

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)Nos.4106 and 4107 of 2013
and
M.P.No.1 of 2013

1.Amirthammal
2.G.Balaraman
3.Vijayalakshmi
4.Jayalakshmi
5.Dhanalakshmi
6.Rajkumar
7.Balaji
8.Kanchana
9.Deepika (Minor)

... Petitioners

Vs.

1.Dharani
2.N.Sundaram

..Respondents

सत्यमेव जयते

Prayer in CRP(PD)No.4106 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree passed in I.A.No.8656 of 2013 in O.S.No.1717 of 2006 dated 11.07.2013, on the file of the learned 6th Assistant Judge, City Civil Court, Chennai.

Prayer in CRP(PD)No.4107 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order in Review I.A.(SR)No.32414 of 2013 in O.S.No.1717 of 2006 dated 07.08.2013, on the file of the learned 6th Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.S.Krishnasamy

For Respondents : No Appearance

COMMON ORDER

Both these civil revision petitions arise out of an order of rejection of plaint in O.S.No.1717 of 2006 and more so, issue involved in both revisions are one and the same and the parties are also one and the same, therefore this Court decides to dispose these Revisions by this common order.

2.The revision petitioners herein are plaintiffs 1, 3 to 10 in O.S.No.1717 of 2006 on the file of the learned VI Assistant Judge, City Civil Court at Chennai and they have instituted the above suit against respondents herein and others for partition and separate the possession and permanent injunction. The respondents herein are

arrayed as defendants 5 and 6 in the above suit.

3.It is the contention of the revision petitioners that pending suit the respondents herein filed an application in I.A.No.8656 of 2013 under Order VII, Rule XI CPC to reject the plaint on the grounds that plaint does not disclose any cause of action, suit is barred by limitation and the Court fee paid is low by undervaluing suit properties. The said application was resisted by the revision petitioners contending the application of respondents as not maintainable under law and facts. The issue pertaining to the payment of Court Fees cannot be decided after the commencement of evidence. In so far as the question of limitation is concerned, it is a mixed question of law and facts and therefore it cannot also be decided at this stage.

4.It is further contended that the plaintiffs/petitioners herein that they have properly valued the suit properties and paid the correct Court Fee as per Section 37(2) of the Tamilnadu Court Fees and Suit Valuation Act. Hence they pray to dismiss the above said application.

5.Per contra, it is contended by the respondents herein that there are five items of properties described in the schedule of property in the said suit and the plaintiffs have given the total value of the suit

properties is Rs.9,75,000/- in order to escape from the payment of Court Fee. The suit properties item 1-4 alone is worth more than Rs.7 crores as on date of filing the suit. As much as the suit 5th item of property is concerned, it is a piece of agricultural land measuring 2.06.0 hectares and its market value would be around 4.50 – 5 crores. Therefore the plaintiffs have undervalued the suit properties with an intention to bring the suit within the pecuniary jurisdiction of the above said Court viz., VI Assistant Judge, City Civil Court at Chennai. Hence the plaint is liable to be rejected on the ground of under valuation of the suit properties.

6.The Court below on considering the application in I.A.No.8656 of 2013 came to conclusion that the suit item 1 to 4 were undervalued. Hence in order to ascertain the correct market value of the suit item 1 to 4 the Court Ameen was directed to find out the correct market value by the learned judge by an order dated 29.04.2013. The said order of appointment Ameen find out the market value is under challenge in CRP.No.4106 of 2013.

7.The revision petitioners have filed Review Application as against the above direction of the Court below of appointing the Court

Ameen to ascertain the market value of the suit item 1 to 4, on the ground that the application to reject the plaint was filed on the ground of pecuniary jurisdiction after the commencement of evidence and so it is hit by the provision of Section 12(2) of Tamilnadu Court Fee and Suit Valuation Act.

8.It is their contention that as per the dictum laid down by the Hon'ble Division Bench of this Court reported in 2012 (5) LW page 197, application to reject the plaint was filed on the ground of pecuniary jurisdiction after the commencement of evidence is impermissible.

9.Whereas the learned Trial Judge by an order dated 07.08.2013 rejected the above Review Application in Review I.A.SR.No.32414 of 2013 filed by the revision petitioners on the ground that an application under Order 7, Rule 11 CPC is maintainable at any stage of the proceeding before pronouncement of Judgment. Challenging the same the revision petitioners filed CRP.No.4107 of 2013.

10.Now the question arise before this Court is as to whether an application to reject the plaint filed on the ground of improper

valuation of the suit and insufficiency of Court fee is liable to be decided as a preliminary issue thereupon the filing of such application where the Trial has already commenced or such application to reject the plaint is liable to be decided along with the main suit, since the Trial of the suit is already commenced as on the date of filing of such application by the defendants 5 and 6.

