

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 782 of 2018

and

C.M.P. No. 4318 of 2018

1. M.V. Balasubramaniam
2. B. Latha
3. B. Jahnavi

.. Petitioners

Vs.

1. Muralikrishna Enterprises
rep. by its Prop.P. Sivanandham
2. P. Sivanandham

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal dated 11.01.2018 made in I.A.No.257 of 2017 in O.S. No.120 of 2008 on the file of the Principal Subordinate Court at Salem.

For Petitioner :Mr.K.Rajasekaran

ORDER

This revision petition arises against the fair and decreetal dated 11.01.2018 made in I.A.No.257 of 2017 in O.S. No.120 of 2008 on the file of the Principal Subordinate Court at Salem.

2. The respondents have filed the suit in O.S. NO. 120 of 2008 seeking for mandatory injunction. Subsequently, the petitioners filed an Interlocutory Application in I.A. No. 257 of 2017, under Order 7 Rule 11 of CPC for rejection of plaint, on the ground that the suit has not been properly valued and requisite court fee has not been paid by the plaintiffs. Without considering the submissions of the petitioners, the court below erroneously dismissed the aforesaid application holding that the petitioners had already filed an application in I.A. No. 627 of 2010 and the same was dismissed for default. Thereafter, an application was filed to restore the said application, which was not numbered. Hence, the said application has become final and so the instant application is not maintainable. Challenging the same, the present revision petition is filed before this Court.

3. The learned counsel for the petitioners would submit that the plaintiffs have not valued the court fee under Section 25(d) of the Court Fee and Suit Valuation Act and for the second prayer of recovery, the suit should have been valued under Section 27(c) of the Act instead of 22 of the Act.

4. Considered the facts and submissions of the learned counsel for the petitioners and perused the material available on record.

5. The court below has rightly dismissed the application as not maintainable since the petitioners have not taken any steps to restore the application, filed by the petitioners in I.A. No. 627 of 2010. Therefore, this Court is not inclined to interfere with the order passed by the court below. However, it is open to the petitioners to establish before the trial court that the court fee has been undervalued and the trial court shall consider the same at a later stage, under the provisions of law.

D. KRISHNAKUMAR J.,

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6. The Civil Revision Petition is dismissed, with the above direction. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

01.03.2018

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy on 03.05.2018]

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To

The Principal Subordinate Court
Salem.

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and

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