



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 10.09.2018
DELIVERED ON : 28.09.2018
CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P. (NPD) (MD) No.2407 of 2015

and

M.P. (MD) No.1 of 2015

R.Kaliappan

.. Petitioner/Petitioner/Defendant

Vs.

Kasthuri

.. Respondent/Respondent/Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the order dated 30.09.2015 in I.A.No.288 of 2015 in O.S.No.227 of 2013 on the file of the learned Principal District Munsif, Thoothukudi.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondent : Mr.R.Vijayakumar

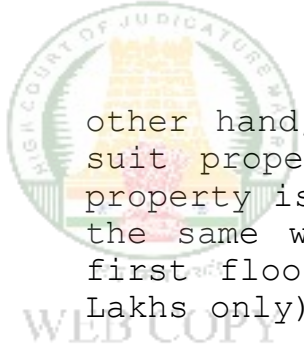
ORDER

Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner and Mr.R.Vijayakumar, learned counsel appearing for the respondent.

2.This petition has been filed to set aside the order dated 30.09.2015 in I.A.No.288 of 2015 in O.S.No.227 of 2013 on the file of the learned Principal District Munsif, Thoothukudi.

3.The petitioner herein is the defendant and the respondent herein is the plaintiff in the suit. The respondent filed a suit against the petitioner herein claiming arrears of rent for the first schedule property to the tune of Rs.36,000/- (Rupees Thirty Six Thousand only) with interest from the date of suit till the date of decree and also claiming Rs.2,000/- (Rupees Two Thousand only) as rent for the second schedule property with interest at the rate of 12 % from the date of plaint till the date of decree and for eviction of the petitioner herein from the suit property and for the other relieves. The petitioner herein filed petition in I.A.No.288 of 2015 questioning the jurisdiction of the Court. The trial Court dismissed the petition and against the order of dismissal, this revision petition is filed.

4.On the side of the petitioner, it is stated that the respondent filed an application in I.A.No.1255 of 2012 before the learned Principal District Munsif, Thoothukudi to direct the respondent to value the suit property and to pay the correct Court fee and the petition was allowed by the trial Court by directing the respondent to value the suit and to pay the correct Court fee. The respondent valued the suit property as Rs.55,000/- (Rupees Fifty Five Thousand only) which is not based on the market value. The respondent pleaded that the petitioner is a trespasser and on the



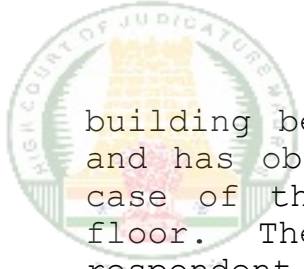
other hand, she valued the relief based on the one year rent. The suit property is situated in Thoothukudi city. The value of the property is more than Rs.15,00,000/- (Rupees Fifteen Lakhs only) and the same was admitted in the cross examination. The value of the first floor of the house is more than Rs.10,00,000/- (Rupees Ten Lakhs only). The Court have no pecuniary jurisdiction.

5. On the side of the respondent, it is stated that the suit property measuring 10x10 ft and the value is not upto Rs.10,00,000/- (Rupees Ten Lakhs only). The admission of the respondent is that the value of the suit property is Rs.15,00,000/- (Rupees Fifteen Lakhs only) is not for the second schedule property. The entire property including the ground floor is valued as Rs.15,00,000/- (Rupees Fifteen Lakhs only) but the second scheduled property is only a small room and the petitioner has to prove the value. This petition is filed to drag on the matter and this revision petition is filed after the case is reserved for Judgment and prayed the petition to be dismissed.