11. In actual the above question of law came to be settled by a Hon'ble Division Bench of this Court through a reference made by a Learned Single Judge raising as to identical question in the matter of S.N.S. Sukumaran & Others Versus C. Thangamuthu & Others reported in 2012 (5) L.W.197. The said reference is answered by holding as following that:

"29. In Sri Manicklal Verma vs. Smt. Jamanadevi reported in AIR 2002 Karnataka 332 the suit was for possession of the suit property, which has been valued at Rs.14 lakhs under Section 29 of the Karnataka Court Fees and Suits Valuation Act, 1958. The defendant disputed the valuation of the said suit property. The Trial Court after examining the valuation given by the Registered Valuer and taking into account the age of the building found that the

Court-fee paid on the plaint was sufficient. In revision the defendant took the stand that the Trial Court has miserably erred in determining the market value of the subject matter of the suit by not taking into consideration the relevant factors, and further, by not holding proper enquiry as required under Section 11(2) of the Act. The relevant portion of the judgment reads as under:-

"5. Section 11(2) of the Act reads as under :

11. Decision as to proper fee in Courts.-

(1) xxx xxx xxx.

(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.

6. With reference to the above provision contained in sub-section (2) of Section 11 of the Act, this Court has consistently held that if any defendant pleads in his written statement that the subject-matter has not been properly valued or the Court fee paid is not sufficient, then it is mandatory on the part of the Trial Court to decide the issue so raised before recording of the evidence. [See *Umarabba v. Pathunni and Ors.* 1981(2)Kar.LJ.97, *Thimmaiah vs. Sreenivasa*, ILR (1999) 3 Kant.3660 = MANU/KA/0105/1995 and *Umakanth M. v. M. Malathi and Ors.* 1998 (2) Kant. LJ. 220.....

10. Another aspect of law which is of fundamental importance in a case like the present one is that the issue pertaining to valuation of the subject-matter of the suit, which in turn has direct relevance to the amount of the Court fee payable and the pecuniary jurisdiction of the

Court, always gives rise to a mixed question of fact and law and therefore necessitates an enquiry as contemplated under Section 11(2) of the Act. Therefore, such an issue cannot by its very nature be decided as a preliminary issue within the meaning of Order 14, Rule 2(2) of the CPC which confers discretion in the Court to decide the issue of law only as a preliminary issue and that too, if it touches upon the jurisdiction of the Court or institution of such a suit is barred by any law.

11. On the other hand, Section 11(2) of the Act, like Order 14, Rule 2(2) of the CPC, does not confer mere discretion on the Court but it mandates that the issue of valuation of the subject-matter of the suit both for the purposes of Court fee and jurisdiction has to be decided before evidence is recorded. It is also to be borne in mind that once the issue of valuation is decided by the Trial Court in the manner provided under the Act, the remedy available to any aggrieved party against such an order will be only to raise grievance on this score is a Court of appeal as provided under Section 11(4)(a) of the Act. As a necessary consequence any remedy by way of preferring revision

under Section 115 of the CPC cannot be said to be maintainable.

30. In R.C. Sundravalli vs. T.D. Shakila reported in AIR 2002 Madras 82 a single Judge of this Court observed:-

"6. Section 12(2) of the Court Fees Act reads thus:

XXXXXXXXXX

(Only Section 12(2) is quoted herein)

7. That the defendant has the right to take an objection regarding the improper valuation of the suit or insufficiency of Court fees even by a petition supported by an affidavit and not necessarily by the written statement has been decided in the decision reported in Raju Gramani v. Srinivasa Gramani, (1958) 1 Mad LJ 308. Therefore, it was open to the petitioner to raise this question by his written statement or even by an affidavit supported by petition. But, the aforesaid Section clearly lays down that this objection should be raised before the first hearing of the suit or before evidence is recorded on the merits of the claim.

9. If the words "First hearing of the suit" is so

understood, then under Section 12(2) of the Tamil Nadu Court Fees Act, the defendant can plead either by written statement or otherwise the defence relating to improper valuation of suit or insufficiency of Court fee before the first hearing of the suit. In this case the issues have been settled, therefore, the first stage before which the defendant could have raised his objection has passed. The Section provides for another stage when a defendant could plead as above. This is before the evidence is recorded on the merits of the claim. Therefore, after evidence is commenced on the merits of the claim, a reading of the Section indicates that the defendant does not have any further opportunity to plead either that the suit has not been properly valued or that the fees paid is not sufficient. In this case, both the stages have passed. The issues have been settled and even as per the admission of the petitioner, the additional issues have also been framed and it is also seen from a perusal of the judgment that trial had already started.

