

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3852 of 2013
and MP.No.1 of 2013

1.R.Selvaraj
2.Ramasamy Gounder

..Petitioners

Vs.

P.Subramani

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.07.2013 made in I.A.No.390 of 2013 in O.S.No.103 of 2012 on the file of the IV Additional District and Sessions Court at Coimbatore.

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For Petitioners : Mr.Mukunth for

M/S.Sarvabhauman Associates

For Respondent : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 24.07.2013 made in I.A.No.390 of 2013 in O.S.No.103 of 2012 on the file of the IV Additional District and Sessions Court at Coimbatore.

2. The petitioners are the plaintiffs and respondent is defendant in O.S.No.103 of 2012 on the file of the IV Additional District and Sessions Court at Coimbatore. The petitioners filed said suit for recovery of possession. They valued the suit property at the market rate of Rs.15,50,000/- and also valued the suit property for payment of Court fee at Rs.15,000/- under Section 7(2)(a) of the Tamil Nadu Court Fees and Suit Valuation Act. The respondent filed I.A.No.830 of 2012 under Section 12(3) of the Tamil Nadu Court Fees and Suit Valuation Act read with Section 151 C.P.C., to take the issue in respect of the Court fees and valuation as preliminary issue and direct the petitioners to amend the plaint and pay the deficit Court fee.

3. The petitioners filed counter affidavit and contended that the suit property is 8 Acres of ryotwari land and it is an agricultural land. The suit is filed for recovery of possession. As per Section

7(2)(a) of the Act, for the ryotwari land, the Court fee is payable at 30 times of survey assessment of the land.

4. The learned Judge by order dated 08.02.2013 considering the averments made in the plaint, affidavit and counter affidavit, held that the petitioners cannot give two valuations in the suit; one for pecuniary jurisdiction to file suit in the District Court and another for paying Court fee. The learned Judge directed the petitioners to amend the plaint suitably for adopting the same valuation for the purpose of pecuniary jurisdiction and for payment of Court fee.

5. In view of the said order dated 08.02.2013, the petitioners filed present I.A.No.390 of 2013 under Order VI Rule 17 C.P.C. to amend the plaint valuing the suit at Rs.15,000/- instead of Rs.15,50,000/-. The respondent filed counter affidavit and opposed the said application. The learned Judge dismissed the application on the ground that if amendment is allowed, it will oust the jurisdiction of the Court and the same cannot be allowed.

6. Against the said order of dismissal dated 24.07.2013 made in I.A.No.390 of 2013, the present Civil Revision Petition is filed by the petitioners/plaintiffs.

7. Heard the learned counsel for the petitioners and perused the materials available on record. Though notice was served on the respondent privately and his name has been printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel.

8. From the order of the learned Judge and materials available on record, it is seen that on the application filed by the respondent in I.A.No.830 of 2012, the learned Judge by order dated 08.02.2013 directed the petitioners to amend the plaint for adopting the same valuation for the purpose of pecuniary jurisdiction as well as for the payment of Court fee. The petitioners filed present I.A.No.390 of 2013 for amendment of the plaint for adopting the same value of Rs.15,000/- for jurisdiction as well as for payment of Court fee.

9. The petitioners are seeking the relief of recovery of possession in respect of agricultural land. The respondent has not denied that the suit property is agricultural land. Section 30 of the Tamil Nadu Court Fees and Suit Valuation Act, deals with the Court fee payable for the possession of the immovable property not

otherwise provided in the Act. Section 7 of the Tamil Nadu Court Fees and Suit Valuation Act, deals with market value of the ryotwari land. Section 7 of the Tamil Nadu Court Fees and Suit Valuation Act was amended by Act 6 of 2017 dated 17.02.2017 and amendment came into force on 01.03.2017. Section 7 of the Tamil Nadu Court Fees and Suit Valuation Act, before amendment and the same is applicable to the present suit, which reads as follows:

Section 7:

"7. Determination of market Value:- (1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) The market value of land in suits falling under sections 25(a),25(b),27(a),29,30,37(1),37(3),38,45 or 48 shall be deemed to be-

(a) where the land is ryotwari land, thirty times the survey assessment on the land:

Provided that, where the land forms part of a survey field and is not separately assessed to revenue, the value of such part shall be deemed to be thirty times such proportion of the survey assessment as the part bears to the entire survey field.

Section 30 of the Act reads as follows:

"30. Suits for possession not otherwise provided for.- In a suit for possession of immovable property not otherwise provided for, fee shall be computed on the market value of the property or on (rupees five thousand], whichever is higher.

[Provided that in cases where a defence of adverse possession is made, the same shall be treated as a counter claim and fee shall be computed on the market value of the immovable property.]

