

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.3686 of 2016
and C.M.P.No.18699 of 2016**

Judgment reserved on 18.07.2017	Judgment pronounced on 21.08.2017
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S.N.Balapattabi

...

Petitioner

Vs

Mrs.Balanagalakshmi

...

Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair order and decreetal order dated 26.09.2016 in I.A.No.250 of 2015 in O.S.No.2 of 2007 on the file of the III Additional District & Sessions Judge at Gobichettipalayam.

For Petitioner : Mr.V.Raghavachari for
M/s.M.Narayanasamy

For Respondent : Mr.S.Parthasarathy,
Senior Counsel for
M/s.Kumar & Baskar

ORDER

This Civil Revision Petition is filed against the fair order and decreetal order dated 26.09.2016 in I.A.No.250 of 2015 in O.S.No.2 of 2007 on the file of the III Additional District & Sessions Judge at Gobichettipalayam.

2. The petitioner is the defendant and the respondent is the plaintiff in O.S.No.2 of 2007 before the Fast Track Court No.2, Gobichettipalayam. The respondent filed suit in O.S.No.2 of 2007 for partition into two shares and allot one share to the respondent and for mense profits. The petitioner filed I.A.No.250 of 2015 under Order VII Rule 11 CPC for rejection of the plaint. According to the petitioner, the title of the respondent is denied and she ought to have filed suit for declaration. The suit is barred by limitation as respondent is not in possession of the suit property, plaint does not discloses any cause of action, the respondent suppressed the material facts and has not impleaded necessary parties as the two daughters of the petitioner are also co-parceners, non-production of documents based on the cause of action and the respondent has not properly valued Item Nos.8 & 9 of the suit property and has not paid proper court fee.

3. According to the petitioner, the respondent is claiming partition of ancestral properties, joint family properties as well as separate properties. In view of these facts, three separate nature of properties, the respondent has to value the properties at the market value and pay the court fee on the said value as per Section 37 (1) of the Tamil Nadu Court Fees & Suits Valuation Act and not as per Section 37 (2) of the Act. The respondent is not in joint possession of all the properties and therefore she has to pay the court fee at Ad valorem on the market value of the suit properties.

4. The respondent filed counter affidavit, additional counter affidavit and denied various allegations made by the petitioner. According to the respondent, the suit was initially filed in Sub Court, Gobichettipalayam and was taken on file as O.S.No.9 of 2004 and pending suit, the petitioner filed I.A.No.125 of 2005 on the ground that Sub Court, Gobichettipalayam has no pecuniary jurisdiction to entertain and pass orders on the suit. After enquiry, it was held that Sub Court, Gobichettipalayam has no pecuniary jurisdiction and after valuing the properties, the suit was represented before District Court, Erode and numbered as O.S.No.177 of 2006. The said suit was

transferred to the III Additional District Court No.3, Gobichettipalayam and re-numbered as O.S.No.2 of 2007.

5. According to the respondent, she is claiming partition as per the provision of Hindu Succession Act as amended and she is liable to pay court fee only under Section 37 (2) of Tamil Nadu Court Fees and Suits Valuation Act and Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act is not applicable to the facts of the case. She also further stated that the suit is not undervalued, the plaint cannot be rejected under Order VII Rule 11 (b) CPC. If court comes to the conclusion that the suit is undervalued, the respondent must be given time to pay the court fee and only when she fails to pay the deficit court fee, plaint can be rejected. Already Sub Court, Gobichettipalayam has enquired into the value of the property and returned the plaint on the ground that the property is undervalued. The respondent, after return of the said plaint, valued the properties at the market rate and has represented the plaint before the District Court, Erode and it has been numbered as O.S.No.177 of 2006 and subsequently it was transferred to Fast Track Court, Gobichettipalayam and re-numbered as O.S.No.2 of 2007. In view of the said fact, the petitioner has no right to raise the said issue once again.

