

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2018

Pronounced on: 11.07.2018

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P (NPD) .No.1389 of 2006

and

M.P.No.1 of 2006

Mr.Samuel Arulraj ...Petitioner /Petitioner/2nd Defendant

Vs

1.Mrs.Dhanalakshmi

2.Minor Sachratis, represented
by his mother and next friend

Mrs.Dhanalakshmi ...Respondents 1 & 2/Respondents 1 &
2/Plaintiffs 1 & 2

3.Mr.M.Vijayakumar

4.The Sub Registrar,
Neelankarai Office,
Having Office at Neelankarai
Pallikaranai Firka,
Tambaram Taluk.

...Respondents 3 & 4/Respondents 3 &
4/Defendants 1 and 3

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order of the learned District Munsif Court, Alandur passed in I.A.No.1377 of 2005 in O.S.No.189 of 2005 dated 04.07.2006.

For Petitioner : Mr.V.Balaji

For Respondents : No Appearance for R1
(R2-minor represented by R1)
R3 & R4 given up vide order
dated.05.09.2006

ORDER

The Civil Revision Petition is filed challenging the order passed by the learned District Munsif, Alandur dated 4th July

2006 in I.A.No.1377 of 2005 in O.S.No.189 of 2005. The said petition was filed under Section 21 r/w. Order 7 Rule 11 of the Code of Civil Procedure questioning the pecuniary jurisdiction of the Court and consequently rejecting the suit as not maintainable.

2. The respondents 1 & 2 herein had filed the suit in O.S.No.189 of 2005 on the file of the District Munsif, Alandur against one M.Vijayakumar/3rd defendant and the Sub Registrar/4th defendant, Neelangarai for partition and separate possession of the plaintiff's $\frac{1}{2}$ share in the suit property and for a permanent injunction restraining the petitioner from alienating the suit property to any third party and the 4th defendant /Sub Registrar from registering any document in respect of the suit property. The plaintiff had valued the suit property at Rs.1,90,000/- and valued the suit at Rs.95,000/- being the value of their $\frac{1}{2}$ share of the suit property. In the said plaint respondents 1 and 2 had referred to the sale in favour of the petitioner herein by the third respondent who is none other than the husband of the first respondent and the father of the second respondent.

3. The petitioner herein had filed his written statement wherein he has questioned the valuation of the suit property by respondents 1 & 2 thereby questioning the pecuniary jurisdiction of the Court as the suit ought to be valued at Rs.5,95,709/-, which was the value for which the petitioner had purchased the property. The petitioner had also raised other defence as well, one of which was that respondents 1 and 2 had not sought the relief of cancellation of the sale deed. Along with the written statement the petitioner had also taken out the impugned Interlocutory Application for deciding the issue of pecuniary jurisdiction as a preliminary issue. The counter of the respondents 1 and 2 was that the value of the property was not Rs.5,95,709/- and that they had rightly valued the suit and therefore no exception could be taken to the same. They had also contended that the sale in favour of the petitioner had taken place when they had an order of injunction in their favour in O.S.No.87 of 2004 of by way of abundant caution they had also contended that if the Court came to the conclusion that the suit is under valued, they must be given an opportunity to pay additional Court fees.

4. The learned District Munsif, Alandur allowed the petition in part, in that, the Court has not considered the petitioner's claim that the suit is bad for the non-inclusion of the relief of cancellation of the sale in his favour. The learned District Munsiff, Alandur therefore accepted the petitioner's claim that the value of the suit property was Rs.5,95,709/-. However,

after valuing the suit at Rs.2,98,855/-, the learned District Munsiff without following the procedure contemplated under Order 7 Rule 10 (1) retained the jurisdiction with itself and directed the respondents to pay the additional Court fee for a sum of Rs.2,98,855. It is this order that is the subject matter of challenge before this Court.

