

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 20.11.2019

Pronounced On : 10.12.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition No.2816 of 2015

and

M.P.Nos.1 and 2 of 2015

1. Smt.Saraswathi
2. Smt.Vanajachi
3. R.Ayyasamy
4. V.Geetha Ramani
5. Smt.Sundarambal

.. Petitioners/Petitioners/Respondents

Vs

1. P.V. Gurusamy
2. V.Ranganathan
3. Mrs.Kamalam
4. K.Narayansamy

.. Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decretal order dated 06.04.2015 made in I.A.No.917 of 2014 in O.S.No.194 of 2008 on the file of the learned III Additional Subordinate Judge, Coimbatore.

For Petitioners: Mr.C.R.Prasanan

For Respondents: Mr.V.Radhakrishnan, Sr. Counsel  
for Mr.S.Kadarkarai (for R1 & R2)  
No appearance (for R3 & R4)

सत्यमेव जयते  
O R D E R

The plaintiffs in OS No.194 of 2008 on the file of the learned III Additional Subordinate Judge, Coimbatore, are the petitioners herein. Before the said Court, they filed a suit as against the respondents herein, seeking the relief of declaration, declaring that the plaintiffs and the 4<sup>th</sup> defendant, are the absolute owners of the suit scheduled property.

2. In the said suit, the respondent/defendants have entered appearance and filed their written statement. Thereafter, before commencement of trial, on 19.09.2014, the revision

petitioners/plaintiffs have filed an interlocutory application in IA.No.917 of 2014 under Order VI Rule 17 and Section 151 of CPC, praying to allow the revision petitioners/plaintiffs to amend the plaint in respect of payment of Court fee column, especially, in paragraph no.12 of the plaint.

3. In the affidavit filed by the 1<sup>st</sup> petitioner/plaintiff, she has stated that the suit property is an agricultural land measuring an extent of 2.35 acres in Old S.F.No.473/3, now new S.F.No.480/2-A of Vilankuruchi Village. Since the suit property is an agricultural land, though it has been valued under Section 25(a) of the Tamil Nadu Court Fees and Suits Valuation Act [hereinafter referred to as 'Act'], the market value has to be valued, read with under Section 7 of said Act. As per Section 25(a) read with Section 7 of the Act, 30 times of the value of the Kist or Rs.1,000/- whichever is higher, is the proper valuation of the suit scheduled property for the suit relief.

4. In the affidavit, the 1<sup>st</sup> revision petitioner/plaintiff has further stated that due to inadvertence the value of the suit scheduled property was determined as Rs.2 Lakhs and hence, they have paid the Court fee at Rs.15,000/- and accordingly, prayed to amend the valuation column of the plaint.

5. On the other hand, in the counter affidavit filed by the 2<sup>nd</sup> respondent/defendant adopted by the 1<sup>st</sup> respondent/defendant, it was averred that the application filed by the revision petitioners/plaintiffs, is an abuse of process of Court and law. In fact the said suit has been filed by the revision petitioners/plaintiffs, for the relief of declaration, that they are the owners of the suit schedule property. At the time of filing the plaint, the market value of the suit property was mentioned as Rs.2 Lakhs and ad valorem Court fee has been paid. In respect to the valuation of the suit scheduled property and the Court fee paid therein, the respondents/defendants filed an application in IA No.679 of 2008, seeking to take up the issue of valuation and payment of Court fee as a preliminary issue and the application was contested by the revision petitioners/plaintiffs, stating that the valuation of suit property at Rs.2 Lakhs is proper and that it is the value given by the respondents/defendants in the earlier suit in O.S.No.748 of 1998 on the file of the Sub Court, Coimbatore.

6. In the counter affidavit, it is further averred that the value of the suit scheduled property has increased manifold, at the time of filing the suit in 2008 and the valuation in the year 1998, cannot be adopted for the payment of Court fee. Only for avoiding the payment of Court fee, the revision

petitioners/plaintiffs have come up with the above application alleging that the suit property is an agricultural property and therefore, the market value of the property under Section 7 of the Act, is 30 times the kist and it is sufficient to pay the Court fee at Rs.75.50p. In effect the revision petitioners/plaintiffs are seeking to reduce the value of the suit property from Rs.2 Lakhs to Rs.1,000/- and Court fee from Rs.15,000/- to Rs.75.50p. The application filed by the revision petitioners/plaintiffs, is untenable and liable to be dismissed in limini.