6. Before the learned Judge, the petitioner examined himself as PW1 and marked eight documents as Exs.P1 to P8. The respondent did not let in any oral or documentary evidence. The learned Judge, considering all the materials on record and documents filed by the petitioner, dismissed the application holding that the reasons given by the petitioner for rejection of plaint are not valid and also held that the properties mentioned as Item No.9 in the plaint is owned by the respondent and petitioner's wife and at this stage, it is not necessary to decide how much share the petitioner's wife is entitled to and the same can be decided only at the time of trial of the suit.

7. Against the said order of dismissal dated 26.09.2016 in I.A.No.250 of 2015 in O.S.No.2 of 2007, the present Civil Revision Petition is filed.

8. The learned counsel appearing for the petitioner submitted that the respondent has been ousted from the suit properties for more than statutory period, the respondent was not in possession of the suit properties from 1990 and suit is filed after 12 years and the same is barred by limitation. She is not in joint possession with the petitioner. In view of the ouster, it cannot be said that she is deemed to be in

joint possession of the suit properties with the petitioner. The suit filed by the respondent is not only for ancestral and joint family properties but also for separate properties and also properties alleged to have been inherited by her. The respondent has to pay the court fee under different heads as provided under Tamil Nadu Court Fees and Suits Valuation Act. The value of the properties in Item Nos.8 to 10 are not valued even as per the guideline value. The value of the properties are more than Rs.10 lakhs and Rs.12 lakhs whereas the respondent has valued the suit properties only at Rs.60,000/- and Rs.80,000/- respectively.

9. The learned Judge erred in dismissing the application holding that the petitioner has not filed documents now filed, before Sub Court, at the time of enquiry in I.A.No.125 of 2004 in O.S.No.9 of 2004. The learned Judge erred in dismissing the application on the ground that the petitioner is challenging the value in respect of Item Nos.8 to 10 only and not all the properties. The learned Judge, having held that the properties in Item No.9 is in the names of the petitioner's wife and respondent, ought to have ordered enquiry with regard to market value of the property and directed the respondent to pay court fee under Section 37 (1) of the Tamil Nadu Court Fees and

Suits Valuation Act. The learned Judge erred in holding that the share of the petitioner's wife can be determined only at the time of trial. The learned Judge failed to see that Item Nos.8 to 10 are separate properties and respondent has to pay the court fee only under Section 37 (1) of the Tamil Nadu Court Fees and Suits Valuation Act, at the market value as she is not in joint possession of the suit properties or deemed to be in joint possession with the petitioner. The learned Judge has committed irregularity in dismissing the application on the ground that the suit is eight years old. The learned Judge failed to see that as per Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, the Court has power to decide the value of the suit before evidence is recorded.

10. In the present case, trial has not commenced. No evidence is recorded. The petitioner has raised the issue of undervaluation of properties before recording of evidence and the learned Judge ought to have decided the issue on merits as per Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act. The Court has power under Section 19 of the Tamil Nadu Court Fees and Suits Valuation Act and under Order XXVI Rule 9 of CPC to appoint a Commissioner to ascertain the market value of the properties. In support of his

contention, the learned Counsel for the petitioner relied upon the following judgments -

(i) AIR 2003 MADRAS 290 [George Thomas v. Smt.Srividya]

26. However, the disentitlement of the defendant to raise the plea of under valuation will not absolve the liability of the plaintiff to pay proper Court fee. In the event, on facts, this Court comes to the conclusion that the suit is undervalued, even in the absence of any plea, it can direct the plaintiff to pay the deficit court fee.

(ii) 2010 (5) L.W. 334 [Regila Prem v. Chellappan & others]

19. As per the said judgment, when an application is filed disputing the valuation of the property, the court has to consider the same and the same shall be considered as per the section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act and the learned Judge has held the provision of section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act is a substantial law, which will prevail over Order 14, Rule 2 CPC, which is a procedural law. Nevertheless, having regard to the facts of that case, the learned Judge dismissed the revision petition filed by the tenant for deciding the matter as a preliminary issue.

