

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	11.07.2019
Pronounced On	24.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P(PD)No.2565 of 2015
and
M.P.No.1 of 2015

1.Pichaiammal
2.S.P.Meenakshi
3.Ramasamy
4.Mahesh @ Subramanian
5.Rajesh .. Petitioners

Priya Aparna .. Respondent

vs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 17.12.2014 in I.A.No.964 of 2014 in O.S.No.157 of 2013 on the file of the Additional District Judge-II, Poonamallee.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.T.S.Baskaran

ORDER

The present civil revision petition filed to set aside the fair and decretal order dated 17.12.2014 passed by the II Additional District Judge, Poonamallee in I.A.No. 964 of 2014 in O.S.No. 157 of 2013.

2. By the impugned order the court has dismissed the application filed by the petitioners under Order 14 Rule 2 of CPC read with section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

3. The petitioners are the defendants in O.S.No.157 of 2013 before the II Additional District Judge, Poonamallee. This suit was filed by the respondent herein for 1/6th share in the suit schedule property.

4. The petitioners are the mother, wife, and children of the late R.Vairavan Pillai respectively. The Said R.Vairavan Pillai died intestate on 06.06.1995.

5. The respondent claims to be the daughter of late R.Vairavan Pillai through his 2nd wife Mahalakshmi. She was born on 10.11.1993 and therefore at the time of death of late R.Vairavan Pillai, the

petitioner would have been about 1½ years old. The respondent's mother Mahalakshmi and late R.Vairavan Pillai were working together in Tamilnadu Housing Board.

6. In the said proceedings, the petitioners had filed their written statement. Following draft issues were filed on behalf of the petitioners in the said suit:-

- i. whether the age of the plaintiff (respondent) on the date of the suit is more than 22 years as claimed by the plaintiff?
- ii. Whether the plaintiff (respondent) is estopped by reason of release of all the rights of the plaintiff by her mother on behalf of the then plaintiff (respondent) minor under release deed dated 03.04.1996?
- iii. Whether the market value of the plaintiff's (respondent's) 1/6th share is more than 1/6th crore?
- iv. Whether the plaintiff (respondent) is liable to pay the court fee on ad-valorum based on 1/6th crore under section 37(1) of the T.N.C.F. Act?
- v. Whether the suit is barred by limitation?

7. The petitioners/defendants filed I.A.No.964 of 2014 for a prayer to decide the court fee issue as a preliminary issue and to direct the respondent/plaintiff to pay proper court fees of Rs.1,50,000/- for the relief of partition under Order 14 Rule 2 of CPC r/w Section 12(2) of C.F Act and Section 151 of CPC.

8. According to the petitioners, the respondent ought to have the valued of the Suit under Section 37 (1) of the TamilNadu Court Fee Valuation Act, 1955 and not under Section 37 (2) of the said Act.

9. The Court after considering the arguments of the parties has concluded that this issue can be decided only after considering the evidence at the time of the final hearing.

10. Aggrieved by the same, the present Civil Revision Petition is filed.

11. According to the petitioners, the respondent is not in joint possession of the suit schedule properties along with the petitioners and therefore the Court fee is payable under Section 37 (1) of the

<http://www.judis.nic.in> TamilNadu Court Fee and Valuation Act. Apart from the above, it was

submitted the respondent was not entitled to partition the suit schedule property as the respondent's mother had settled pending dispute with the 2nd petitioner on 30.04.1996 by entering into a mutual settlement by accepting a sum of Rs.30,000/-.

12. According to the petitioners, the respondent's mother Mahalakshmi had released her and respondent's rights overall terminal benefits of deceased R.Vairavan Pillai and the property of the deceased R.Vairavan Pillai in her capacity as the natural guardian of the respondent and therefore the respondent cannot claim any right over the estates of the deceased R.Vairavan Pillai

13. Further, it was submitted that the property namely the house property was in the name of the 2nd petitioner and therefore the respondent cannot claim rights over the said property. It was further submitted that R.Vairavan Pillai died on 06.06.1995, whereas the property in question was purchased by the 2nd petitioner from the TamilNadu Housing Board in the year 2000 vide sale deed dated 04.07.2000 and therefore the respondent cannot claim rights on the said property.

