

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM

THE HON'BLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.270 of 2013

Yesu @ Yesu Doss

.. Petitioner

Vs

1.Basher

2.Jagaree-ini-sa

3.Syed Shabir Hussain

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the Court of the Principal District Munsif, Thirukoilur, in I.A.No.1487 of 2011 in O.S.No.245 of 2011 dated 30.10.2012.

For Petitioner : Ms.Sripriya for
Mr.V.Raghavachari
For Respondents : Mr.N.Suresh

ORDER

This Civil Revision Petition has been filed to set aside the Fair and Decreetal Order 30.10.2012 made in I.A.No.1487 of 2011 in O.S.No.245 of 2011, on the file of the Principal District Munsif Court, Thirukoilur.

2. The petitioner is the defendant and the respondents are the plaintiff in O.S.No.245 of 2011. The respondents filed suit for declaration and injunction in respect of C, D and E suit schedule properties. The petitioner has not filed written statement and issues are not framed. The petitioner filed an I.A.No.1487 of 2011 to appoint the Court Bailiff to inspect the suit property to note down the nature of the property and file report.

3. According to the petitioner, the suit properties are not agricultural land, but, they are only house sites, shops are constructed in the suit property and the value of the property is more than Rupees One Crore. The respondents have undervalued the suit property and has not paid correct court fee.

3. The first respondent filed counter affidavit and contended that the petitioner has not filed written statement, even six months after receipt of summons. Suit property is only the agricultural land and they are cultivated. It is classified only as agricultural land in Revenue records and patta has been issued in favour of the respondents. The respondents are paying kist. The suit is valued as per the kist paid by the respondents. The respondents are not bound by the sale by the petitioner for higher value and prayed for dismissal of the said application.

4. The learned Judge after considering the averments mentioned in the

affidavit, counter affidavit, arguments advanced by the counsel for the parties, dismissed the application.

5. Against the said order of dismissal dated 30.10.2012 made in I.A.No.1487 of 2011, the present Civil revision petition is filed by the petitioner.

6. The learned counsel for the petitioner reiterated the averments made in the affidavit filed in support of the above application and contentions raised in the grounds of the revision. The learned counsel for the petitioner submitted that the petitioner has filed the written statement before the respondents had filed the counter affidavit and learned Judge passed the impugned order without considering the same. The learned counsel for the petitioner submitted that even before filing of the suit, the property was sold to various third parties and the petitioner issued notice dated 07.01.2012 to the Tahsildar, Thirukoilur and the Sub Registrar, Thirukoilur and purchasers of the property. In support of his contentions, he relied upon the order passed by this Court in C.R.P.No.1878 of 2009 dated 20.08.2010, wherein paragraphs 17, 18(g) and 24 read as follows:

“17.It is further held that the question of Court

fee must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits. But this Court in the Judgment reported in 2002(2) CTC 513, in the case of V.R.Gopalakrishnan vs. Andiammal, distinguished the petition under Order 14 Rule 2 and petition filed under Section 12(2) of the Court Fees and Suits Valuation Act in para 14 as follows:- “There appears to be some conflict between the provisions in CPC (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 CPC 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.”

18(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 Nadu Courts and Suit Valuation Act and the Court cannot choose to decide that issue along with other issues. This provisions 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.

24.Further, in the above case, the Honourable Supreme Court has also observed that Section 12(2) enables the defendant to raise a dispute regarding proper Court Fee payable on the plaint and under Section 19, Commissioner can be appointed to properly value the property. 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.”

7. Per contra, the learned counsel appearing for the respondents submitted that the suit property is only the agricultural land and the respondents have filed the documents to prove that the suit properties are only agricultural land. The petitioner has not filed any document to prove that the suit properties are house sites. In support of his case, he has relied upon the decision of this Court in **RAMAN V. RAHMATHUNNISA AND TWO OTHERS** reported in 1999 (III) CTC 88, wherein paragraph 12, 13 and 14 read as follows:

“12.The suit has been valued under Section 25(b) of the Act, which says,

“In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 26.

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference

to any immovable property, fee shall be computed on one-half of the market value of the property, or on rupees three hundred, whichever is higher.”

13. How to assess the market value in a suit under Section 25(b)? We have to refer Section 7 of the Act. It is said thus,

(1) Save as otherwise provided where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) The market value of land in suits falling under Sections 25(a), 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45 or 48 shall be deemed to be.”

Schedule property is 10 ½ x 40 feet Jadiadi and building therein. Plaintiff claims to be in possession of the property. It is well settled that for the purpose of payment of Court fee, allegations in the plaint alone will have to be considered.