24. Therefore, in the light of the observation of the Honourable Supreme Court and the law laid down by this Court in the judgment reported 2002(2) CTC 513, in the case of V.R.Gopalakrishnan.

vs. Andiammal, referred to above, I am of the opinion that when a question of jurisdiction is raised by filing an application under section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act by stating that the property was not properly valued and if properly valued, the court will have no jurisdiction, the same must be tried as a preliminary issue and court has to direct the parties to lead in evidence in that aspect, otherwise there is no purpose in enacting section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act.

(iii) 2016 (4) MLJ 765 [N.Ganesan v. Vadivel]

8. It is also quite well settled in law that the payment of Court Fee cannot be made according to the whims and fancies of the Plaintiff and Section 149 of C.P.C cannot be taken as a license to justify the inordinate delay on the part of the Plaintiff.

(iv) 1992 (1) SCC 731 [Sujir Keshav Nayak v. Sujir Ganesh Nayak]

3.
Competency refers to jurisdiction territorial or pecuniary, of limited or unlimited limits. In courts of limited pecuniary jurisdiction valuation assumes great importance. A plaintiff may over or under-value the suit for purposes of avoiding a court of a particular grade. In the former the plaint may be returned under O.7 Rule 10 for presentation in proper court but in latter it is liable to be rejected. Since under-valuation goes to the root of maintainability of the suit a defendant is entitled to raise the objection irrespective of the nature of the suit. That is why this Court in *Abdul Hamid Shamsi v. Abdul Majid And Ors.* while upholding the right of the plaintiff to value the suit for accounting according to his own estimate held that he "has not been given the absolute right or option to place any valuation whatever in such relief." But that was a case of limited pecuniary jurisdiction in which the

defendant could object as arbitrary under-valuation could result in rejection of the plaint.

..... But in suits of such nature filed before courts of unlimited jurisdiction the valuation disclosed by the plaintiff may be accepted as correct. This, however, does not mean that the courts power to examine the correctness of valuation is taken away. If on perusal of plaint the court is prima facie satisfied that the plaintiff has not been fair and valued the suit or relief arbitrarily it is not precluded from directing the plaintiff to value it properly and pay court fee on it.

(v) 1987 (4) SCC 71 [E.Achuthan Nair v. P.Narayanan Nair & Anr.]

4.It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same. The plaintiff has valued the lease hold interest on the basis of the rent. Such a valuation, as has been rightly held by the Courts below, is reasonable and the same is not demonstratively arbitrary nor there has been any deliberate underestimation of the reliefs.

11. Per contra, the learned Senior Counsel appearing for the respondent submitted that plaint can be rejected only when any one of the ingredients of Order VII Rule 11 (a) to (d) of CPC is satisfied. In the present case, objection raised by the petitioner are not as per Order VII Rule 11 (b) of CPC. Even if the Court comes to the conclusion that the suit is not properly valued, the plaint cannot be

straightaway rejected. The Court has to direct the plaintiff to pay the deficit court fee within the time granted. If the plaintiff pays the court fee as directed by the Court, then the suit must be proceeded with. Only if the plaintiff fails to pay the deficit court fee as directed by the Court, the plaint can be rejected. In the present case, already Sub Court, Gobichettipalayam has decided the question of valuation and it was found that the plaint was not properly valued and the same was returned to be represented before the proper court.

12. The respondent valued the suit and presented the same before District Court on payment of proper court fee and the same was taken on file accepting the valuation given by the respondent as correct. It is not open to the petitioner now to raise the same issue once again. The respondent has stated in the plaint that she is in joint possession of the suit property including the properties inherited from her mother. The learned Senior Counsel submitted that the petitioner has also admitted the joint possession. In the application for rejection of plaint, only the averments in the plaint and documents filed alongwith the plaint can be considered. The averments in the written statement or documents relied on by the petitioner or averments filed in support of the rejection of plaint cannot be taken into consideration.