14. Learned counsel for the petitioners submits that the respondent cannot claim to be in joint possession of the suit

property, therefore, she cannot value the under Section 37 (2) of the Tamil Nadu Court Fees & Suits Valuation Act, 1955.

15. Per contra, the learned counsel for the respondent (plaintiff) submits that the order of the lower court was well reasoned and requires no interference. He submits that the property in question was allotted to late R.Vairavan Pillai during his lifetime in the year 1986 by the Tamil Nadu Housing Board under the Lease Cum Sale Agreement / outright purchase agreement wherein it was mutually agreed to the effect the sale deed.

16. Therefore, only the sale deed was executed in favour of the 1st petitioner as the said late R.Vairavan Pillai passed away on 06.06.1995. However, the said property was allotted to late. R.Vairavan Pillai during his lifetime and therefore as a daughter born to late. R.Vairavan Pillai and her mother Mahalakshmi, the respondent was entitled to a share in the suit schedule property and was justified in filing the suit for partition by valuing the suit under Section 37 (2) of the Tamilnadu Court Fees & Suits Valuation Act, 1955.

17. He further submitted that the petitioners were trying to frustrate the legitimate rights of the respondent by making it seem

as if the respondent was not entitled to file a suit under the aforesaid provisions.

18. Learned counsel for the petitioners relied on the following decisions of the courts in support of the present Civil Revision Petition:-

- i. **N.R.Govindarajan vs V.K.Rajagopalan and Others** (2005) 12 SCC 362.
- ii. **Sellammal alias Suppammal vs Jothimani Nadar alias Veda Nadar and Others**, AIR 1936 Mad 411.
- iii. **Sujir Keshav Nayak vs Sujir Ganesh Nayak**, (1992) 1 SCC 731.
- iv. **S.N.S.Sukumaran and Others vs C.Thangamuthy and Others**, 2012 (5) CTC 705.
- v. **S.K.P.Subramaniam and Another vs S.K.Chinnarsaj (Deceased) and Other**, 2017 SCC OnLine Mad 2.

19. Learned counsel for the respondent relied on the following decisions of the courts in support of the suit:-

- i. **M.K.Mala vs M.K.Ravi**, 2015 (3) CTC 671.

- ii. **Virudambal and 4 Others vs Kandasamy and 4 Others**, 2000 (II) CTC 263.
- iii. **Chithra Ramalingam vs G.Sridharane and Others**, 2010-3-L.W 793.
- iv. **S.Veersamy Chettiar (died) and Others vs Union of India and Others** in A.S.No.428 of 2012 passed by this Court.
- v. **Ravanasiddappa & Another vs Mallikarjun and Others**, (2011) 11 SCC 1.

20. The dispute that arises for consideration in the present case is whether a child born out of 2nd marriage or out of an illicit relationship between 2 consenting adults would be entitled to claim a right to partition over the estate of her deceased father? If so how the court fee has to be determined and paid?

21. In **Bharatha Matha vs R Vijay Raghunathan** (2010) 11 SCC 483, dealing with section 16 of the Hindu Marriage Act, 1955, the Honourable Supreme Court held that section 16 was intended to bring about social reforms, conferment of the social status of legitimacy on a group of children, otherwise treated as illegitimate. The Court also ruled that a child born of void or voidable marriage is not entitled to claim inheritance in the ancestral coparcenary

property but was entitled only to claim a share in self-acquired properties, if any of the deceased.

22. In **Parayankandiyal Eravath Kanapraavan Kalliani Amma (Smt) vs K. Devi**, (1996) 4 SCC 76 it was observed that " It may also be pointed out at this stage that the Joint Committee which was constituted to look into the provisions of the Hindu Marriage Act, indicated in its Report that in no case should children be regarded as illegitimate and consequently it followed the principles contained in Section 26 of the Special Marriage Act, 1954, to provide that children born of void or voidable marriages shall be treated to be legitimate unlike the English law which holds the child of a voidable marriage alone to be legitimate but not that of a void marriage (see Section 9 of the Matrimonial Causes Act, 1950).

23. Thus, if the respondent was born out of the relationship between the deceased R.Vairavan Pillai and her mother Mahalakshmi, she can claim rights over the estates of deceased R.Vairavan Pillai. This has to be determined in the suit after trial. Therefore, the next question to be answered is what was the correct court fee to be paid by the respondent in a partition suit.