6. On the side of the petitioner, it is stated that I.A.No.1255 of 2012 filed by the petitioner herein, the trial Court has ordered to pay the Court fee as per the market value of the suit property under Section 30 of the Tamil Nadu Court Fees Act within the period of three weeks. The respondent has not taken any steps to value the property. No appeal or revision is filed against the order passed in I.A.No.1255 of 2012 and the Court fee paid under Section 22 of C.P.C., is not applicable for recovery of possession. Under Section 30 of the Tamil Nadu Court Fees and Suits Valuation Act provides that for $\frac{1}{4}$ share of the market value of the suit property, fee shall be computed on one half of the market value of the property or on rupees one thousand, whichever is higher. The petitioner filed a petition in I.A.No.288 of 2015 to reject the plaint for under valuation. The respondent approached the Court for evicting the petitioner who was the tenant by filing R.C.O.P and the respondent is also claiming that the petitioner is an encroacher. It is further stated that the value of the property is more than Rs.50,00,000/- (Rupees Fifty Lakhs only) and the same is admitted by the respondent in his evidence. Admitted facts need not be proved and the trial Court is wrong in considering that the petitioner failed to produce any document to show the market value of the property.

7. On the side of the respondent, it is stated that the petitioner was a tenant who was occupying the ground floor. After eviction, the petitioner trespassed into the first floor. The respondent has paid the Court fee under Section 30 of the Tamil Nadu Court Fees Act but not under Section 22 of Tamil Nadu Court Fees Act. But in the plaint, in para 7, the section is wrongly mentioned as 22 instead of 30.

8. Records perused. The case of the respondent is that the petitioner was a tenant who was occupying the ground floor and the



building belonged to the respondent. The respondent filed R.C.O.P. and has obtained an order for eviction against the petitioner. The case of the respondent is that the petitioner vacated the ground floor. The petitioner trespassed into the first floor. The respondent filed a suit against the petitioner claiming the arrears of the rent and for eviction. From the records, it is seen that the petitioner filed a petition in I.A.NO.1255 of 2012 and the trial Court has ordered the respondent to pay the Court fee as per Section 30 of the Tamil Nadu Court Fees Act. The order of the trial Court is not complied with by the respondent. The contention of the respondent is that the value of the suit property is only Rs.93,000/- (Rupees Ninety Three Thousand only) as it is a only 10x10 room and the Court fees was paid accordingly. A perusal of paragraph No.7 of the plaint reveals that only Section 22 was mentioned by the respondent. Admission mentioned by the petitioner as to the value of the suit property in the deposition of the respondent is denied by the respondent. The respondent is stating that the value of Rs.15,00,000/- (Rupees Fifteen Lakhs only) is for the entire building which includes the ground floor also but the suit is filed only with regard to the single room in the first floor and the value is only Rs.93,000/- (Rupees Ninety Three Thousand only) as per the Court fees Act, the value of the property as fixed by the plaintiff. The petitioner herein failed to produce any document to show that the suit property in the first floor is valuable more than Rs.10,00,000/-.

9.The suit is filed for balance of rent for the ground floor property and for the first floor property but with regard to the second item of the suit property, the respondent is not entitled to fix the Court fee on the basis of the rent to be paid. Hence, the matter is remanded back to the lower Court. The respondent is directed to pay the Court fees in accordance with law under Section 30 of the Court fees Act and to make necessary amendments in the plaint within a period of 15 days from the date of receipt of copy of this order. The trial Court is directed to frame a preliminary issue as to the pecuniary Jurisdiction and to proceed with the trial in accordance of law without entertaining any more petitions on this same issue.

10. With the above observation, this Civil Revision Petition is partly allowed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar (Wrts)

/True Copy/

Sub Assistant Registrar (CS-I)



To

The Principal District Munsif,
Thoothukudi.

+ 1 CC TO Mr.R.VIJAYAKUMAR, ADVOCATE IN SR No. 87644

+ 1 CC TO Mr.G.PRABHU RAJADURAI, ADVOCATE IN SR No. 87891

MRN

KK/RP/SAR-1 : 23/10/2018 : 4P/4C

C.R.P. (PD) (MD) No.2407 of 2015
28.09.2018