The plaint discloses cause of action and also as to how the suit is not barred by limitation. The learned Senior Counsel also submitted that the respondent is in joint possession of the suit property and therefore the court fee paid under Section 37 (2) of the Tamil Nadu Court Fees and Suits Valuation Act is correct. The learned Judge has considered all the facts and law and has dismissed the application.

13. In support of this contention, the learned Senior Counsel for the respondent relied upon the following judgments -

(i) 2006 (4) L.W. 896 [Ramesh B. Desai & ors. v. Bipin Vadilal Mehta and ors.]

14. *The principle underlying Clause (d) of Order VII Rule 11 is no different. We will refer here to a recent decision of this Court rendered in Popat and Kotecha Property vs. State Bank of India Staff Association (2005) 7 SCC 510 where it was held as under in para 10 of the report: -*

"10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force."

It was emphasized in para 25 of the reports that the statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11 CPC. The principle is, therefore, well settled that in order to examine whether the plaint is barred by any law, as contemplated by sub-rule (d) of Order VII Rule 11 CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence. Applying the said principle, the plea raised by the contesting respondents that the Company Petition was barred by limitation has to be examined by looking into the averments made in the Company Petition alone and any affidavit filed in reply to the Company Petition or the contents of the affidavit filed in support of Company Application No. 113 of 1995 filed by the respondents seeking dismissal of the Company Petition cannot at all be looked into.

(ii) 2015 (3) CTC 671 [M.K. Mala v. M.K.Ravi]

7.2. In order to appreciate this answer, it is necessary to look into the basis of claim made for partition. It is the case of the plaintiff that in the partition between the mother and the legal heirs, namely, the plaintiff and the defendants, suit property was allotted to the share of the mother, K.Saroja Bai in the partition that took place on 02.12.1994; that Saroja Bai died on 02.06.1999; that after the death of Saroja Bai, the plaintiff and the defendants became entitled to the property as legal representative and each of them are entitled to 1/4th share. The sum and substance of the pleadings would go to show that after the death of the mother, the plaintiff and the defendants are deemed to be in joint possession of the property. When it is stated in the evidence that nobody is in possession of the property and when the pleadings indicate presumptive joint possession, the evidence must be interrupted as the plaintiff having meant the actual physical residence as possession. In other words, the plaintiff has

understood that actual physical entry into the property alone would mean possession, which is the understanding of a common man. But the Court should not be carried away by the language used by the common man and the Court is duty bound to interpret the same legally. Therefore, the evidence adduced would show that the plaintiff and the defendants must be deemed to be in joint possession of the property.

(iii) 99 L.W. 711 [P.Ramaswamy Gounder v. Ambujan & Ors.]

4. The three cardinal principles that should be borne in mind while disposing of a question relating to court-fee are : (1) The Court shall accept the plaint averments as correct and apply the appropriate provision in the Act, (b) the court shall not be carried away by the form in which the plaint is dressed but shall peep into the substance to ascertain the base for reliefs claimed and the reliefs really asked for in the action, and (c) the Court is not concerned with the legality or maintainability of the claim as that relates to the merits and falls outside the purview of the Act.

*7. According to the Learned Counsel for the petitioner, a reading of the plaint as a whole will disclose that the plaintiff is **not** even in constructive possession of both movable properties in respect of which she had claimed partition and therefore the court-fee has to be paid under Section 37(1) of the Act. In this context great reliance is made on the allegations in the plaint that the plaintiff had claimed accounting in respect of these properties as well. According to the learned Advocate General, that will imply that there was an ouster and therefore, the appropriate provision is Section 37(1) but not Section 37(2). I am unable to agree. The plaint has categorically stated that she is one of the heirs to her father and that all the properties were the separate and absolute properties of her father and that she claims a share as a heir to her father. The law presumes that the possession and enjoyment of one*