24. Section 37 (1) of the Tamilnadu Court Fees & Suits Valuation Act, 1955 applies when a suit for partition is filed by a plaintiff for separate possession of a share in a joint family property or of property owned, jointly or in common. There the plaintiff is **"excluded from the possession"** of such property. The Court fee is payable on the market value of the plaintiff's share.

25. On the other hand, section 37(2) of the said Act applies in a case of a suit for partition and separate possession of joint family property or property owned jointly or in common, by the plaintiff **"who is in joint possession such property"**. The Court fee is to be paid at the rates prescribed there under.

26. The first bench of this Court in **S.N.S. Sukumaran vs C.Thangamuthu**, 2012 SCC OnLine Mad 3734: (2012) 5 CTC 705 : (2012) 5 LW 197 : 2013 AIR CC 407 after considering a plethora of decisions has summarized the position as far as determination of Court fee and a requirement to be decided the same on a preliminary issue of law as follows:-

31. After giving our anxious consideration to the matter and having regard to the law discussed herein above, 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 14, 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 12(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 merits 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.

27. In **N.R. Govindarajan vs V.K.Rajagopalan**, (2005) 12 SCC 362 the Hon'ble Supreme Court directed the trial court to frame an issue under Order 14 Rule 2 of CPC in terms of the plea raised in the written statement on the question of court fee and to hear and decide the same as a preliminary issue before proceeding ahead.

28. The Honourable Supreme Court in **Neelavathi vs N.Natarajan**, (1980) 2 SCC 247 has held that "The general principle of law is that in the case of co-owners, the possession of one is in law possession of all unless ouster or exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally, it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. **Before the plaintiffs could be called upon to pay court fee under Section 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been "excluded" from joint possession to which they are entitled in law."**

29. The respondent has neither stated that she is in joint possession of the suit schedule property nor has stated that she has been excluded from it. In this case, the right to claim a share in the suit schedule property is inter twined with the disputed question of fact as to whether the respondent was indeed the daughter of late R.Vairavan Pillai and whether the alleged mutual settlement stitched between the 2nd petitioner and the respondent's mother would deny the respondent a right to a share in the property.

30. In this case, therefore, there is no necessity for deciding the disputes relating to court fee as a preliminary as the rights of the respondent is intertwined with the issue as to whether the respondent is the daughter of the said deceased R.Vairavan Pillai. This can be decided only after the trial.

31. Considering the nature of the dispute that has arisen before the court, I am of the view that the issue relating to court fees need not and cannot be decided without deciding the merits of the case as to whether the respondent/plaintiff is the daughter of the deceased R.Vairavan Pillai or not. Unless a full fledged trial is conducted.

32. Therefore, if the above facts are established, the issue relating to Court fee would be irrelevant in the light of the decision of the Hon'ble Supreme Court in **Neelavathi vs N.Natarajan**, (1980) 2 SCC 247, referred supra.

33. In **Lakshmi Ammal vs K.M. Madhavakrishnan**, (1978) 4 SCC 15, the Hon'ble Supreme Court observed that *"It is unfortunate that long years have been spent by the courts below on combat between two parties on the question of court fee leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. Secondly, the court fee, if it seriously restricts the rights of a person to seek his remedies in courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable, of course, the benefit must go to him who says that the lesser court fee alone is paid."*

34. The intention of the petitioner appears to be to non-suit the respondent at the threshold by raising preliminary objection relating to the court fee.

35. In view of the above discussion, I am of the view that the order passed by the trial court needs no interference. The preliminary issue raised by the petitioners relating to the court fee payable by the respondent is left to be determined along with other issues raised by the petitioners in the suit and other issues that the court may frame before the trial.

36. Therefore, the Additional District Judge-II, Poonmallee is directed to take up the suit and frame issues and proceed with the trial. The Additional District Judge-II, Poonmallee shall endeavour to complete the trial and proceed to pass a preliminary decree the above suit within a period of twelve months from date of receipt of this order.

37. The present Civil Revision Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

24.07.2019

Index:Yes/No
Internet :Yes/No

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C.SARAVANAN, J.

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To

- 1.The II Additional District Court,
Poonamallee.
- 2.The Section Officer, V.R.Section,
High Court, Madras.



Pre-Delivery Order in

C.R.P(PD)No.2565 of 2015
and
M.P.No.1 of 2015

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