



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 09.08.2018

Orders Pronounced on : 11.08.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (MD) No.48 of 2011 (PD)

and

M.P. (MD) No.1 of 2011

M.Alagesan

...Petitioner/Petitioner/Defendant

Vs.

J.Esakkimuthu

... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the order dated 28.09.2010 passed in I.A.No.143 of 2009 in O.S.No.35 of 2009 on the file of the Additional District Munsif, Tuticorin.

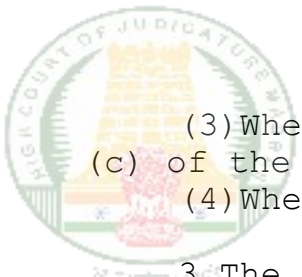
For Petitioner : Mr.S.Subbiah
Senior Counsel
for
Mr.G.Aravindhan

For Respondent : Mr.G.Prabhu Rajadurai

ORDER

The order dated 28.09.2010 passed in Interlocutory Application No.143 of 2009 in Original Suit No.35 of 2009 by the learned Additional District Munsif, Tuticorin is being challenged in the present Civil Revision Petition.

2.The respondent was the plaintiff and the Petitioner was the defendant in the suit. The respondent filed suit in O.S.No.35 of 2009 against the petitioner before the learned Additional District Munsif, Tuticorin, for the relief of permanent injunction. In the meantime, the petitioner herein filed an interlocutory application in I.A.No.143 of 2009 in O.S.No.35 of 2009 before the Additional District Munsif, Tuticorin, to frame the following additional issues:-



(3) Whether the plaint can be valued under Section 27(c) or 25 (c) of the Court Fee Act? and

(4) Whether the Court below has jurisdiction to try the suit?

3. The respondent in his counter affidavit specifically stated that the present suit is filed only for permanent injunction and therefore, they have valued the relief sought for in the plaint at Rs.1,000/- and paid the necessary Court fee of Rs.75.50 under Section 25(c) of the Tamil Nadu Court Fee Act. Therefore, the improper valuation of the suit and payment of lesser Court fee do not arise. Accordingly, the learned District Munsif, Tuticorin, have the jurisdiction to entertain the suit.

4. After hearing both the parties and perused all the pleadings and other documents, the lower Court dismissed the application stating that the issue raised by the petitioner is not relevant for the present case. Hence, after completion of the pleadings, if the Court feels that it is necessarily issues can be framed, the same can be decided by this Court. Under such circumstances, the petitioner has come out with the present Civil Revision Petition.

5. I have heard the learned counsel appearing for the petitioner; the learned counsel appearing for the respondent and also perused the entire materials on record.

6. When the matter came up for hearing, the learned counsel appearing for the petitioner made a submission stating that before deciding all the issues, the issue on payment of Court fee can be decided as a preliminary issue and therefore, the lower Court can frame the said issue as a preliminary issue.

7. In support of his submissions, the learned counsel for the petitioner relied on following Judgments:-

(i) 2012-5-L.W. 197 (S.N.S.SUKUMARAN v. C.THANGAMUTHU) wherein at paragraph No.31, it has been held as follows:

"After giving our anxious consideration to the matter and having regard to the law discussed hereinabove, the reference is answered as under:-

(1) The Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Section 12) enacted by the State Legislature on a subject covered by the Concurrent List, albeit inconsistent with the provisions of the Code of Civil Procedure (Order XIV, Rule 2) and being in compliance with the requirement of Article 254 of the Constitution of India, having been given assent by the President of India, shall prevail over the provisions of the Code of Civil Procedure.

(2) When a defendant comes forward with a case pleaded in the written statement questioning the correctness of the valuation of the suit property and payment of court fee and asks the Court, by an application, to decide it



first before deciding the suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before deciding the suit on merits.

(3) However, before proceeding to decide the objection with regard to valuation and court fee as provided under Section 1(2) of the State Act, the Court shall prima facie satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the defendant has substance.

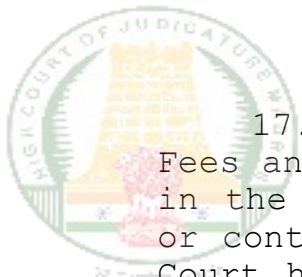
(4) Such objection with regard to improper valuation of the suit and insufficiency of Court fee shall be entertained by the Court only before the hearing of the suit on merits commences and witnesses are examined. Section 12(2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merit of the case.

(5) Exercise of right by the defendant as contained in Section 12(2) of the Act must be bona fide and not with an ulterior motive of dragging the suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such application, and in the event the Court finds that the defendant is not diligent or co-operating with the Court in the disposal of such objection expeditiously, then the Court shall proceed with the hearing of the suit on merits and decide all issues, including the one relating to the valuation of the suit and the adequacy or otherwise of court fee, together."

(ii) (2012) 2 MLJ 73 (P.B.KASEE SAH v. P.T.HIRU SAH), wherein at paragraph Nos.15 to 17, it has been observed as under:-

"15. Learned counsel appearing for respondent has submitted that under Order 14, Rule 2 C.P.C. Discretion is always vested with the Court whether to take up the issue as preliminary issue or not and when the learned Judge has directed that the issue regarding valuation to be decided along with the suit, the same cannot be interfered with.

16. Order 14, Rule 2 C.P.C. Deals with settlement of issues and determination of suit on issues of law or on issues agreed upon. As per Order 14, Rule 2 C.P.C., Court may try any issue as preliminary issue when it relates to: (a) jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force. As per Order 14, Rule 2 C.P.C., a discretion is vested with the Court to try the issue as to jurisdiction or statutory bar to the suit as a preliminary issue. In appropriate cases, Court may decline to try the issue as to jurisdiction or to statutory bar to the suit as preliminary issue if it considers expedient to do so.



17.Of course, as per Section 12(2) of Tamil Nadu Court Fees and Suits Valuation Act, when the defendant has disputed in the written statement the valuation of the suit property or contended that the suit has not been properly valued, the Court has to consider it as a preliminary issue. But not in all cases where the defendant has disputed in the written statement, the valuation of the suit property, the Court need to consider the issue as a preliminary issue. There should be harmonious reading of Order 14, Rules 1 and 2 C.P.C. And Section 13(2) of Tamil Nadu Court fees and Suits Valuation Act. After all, the question resolving the dispute regarding valuation is for the purpose of seeing whether the suit has been properly valued and whether the suit within the pecuniary jurisdiction of the Court, Lest, if the suit property is under valued and in such cases if the property is correctly valued, the Court may not have pecuniary jurisdiction to try the suit."

8.The learned counsel appearing for the respondent has also agreed that the issue with regard to payment of Court fee for the suit prayer can be considered as a preliminary issue, at the time of framing other issues.

9.Since both the counsels advanced their arguments conceding that the said issue on payment of Court fee can be considered as a preliminary issue and to that extent, the lower Court can frame an issue, as a preliminary one, at the time of framing of other issues, this Court, without going into the merits of the case, recording the submissions made by both sides, directs the Court below to frame an issue of payment of Court fee as a preliminary issue, at the time of framing other issues and accordingly, decide the same.

10.With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Additional District Munsif, Tuticorin.

+1CC to Mr.G.Aravindhnan, Advocate, SR.No.78624

+1CC to Mr.G.Prabhu Rajadurai, Advocate, SR.No. 78362

C.R.P(MD)No.48 of 2011 (PD) and

M.P. (MD)No.1 of 2011

11.08.2018