10. Section 12(2) of the Act also requires the Court to hear and decide these questions before evidence is

recorded affecting such defendant on the merits of the claim. In this case since evidence has also been recorded, the procedure set down in Section 12(2) of the Act cannot be adopted. The learned counsel for the petitioner submitted that the Court should not have postponed this question, but ought to have decided the same and if the Court had found that the valuation is not correct, then, the Court should have directed the respondent to amend the plaint in accordance with the Court's decision and for payment of deficit Court fee and if the petitioner had committed default in either amending the plaint or in payment of deficit fee within the stipulated time the plaint should have been rejected. In this case, the Court below rejects the application on the ground that this question had been raised by the petitioner when the evidence was in progress and therefore, it was highly belated."

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."

12. Thus from the answering of the Hon'ble Division Bench in

point No.4 extracted above, it is needless to say that objection with regard to improper valuation of the suit and insufficiency of Court fee can be entertained by the Court as a preliminary one, 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.

13. Again in those cases where Trials have commenced and the recording of evidence is ongoing and at that of time an objection as to improper valuation of the suit and insufficiency of Court fee is made by the defendants, then the issue cannot be dealt as if a preliminary one and the such issue is to be decided along with the main suit.

14. Admittedly in the case on hand, Trial has commenced much before the filing of the above application by the defendants 5 and 6 to reject the Plaint. Therefore in view of the facts involved in the case on hand and that of the legal position as held above by this Court squarely applies to the issue on hand, the impugned orders does not withstand the Scrutiny of this Court as to see lawful and just. In view of the foregoing discussion, this Court deem it fit to give the following

direction to the Court below.

15.In the result:

(a) CRP(PD)No.4106 of 2013 is dismissed and CRP(PD)No.4107 of 2013 is allowed;

(b) the trial Court is directed to dispose of the suit in O.S.No.1717 of 2006 within a period of three months from the date of receipt of a copy of this order;

(c) the trial Court is directed to decide the issue in respect of Court fee along with other issues in the main suit. No costs. Consequently, connected miscellaneous petition is closed.

17.02.2017

vs

Index:Yes/No

Internet:Yes/No

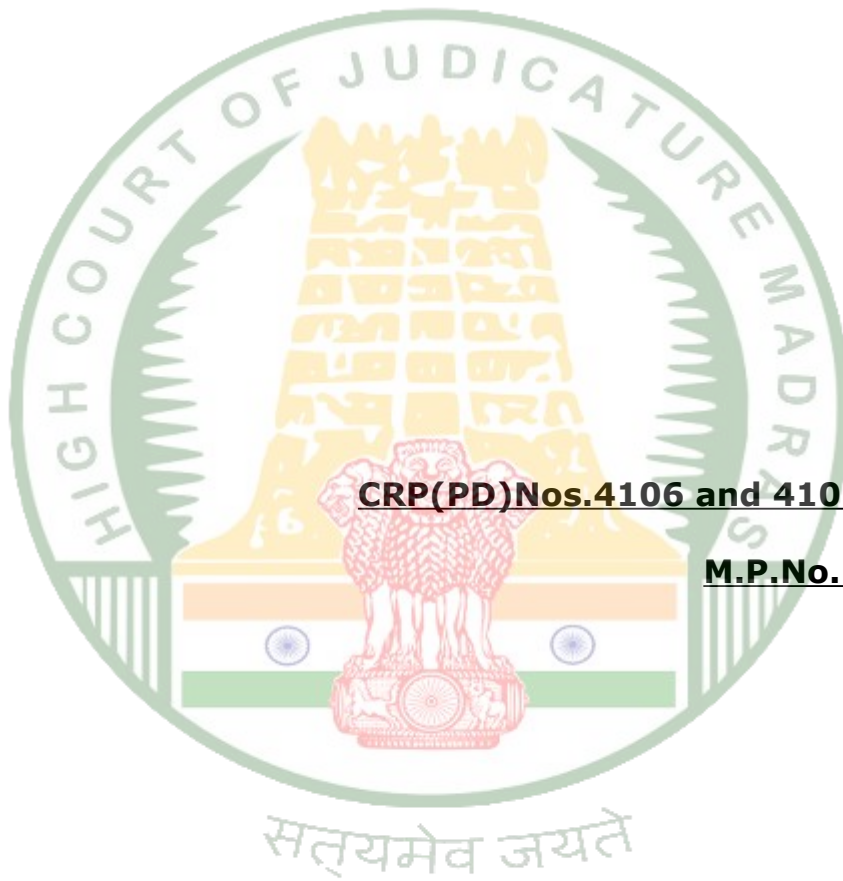
Note : Issue order copy on 18.04.2018.

To

The VI Assistant Judge,
City Civil Court, Chennai.

M.V.MURALIDARAN, J.

VS



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