5. The learned counsel for the petitioner would argue that once the learned Judge has arrived at the suit value of Rs.2,98,855/-, the Court had lost pecuniary jurisdiction to try the suit and therefore the learned Judge ought to have returned the plaint to the plaintiff for presentation before the appropriate Court. The learned counsel would also rely upon the judgment of the Calcutta High Court reported in AIR 1926 Calcutta 355 (Bimala Prosad Mukerji Vs. Lal Moni Devi and others) and another judgment of the Andhra Pradesh High Court reported in 1963 Andhra Pradesh 68 (V 50 C 27) (Mamidi Lakshminarayana Vs. Akula Satyanarayana and others) to state that it is only the date on which the plaint is presented before the appropriate Court that the suit will be taken to have been instituted.

6. From a perusal of the records, it is clear that on the enhancement of the value of the suit property and consequently the value of the suit, the learned District Munsif ceased to have pecuniary jurisdiction over the lis. The learned Judge ought to have returned the plaint for presentation before the proper Court having jurisdiction to try the suit. The order of the learned District Munsif is therefore erroneous in the light of Section 12 of the Tamil Nadu Civil Courts Act 1873.

7. In the result, the Civil Revision Petition is allowed. The learned District Munsiff, Alandur is directed to return the plaint to the plaintiffs/respondents 1 and 2 herein for presentation before the proper Court. Consequently connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dh

To

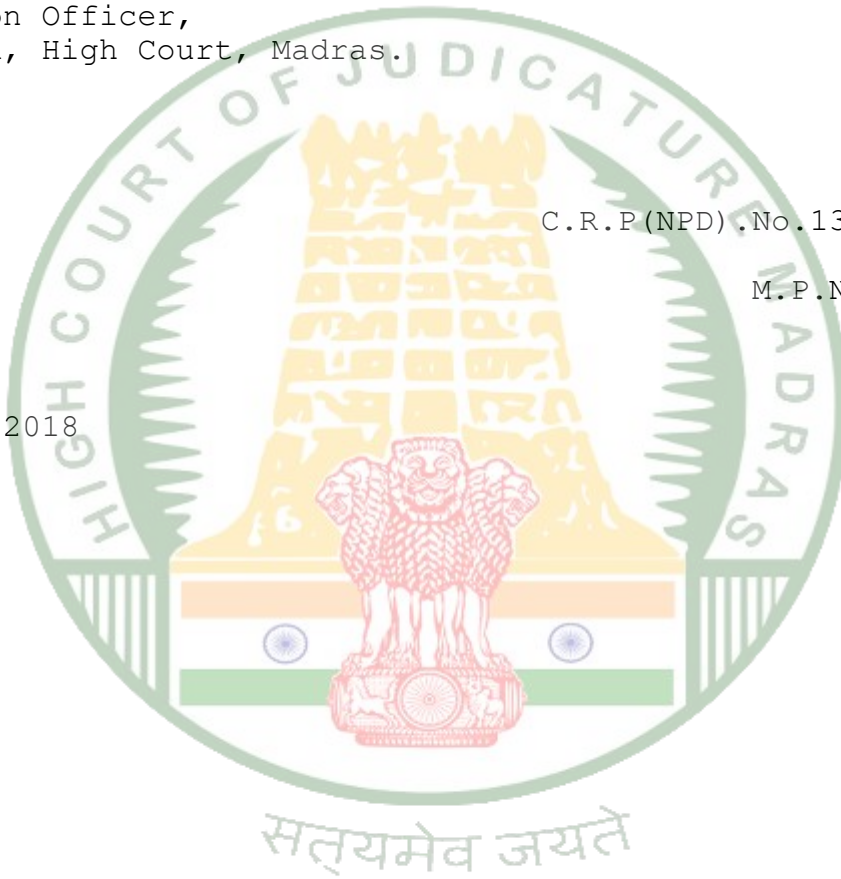
The District Munsif,
Alandur.

Copy to

The Section Officer,
VR Section, High Court, Madras.

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and
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