co-owner is on behalf of others as well. It may be open to one of the co-owners to plead ouster and if she were to succeed, it is a different matter. But when considering the question of court-fee, as already pointed out by me, the relevant data to be noticed is the averments in the plaint. I have already referred to the fact that the plaintiff has claimed a share as heir to her father and that she stated that because she was denied the share in the income, she was constrained to ask for accounting in respect of her share in the income. That by itself will not necessarily imply that she is out of legal possession of the properties in respect of which the relief for partition is claimed. It is true that "the plaintiff is deemed to be in joint possession of the properties" is written in ink later in the body of the original plaint. I am at a loss to understand as to how such an insertion will in any way alter the position of law. It is always open to the plaintiff to amend the plaint in any manner he or she likes, before it is presented. Therefore, when the matter is taken up for consideration by court, it has to take the averments as a whole as found in the plaint albeit there was correction or addition before it was presented. I am to reiterate that there is enough indication in the plaint that the possession of others is on behalf of all the sharers entitled to the property and therefore, as rightly pointed out by the plaintiff, she shall be deemed to be in joint possession of the property. If so, the claim for partition as valued under [Section 37\(2\)](#) is quite correct.

(iv) AIR 1978 SC 1607 [Lakshmi Ammal v. K.M.Madhavakrishnan and ors.]

3. In this particular case there is hardly any difficulty in holding that the plaintiff in paragraph 14 of the plaint has clearly alleged that sh., is in joint possession and is seeking partition and separate possession of her half share in the suit properties as heir of deceased, Paramayee. Obviously, the court fee that is payable is as she has claimed, namely under sec. 37(2) which corresponds to [Art. 17\(b\)](#) of the [Central Act](#), which is the predecessor legislation on the subject. We allow the appeal and send the case

back to the trial court and direct that court to proceed with the suit expeditiously. We make it clear that our decision on the question of court fee does not have any implications on the merits including the validity or otherwise of the Will. No costs.

(v) 1980 (2) SCC 247 [Neelavathi & Ors. v. N.Natarajan & Ors.]

8. The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under S. 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been "excluded" from joint possession to which they are entitled in law. The averments in the plaint that the plaintiff could not remain in joint possession as he was not given any income from the joint family property would not amount to his exclusion from possession.

14. Heard the learned counsel appearing for the petitioner as well as the learned Senior Counsel appearing for the respondent, perused the materials available on record and also the judgments relied on by the parties.

15. The petitioner, in Interlocutory Application for rejection of

plaint raised various grounds. In the Civil Revision Petition, the petitioner has restricted his contention for rejection of plaint under Order VII Rule 11(b) CPC. According to the petitioner, the respondent is seeking partition on three different heads, i.e. ancestral properties, succession and separate properties. The respondent was never in possession of the suit property even during the life time of their grandfather and parents. In such circumstances, the respondent cannot claim deemed possession in respect of her claim by succession and in respect of separate properties. On the other hand, the learned Senior Counsel appearing for the respondent submitted that the respondent is in joint possession alongwith the petitioner as the petitioner is enjoying the property on behalf of the respondent and on his behalf. The said contention is untenable as the respondent is claiming share in some of the properties by succession and on separate possession. To decide the issue whether the court can ascertain the market value of the properties and direct the plaintiff to pay the deficit court fee, if any, the relevant provisions are Section 12 (2) and 19 of the Tamil Nadu Court Fees and Suits Valuation Act and Order VII Rule 11 (b) of CPC. These provisions are extracted hereunder for appreciation of the issue in question.

Section 12 (2) of the Tamil Nadu Court Fees and

Suits Valuation Act.

12. Decision as to proper fee in other courts. -

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

Section 19 of the Tamil Nadu Court Fees and Suits Valuation Act.

19. Inquiry and commission. -

For the purpose of deciding whether the subject-matter of a suit or other proceeding has been properly valued or whether the fee paid is sufficient, the Court may hold such inquiry as it considers proper and may, if it thinks fit, issue a commission to any proper person directing him to make such local or other investigation as may be necessary and to report thereon to the Court.