Section 30 prescribes a Court-fee computed on the market value of the property or on Rs.5,000 whichever is higher, in suits for possession of immovable property not otherwise provided for. The market value in this Section is the market value defined in Section 7 of the Act, namely, the market value fixed under Section 47-AA of the Indian Stamp Act, 1899. The pre-requisite to file a suit under this section is that the plaintiff should have title to the property. "

10. As per Section 7(2)(a) of the Tamil Nadu Court Fees and Suit Valuation Act, in respect of ryotwari land, 30 times of kist is to be taken for the purpose of calculating the market value. In the present case, the suit property is ryotwari land. The petitioners are

entitled to value the suit property at 30 times of the revenue assessment i.e., kist paid by them. As per such calculation, value of the property is only Rs.15,000/-. The petitioners have paid Court fee on the said amount. In order to file the suit in the District Court, the petitioners have given market value at Rs.15,50,000/-. Now after order dated 08.02.2013 in I.A.No.830 of 2012, the petitioners filed present I.A.No.390 of 2013 seeking to amend the plaint to mention the value of the suit property at Rs.15,000/- and not at Rs.15,50,000/-. The earlier order dated 08.02.2013 passed in I.A.No.830 of 2012 was not challenged by the respondent and that order has become final.

11. The petitioners have filed suit on 12.04.2011 and Court fee payable by them is as per Section 30 read with 7(2)(a) of the Tamil Nadu Court Fees and Suit Valuation Act. As per Section 7(2)(a) of the Act, the petitioners are liable and are entitled to pay the Court fee at 30 times of survey assessment of the land. The Court fee payable at the market value of the property as on value of the suit. The petitioner has chosen to value the suit property at Rs.15,000/- and they are entitled to do so as per Section 7(2)(a) of the Tamil Nadu Court Fees and Suit Valuation Act. The learned

Judge has committed an irregularity in dismissing the application on the ground that if the amendment is allowed, it will oust the jurisdiction of the Court. The learned Judge ought to have allowed the application for amendment and after amendment, he ought to have returned the plaint to the petitioners to be represented before the appropriate Court having pecuniary jurisdiction.

12. For the above reason, the order of the learned Judge is set aside and the Civil Revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

24.01.2018

Index:Yes/No

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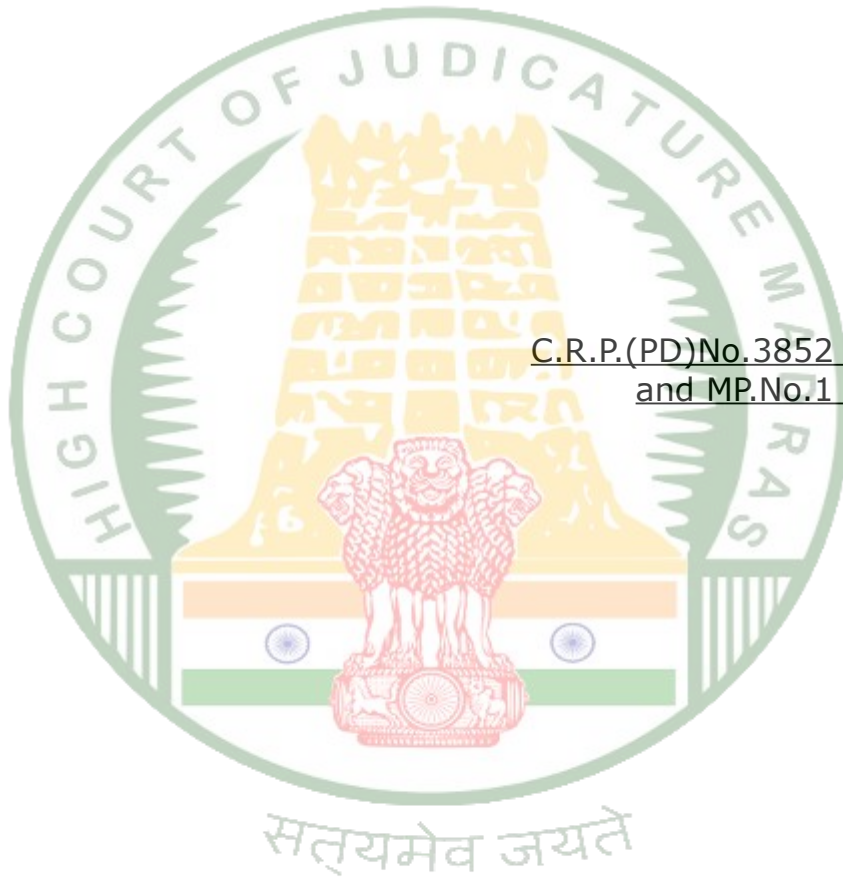
To

The IV Additional District and Sessions Judge
Coimbatore.

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V.M.VELUMANI,J.

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