IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.642 to 644 of 2015
& M.P.Nos.1 to 1 of 2015

Sree Mahaveer Fund Private Limited,
rep.by its Managing Director,
J.Gouthamchand
No.156, Triplicane high road
Triplicane, Chennai-5. .. Petitioner in all CRPs.

Vs.

Thamarai Selvi .. Respondent in CRP(PD)No.642 of 2015

B.Ravi .. Respondent in CRP(PD)No.643 of 2015

Swamykannu .. Respondent in CRP(PD)No.644 of 2015

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PRAYER: Civil Revision Petitions are filed under Article 227 of Constitution of India, against the fair and decretal order dated 21.04.2014 made in I.A.Nos.123 to 125 of 2011 in O.S.Nos.260 to 262 of 2010 respectively, on the file of the Subordinate Court, Tambaram.

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In all CRPs.

For Petitioner : Mr.T.Thiyagarajan

For Respondents : Mr.V.Veluchamy

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 21.04.2014 made in I.A.Nos.123 to 125 of 2011 in O.S.Nos.260 to 262 of 2010 respectively, on the file of the Subordinate Court, Tambaram.

2. The issues in all the three Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

3. The petitioner is plaintiff and respondents are the defendants in O.S.Nos.260 to 262 of 2010 respectively, on the file of the Subordinate Court, Tambaram. The petitioner filed said suits for declaration, recovery of possession, mandatory injunction directing the respondents to remove unauthorised construction put

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up on the suit property and for permanent injunction. According to the petitioner, he is the owner of the property having purchased the same by the sale deed dated 18.07.1968 and the respondents have trespassed into the suit property in S.No.140/3, Madipakkam and put up unauthorised construction. The respondents filed written statement and are contesting their respective suits. The respondents filed I.A.Nos.123 to 125 of 2011 in O.S.Nos.260 to 262 of 2010 under Section 12(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, to decide whether the Court has got pecuniary jurisdiction to try the suits.

4. According to the respondents in all the three Civil Revision Petitions, the petitioner has undervalued the suits and based on the market value, the Court has no pecuniary jurisdiction and prayed for deciding the issue as a preliminary issue.

5. The petitioner filed counter affidavit in all the three applications and denied various allegations made by the respondents. According to the petitioner, he purchased the property by sale deed dated 18.07.1968 and value of the property in all the three suits are only Rs.6,00,000/- each as on the date of filing of

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the suits and the petitioner valued the suits properly. The document relied on by the respondent relates to different survey numbers and it does not belong to the suit property. The said value is not relevant to decide the value of the suits and prayed for dismissal of the applications.

6. All the three applications were taken up together. Before the learned Judge, respondents marked three documents as Exs.P1 to P3 and no oral evidence was let in. The petitioner did not let in any oral and documentary evidence.

7. The learned Judge considering the averments made in the affidavit, counter affidavit and documents marked by the respondents, allowed all the three applications.

सत्यमेव जयते

8. Against the said common order dated 21.04.2014 made in I.A.Nos.123 to 125 of 2011 in O.S.Nos.260 to 262 of 2010 respectively, the present three Civil Revision Petitions are filed by the petitioner/plaintiff.

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9. The learned counsel for the petitioner reiterated the averments made in the counter affidavit as well as the contentions

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raised in the grounds of revision. The learned counsel for the petitioner referred to letter from the Sub-Registrar, Velacherry, filed in the additional typed set of papers and submitted that as per the said information obtained under Right to Information Act, the guideline value of the property is only Rs.228/- per sq.ft. in the year 2005 and Rs.1,325/- per sq.ft. in the year 2011 and the same prevailed during the year 2007 to 2012. The suit was filed in the year 2009 and therefore, value given by the petitioner in the plaint is correct. The respondents are rank trespassers and they are not owners of the property. Therefore, value given by the petitioner is correct.

10. Per contra, the learned counsel for the respondents submitted that guideline value and market value will not be one and the same and the suits have to be valued only as per the market value of the property. The market value is more than pecuniary jurisdiction of the trial Court. The petitioner is seeking relief of declaration of title and therefore, the petitioner has to value the suits at market value of the property and pay the Court fee to that extent. The respondents have made prima facie case that the petitioner has undervalued the suits. In view of Section 12 of the

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Tamil Nadu Court Fees and Suit Valuation Act, the Court has to find out the market value of the property and if plaintiff undervalued the suit property, he must be directed to pay the deficit Court fee within the time granted by the Court.

11. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

12. The issue in all the three Civil Revision Petitions are whether the petitioner has valued the suit property properly and has paid correct Court fee.

13. The petitioner is seeking declaration of title, recovery of possession, mandatory injunction directing the respondents to remove unauthorised construction put up on the suit property and for permanent injunction. In view of the relief of declaration of title sought for by the petitioner, the petitioner has to pay the Court fee on the market value of the property. The petitioner has valued the suits by calculating market value at Rs.6,00,000/- based on the sale deed dated 18.07.1968, by which he purchased the property. On the other hand, the respondents have produced Ex.P1 sale deed

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dated 11.11.2008 relating to adjacent property and proved that market value of the adjacent property is Rs.25,29,450/- per ground.

14. As far as deciding the issues arisen in the suits is concerned, as per Order XIV Rule 2 of C.P.C., the Court has to deliver judgment on all the issues. The Court has discretion under Order XIV Rule 2(2) of C.P.C. to decide the issue of the jurisdiction of the Court or bar to the suit by any law as a preliminary issue, if the Court can decide the said issue, based on the law only. On the other hand, if the defendant files an application under Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act before evidence in the suit is recorded claiming that the plaintiff undervalued the suit, then it is mandatory on the part of the Court to decide the issue as a preliminary issue. The Court has power to examine any witness to come to the conclusion whether the value as given by the plaintiff is correct or not. The Court has power to appoint any person or an advocate to ascertain the value of the suit property. The Court can exercise power under Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act only if the defendant makes prima facie case. If the intention of the defendant is to drag on the proceedings, the

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Court has power to dismiss the application. Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 reads as follows:

Section 12(2)

> **"**(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."

15. In the present case, the respondents have marked the document Ex.P1 sale deed to prove that the petitioner has undervalued the suits by producing sale deed of adjoining property.

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The petitioner has not produced any document before the learned Judge. The information received from the Sub-Registrar, Velacherry, has been filed before this Court in the additional typed set of papers with regard to the guideline value of the property. The learned counsel for the respondents has already contended that the guideline value cannot be the correct market value. The learned Judge considering the averments made in the affidavit, counter affidavit and documents filed by the respondents and marked as exhibits, allowed the applications by giving valid reason. There is no illegality or irregularity in the order of the learned Judge dated 21.04.2014 warranting interference by this Court.

16. It is seen from the impugned order of the learned Judge that the learned Judge has not appointed any person to make enquiry to find out the market value of the property at the time of filing of the suits. In view of the same, as per Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act, the learned Judge is directed to appoint a Senior Advocate of the Bar as a Commissioner to make enquiry and find out the market value of the property on the date of filing of the suits and to file his report. On receipt of such report, the learned Judge is directed to pass consequential

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orders as per Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act.

17. With the above direction, all the three Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No

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To

The Subordinate Judge
Tambaram.

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V.M.VELUMANI, J.

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