7. Before the trial Court after deciding the application filed by the revision petitioners/plaintiffs, by consent, two documents were marked as Exs.B1 & B2, on the revision petitioners/plaintiffs and four documents were marked as Exs.R1 to R4 on the side of the respondents/defendants.

8. Having considered all the materials placed before him, the learned III Additional Subordinate Judge, Coimbatore, by order dated 06.04.2015, dismissed the application filed by the revision petitioners/plaintiffs. Aggrieved over the same, the revision petitioners/plaintiffs are before this Court with the present Civil Revision Petition.

9. The learned counsel appearing for the revision petitioners/plaintiffs would contend that since the suit scheduled property is an agricultural land, though it has been valued under Section 25(a) of the Act, market value has to be valued as per Section 7 of the Act, i.e. 30 times of the value of the Kist or Rs.1,000/- whichever is higher. Earlier, due to inadvertence, the revision petitioners/plaintiffs have valued the same at Rs.2 Lakhs and paid the Court Fee of Rs.15,000/-.

10. Per contra, the learned senior counsel appearing for the respondents 1 & 2 /defendants would contend that the revision petitioners/plaintiffs have filed this application after six years from the date of institution of the suit. No explanation has been offered on the side of the revision petitioners/plaintiffs, as to why the said application has not been filed immediately, after the institution of the suit. As of now, the suit property has been converted into house sites. Therefore, the valuation of the suit property as an agricultural property, is an utter false.

11. Upon considering the arguments advanced by either side counsel, it is true that the application filed by the revision petitioners/plaintiffs for amendment has been filed after the lapse of six years. Since the suit is filed for the relief of declaration and possession, if the land is an agricultural land, 30 times of the value of the Kist of the suit property or

Rs.1,000/- whichever is higher is the proper court fee for the suit relief.

12. Though, it was the contention of the revision petitioners/plaintiffs that the suit property is still an agricultural land, on going through the photographs submitted by respondents 1 and 2 / defendants, the suit scheduled property has been divided into house sites. It is not in dispute that at the time of filing the suit, the revision petitioners/plaintiffs had fixed the notional market value at Rs.2 Lakhs for the payment of Court fee. Subsequently after the lapse of nearly ten years, now they have stated that the suit scheduled property is an agricultural land. Though Exs.B1 and B2, the copy of the Adangal and Kist receipts creates a prima case in favour of the revision petitioners/plaintiffs, Exs.R2 and R3 viz., the order passed the Assistant Commissioner (North) in respect of SF No.482/A4 and the property tax Card of SF No.480/2A4, respectively, reveals the fact that the suit scheduled property cannot be used as an agricultural land.

13. Further, there was no explanation on the side of the revision petitioners/plaintiffs as to why at the time of filing the plaint, the Court fee was calculated under Section 25(a) of the Act. Though it was stated on the side of the revision petitioners/plaintiffs that inadvertently the valuation of the suit property is calculated, it is for them to file an application immediately before the commencement of trial.

14. Moreover, in respect of the payment of Court fee, the learned III Additional Subordinate Judge, Coimbatore, has passed an order on 21.09.2013 in IA No.679 of 2008, for framing the preliminary issue. In this regard, no averment has been made in the affidavit by the revision petitioners/plaintiffs. Only after suppressing the said order dated 21.09.2013 made in IA No.679 of 2008 in OS No.194 of 2008, the petitioner has filed this Interlocutory Application, relating to the Civil Revision Petition i.e. on 19.09.2014.

15. Therefore, already there is an order for framing preliminary issue in respect of payment of Court fee. If the prayer for sought by the revision petitioners/plaintiffs, for amendment of plaint in respect to Court fee column, is decided in favour of them, it will cause much prejudice to the other side. Hence, this Court is of the considered view that the answer available to the preliminary issue, which has been framed in respect of the valuation of suit and for payment of Court fee, is the only solution to avoid these problems.

16. Hence, in view of the above observations, the Civil Revision Petition filed by the revision petitioners/plaintiffs, deserves to be dismissed. Accordingly, the Civil Revision petition is dismissed and the order dated 06.04.2015 made in I.A.No.917 of 2014 in O.S.No.194 of 2008 on the file of the learned III Additional Subordinate Judge, Coimbatore, is sustained. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The III Additional Subordinate Judge, Coimbatore.

+1cc to Mr.C.R.Prasanan, Advocate sr.103029

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