



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.1767 of 2016 (PD)

&

C.M.P. (MD) No.8538 of 2016

S.Muthukrishnan

.. Petitioner/Respondent/Plaintiff

Vs.

Mrs.K.Muthuselvi

.. Respondent/Petitioner/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 31.03.2016, made in I.A.No.176 of 2015 in O.S.No.43 of 2015, on the file of the II Additional District Court, Tuticorin.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.R.J.Karthick

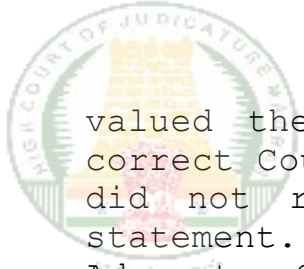
ORDER

This Civil Revision Petition has been filed against the order dated 31.03.2016, made in I.A.No.176 of 2015 in O.S.No.43 of 2015, on the file of the II Additional District Court, Tuticorin.

2. The petitioner is the husband and the respondent is the wife. The petitioner filed the suit in O.S.No.43 of 2015 against the respondent before the file of the II Additional District Court, Tuticorin, for declaration and recovery of possession. The respondent filed written statement on 12.08.2015 and contesting the suit. The respondent filed I.A.No.176 of 2015 before the II Additional District Court, Tuticorin, for appointment of Advocate Commissioner to determine the correct market value of the property mentioned in the plaint and to pay correct Court fee. According to the respondent, the properties are worth more than several crores of rupees. The petitioner has not valued the property correctly. The petitioner in the counter filed in I.A.Nos.7 and 8 of 2015 and H.M.O.P.No.235 of 2013 admitted that the properties are worth more than several crores of rupees. The guideline value of the property is Rs.2,32,97,149/-.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The petitioner filed counter affidavit and denied the various averments mentioned in the affidavit and submitted that he



valued the suit property based on the sale deed and paid the correct Court fee. The respondent filed written statement and she did not raise the plea of deficit Court fee in the written statement. The present application is filed for appointment of Advocate Commissioner only to drag on the proceedings. The petitioner is a Software Engineer and he is working in United States of America and sent money to the respondent. From and out of the said money, the respondent and her father purchased the property fraudulently in their name. Now, there is matrimonial dispute between the petitioner and the respondent and they are living separately and the respondent and her father trying to grab the property belonging to the petitioner. In the circumstances, the petitioner has filed the suit for declaration and recovery of possession and valued the suit properly and paid the correct Court fee and prayed for dismissal of the application.

4. The learned II Additional District Judge, Tuticorin, considering the averments mentioned in the affidavit and the counter affidavit and considering the judgments relied on by the learned counsel for the parties and also considering the fact that the petitioner did not deny that he stated in the counter affidavit filed in I.A.Nos.7 and 8 of 2015 and in H.M.O.P.No.235 of 2013 that the properties are worth more than several crores of rupees; the respondent is receiving several lakhs of rupees as rent; the petitioner valued the suit based on the sale deed of the year 2002, 2003, 2004 and 2007 and filed the suit in the year 2015; and not valued the suit properly, allowed the application, appointing an Advocate Commissioner to ascertain the market value of the property.

5. Against the said order dated 31.03.2016, the petitioner has come out with the present Civil Revision Petition.

6. The learned counsel for the petitioner reiterated the averments made in the counter affidavit and the grounds raised in the Civil Revision Petition and submitted that the respondent did not raise the plea of payment of deficit Court fee in the written statement and filed application only at the time of commencement of trial.

7. The learned counsel for the respondent submitted that the petitioner admitted in the counter filed in the H.M.O.P. that the properties are worth more than several crores of rupees and the respondent is receiving several lakhs of rupees as rent. In the circumstances, the learned II Additional District Judge, Tuticorin, has rightly held that the petitioner has valued the suit property only based on the sale deed of the year 2002, 2003, 2004 and 2007, whereas the value of the property had increased in the year 2015 and prayed for dismissal of the Civil Revision Petition.



8. I have considered the arguments advanced by the learned counsel appearing for the parties and perused the materials available on record.

9. The respondent filed application for appointment of Advocate Commissioner to determine the correct market value of the suit property and for determining the correct Court fee paid by the petitioner. When the suit is undervalued and proper Court fee is not paid, the Court must called upon the petitioner/plaintiff to pay the deficit Court fee. It is for the party, who is alleging that the suit is not properly valued, must prove the same by acceptable evidence. The learned II Additional District Judge has taken note of the fact that the petitioner in the counter filed by him in I.A.Nos.7 and 8 of 2015 and H.M.O.P.No.235 of 2013 that the properties are worth more than several crores of rupees and the respondent is receiving several lakhs of rupees as rent, has held that the petitioner has not denied the said statement. The learned II Additional District Judge failed to consider that the said statement of the petitioner in the I.As., and the H.M.O.P. was not substantiated by any acceptable material to show that the value of the property would be several crores of rupees. The learned II Additional District Judge assumed that the value of the property would have been increased from the date of purchase to the date of filing of the suit. The learned II Additional District Judge failed to see that the respondent has not filed any material to show that the value of the property as stated by the petitioner is less than the market value, except the statement of the petitioner in the counter in I.A. and in the H.M.O.P., which is not substantiated by the petitioner by any material evidence. The learned II Additional District Judge failed to consider the contention of the petitioner that the respondent did not raise the issue in the written statement that the suit is undervalued. In the circumstances, the learned II Additional District Judge erred in appointing the Advocate Commissioner to collect the evidence on behalf of the respondent. The learned II Additional District Judge has not exercised his jurisdiction conferred on him properly and committed an irregularity warranting interference by this Court.

10. In the circumstances, the order of the learned II Additional District Judge, Tuticorin, dated 31.03.2016, passed in I.A.No.176 of 2015 in O.S.No.43 of 2015, is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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To

The II Additional District Judge,
Tuticorin.

Copy to

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to MR.R.J.Karthick , ADVOCATE, SR NO:3950

+1 cc to MR.T.Lajapathi Roy, ADVOCATE, SR NO: 4079

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MAS-SV-MMS/10.2.2017/4p-5c

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