Order VII Rule 11 (b) of CPC

11. Rejection of plaint - *The plaint shall be rejected in the following cases :-*

(b) Where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

16. From the materials available on record, I hold that it cannot be said that the respondent is in joint possession i.e. deemed possession alongwith the petitioner. The contention of the learned Senior Counsel for the respondent is that the petitioner himself has admitted in Para 7 of the affidavit that the respondent is in joint possession. A reading of the said paragraph shows that the petitioner did not admit joint possession by the respondent. On the other hand, he has stated that the plaint speaks about joint possession. Once as per law, it cannot be said that the respondent is in deemed possession, she has to pay the ad-valorem court fee on the market value as per Section 37 (1) of the Act. The contention of the learned counsel for the petitioner in this regard has considerable force. The learned Judge has held that the property mentioned in Item No.9 belongs only to the respondent and petitioner's wife. The petitioner has no share in the said property. Having held so, the learned Judge erred in holding that the share of the petitioner's wife can be decided

only during the trial. The learned Judge failed to see that the respondent is claiming $\frac{1}{2}$ share in the said property also. In view of the finding that item No.9 belongs to the respondent and petitioner's wife, the respondent cannot contend that she is deemed to be in joint possession alongwith the petitioner.

17. Having held that in Item No.9, the petitioner's wife has a share, the learned Judge ought to have passed orders for ascertaining the market value of the property. Similarly, the learned Judge having held that value of the properties in Item Nos.8 to 10 is more than what is stated in the plaint even as per the document and having held that respondent must be given an opportunity to pay the additional court fee, if any, ought to have passed order for ascertaining the market value of those properties and directed the respondent to pay additional court fee, if any. The learned Judge failed to consider Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act wherein it has been clearly stated that before recording evidence, if defendant raises the plea on undervaluation of the suit, the Court has to decide such plea after hearing the parties. If Court comes to the conclusion that the property is undervalued, the Court has to fix the date before which the plaint has to be amended in accordance with law with court's

decision and deficit court fee has to be paid. If the plaintiff fails to amend and pay the deficit court fee, the plaint has to be rejected. To ascertain the correct market value of the property, the court has power under Section 19 of the Tamil Nadu Court Fees and Suits Valuation Act and Order XXVI Rule 9 CPC to appoint a Commissioner in this regard. The learned Judge failed to consider these provisions and failed to exercise his powers conferred on him. The learned Judge committed an irregularity in dismissing the application on the ground that the suit is eight years old and petitioner has not made any case for rejection of plaint.

18. In view of the above, the order of the learned Judge dated 26.09.2016 made in I.A.No.250 of 2015 in O.S.No.2 of 2007 is liable to be set aside and is hereby set aside. All the judgments relied on by the learned counsel for the petitioner as well as the learned Senior Counsel for the respondent had decided about the consideration for rejection of plaint, ascertaining the market value of the property and payment of additional court fee, if any. The judgments relied on by the learned counsel for the petitioner are squarely applicable to the facts of the present case. In the said circumstances, the learned Judge is directed to appoint an Advocate Commissioner as per Section

19 of the Tamil Nadu Court Fees and Suits Valuation Act and Order XXVI Rule 9 CPC to ascertain the correct market value of the properties mentioned in Item Nos.8 to 10 and if the market value is more than what is mentioned in the plaint and the respondent has not paid proper court fee, the respondent may be directed to pay the deficit court fee within the time limit fixed by the Court and pass consequential order as per Section 12 (2) of the Tamil Nadu Court Fees and Suit Valuation Act and Order VII Rule 11 (b) CPC.

19. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.08.2017

Index : Yes/No
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To

The III Additional District & Sessions Judge,
Gobichettipalayam.

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V.M.VELUMANI, J.

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**Order in
C.R.P. PD No.3686 of 2016**

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