide the said issue along with other issues.

(d) Before proceeding to decide the objections, the Court shall prima facie satisfy itself on perusal of pleadings of the parties and materials brought on record, the objections raised by the defendant has substance.

(e) The objections of the defendant must be bonafide and not with ulterior motive of trying to drag on the suit on this issue.

(f) The allegations in the plaint have to be taken as a basis and claim must be read as a whole and substance alone matters and not the form.

10. The contention of the learned counsel for the petitioner that the Court must decide the Court fee payable by the plaintiff as per Section 12(5) of the Tamil Nadu Court Fees and Suits Valuation Act, before evidence is recorded and the petitioner is not given any opportunity to produce the document, is without any merits. The

petitioner ought to have filed all the documents relied on by him before settlement of issues. As per Order XIII Rule 1 CPC, all the documentary evidence in original must be filed by the parties along with plaint or written statement as the case may be. The petitioner has not filed any document along with written statement or along with the application in I.A.No.573 of 2009.

11. It is well settled that only when the Court comes to the conclusion that the plaintiff has not paid proper court fee, the Court can order enquiry, as per Section 19 of the Tamil Nadu Court Fees and Suit Valuation Act, by issuing commission to any proper person or appoint Advocate Commissioner under Order XXVI Rule 9 CPC directing him to make local inspection or other investigation as may be necessary and report to the court. If there is deficit Court fee, the Court can direct the plaintiff at any stage of the suit to pay the Court fee. In view of the well settled judicial pronouncement, the learned Judge has not committed any irregularity or illegality in this order impugned in this revision warranting interference by this Court.

12. The learned Judge considering the averments made in the plaint and documents filed by the respondent, has come to the conclusion that the respondent has proved that suit property is only an

agricultural land and that statement of petitioner without documents to substantiate the same cannot be accepted.

13. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.10.2017

Index : Yes/No
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To

The Additional District Munsif Court
Chidambaram.



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V.M.VELUMANI, J.

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