14. Section 7 of the Act deals with how to assess the market value of the property in a suit under Section 25(b). It is based on the assessment of the land multiplied by 30 times. From a reading of Section 7, it is clear that the open market value to be considered for the purpose of Court fee, it is based on revenue assessment, which is multiplied by 30 times. In this case, lower Court has directed a bailiff to be deputed to ascertain the market value after verifying the records of Sub Registrar and file a report on the basis of guideline value available with it. There is no scope for assessing open market value in a suit under Section 25(b). From the Court Fees Act, I

find that the provision where open market value has relevance is only for a suit under Section 40 of that Act, which deals with setting aside a decree or instrument.”

8. Heard the learned counsel appearing for the petitioner and the respondents and perused the materials available on record.

9. The issue whether the Court has to consider and decide the issue of value of the property and the payment of Court Fee as a preliminary issue is no longer *res integra*. As per Order 14 Rule 2 CPC, the Court has to decide all the issues together. The Court has a discretion to decide the issue of jurisdiction or the suit is being barred by law in force, if the same could be decided based on the law only. On the other hand, if application is filed under Section 12 (2) of Tamil Nadu Court Fees and Suit Valuation Act, 1955, it is mandatory on the part of the Court to decide the issue first. But, the Court must be satisfied that the claim of the defendant that suit is undervalued and correct Court Fee is not paid has substance. The defendant must be bona fide to make such claim and should not file such application to drag on the proceedings. The Division Bench of this Court in the Judgment reported in **2012 (5) CTC 705 SNS Sukumaran Vs. C.Thangamuthu**, formulated guidelines and principles to be followed by the Court in deciding the claim of the defendant that the suit is undervalued.

In the present case, the petitioner has filed the application under Section 151 CPC and not under Section 12(2) of Tamil Nadu Court Fees and Suit Valuation Act. Quoting wrong provisions will not be fatal to the claim of the petitioner. Taking application as one filed under Section 12(2) of Tamil Nadu Court Fees and Suit Valuation Act, I proceed to decide the issue on merits.

10. From the materials available on record, it is seen that the respondents have produced ample documents to prove that the suit properties are only agricultural lands. The petitioner except making the statement that the properties are house sites and the people are residing after putting up construction, has not filed any documents to substantiate his claim. The learned Judge considering the documents filed by the respondent and failure on the part of the petitioner to produce any documents, has rightly dismissed the application. In view of the principles laid down by the Hon'ble Division Bench of this Court in the Judgment as referred to above, I find no irregularity in the impugned order of the learned Judge.

11. In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs.

12.10.2017

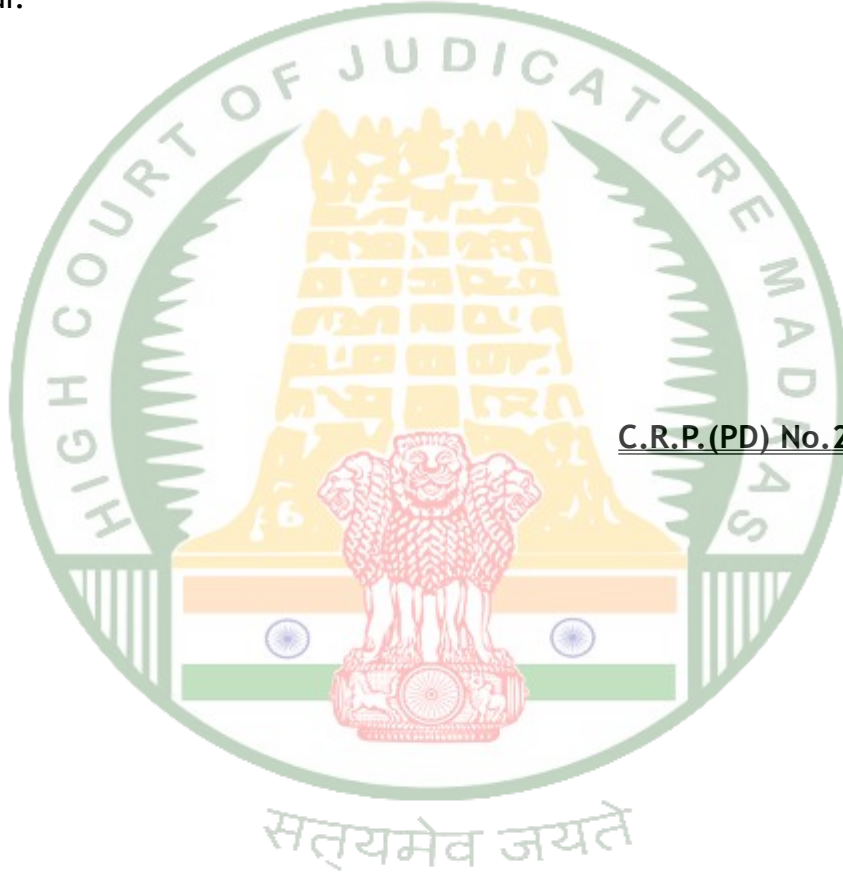
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V.M.VELUMANI,J

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To

The Principal District Munsif Court,
Thirukoilur.



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