

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 12.09.2019

Orders Pronounced on : 15.10.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.PD.No.1033 of 2013
and
M.P.No.1 of 2013

Dhanapathy

..Petitioner

Vs.

1.Lakshmipathy

2.Pasupathy @ Mannar Mannan

3.Gopathy

4.Boopathy

5.Gunapathy

6.Nethaji

7.Ragupathy

8.Union of India, Rep by its Chief Secretary,
Pondicherry

9.The Deputy Collector,
Land Acquisition South,
Pondicherry

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the Judgment and Decree made in C.M.A.No.18 of 2011 dated 17.01.2013 on the file of the Additional Subordinate Judge at Pondicherry in reversing the Fair and Decretal order made in I.A.No.3153 of 2010 in O.S.No.1365 of 2005 dated 01.07.2011 on the file of the III Additional District Munsif Judge at Pondicherry.

For Petitioner : Mr.V.Lakshminarayanan

For R1 and R2 : M/s.Hema Sampath,
Senior Counsel
for M/s.T.Sezhian

For R3, R5 to R7 : No Appearance

For R8 and R9 : Mrs.G.DJearany,
Government Advocate
(Pondicherry)

ORDER:

Aggrieved over the order passed in CMA.No.18 of 2011 on the file of the Additional Subordinate Judge, Pondicherry, the first respondent in the above referred CMA is before this Court with a prayer to set aside the order dated 17.01.2013 passed by the learned Additional Subordinate Judge, Pondicherry.

2. Originally, respondents 1 and 2 herein presented the suit before the learned Principal Subordinate Judge, Pondicherry in O.S.No.367 of 2003 as against the present petitioner and the other respondents, later the same was transferred to learned III Additional District Munsif Court, Pondicherry and numbered as O.S.No.1365 of 2005. During the pendency of the suit, the petitioner herein filed an interlocutory application in I.A.No.3153 of 2010 seeking the relief of framing preliminary issue in respect of the valuation of the suit property and for rejecting the plaint. The learned III Additional District Munsif, Pondicherry after receiving objection from the plaintiffs allowed the application filed by the present petitioner by observing as the value of the suit property is Rs.6,30,000/- but the plaintiff has valued the suit for Rs.15,100/- instead of Rs.47,325.50/-. Therefore, aggrieved over the rejection order passed by the III Additional District Munsif, Pondicherry, the first and second respondents in this Civil Revision Petition preferred a Civil Miscellaneous Appeal in CMA.No.18 of 2011. By order dated 17.01.2013, the learned Additional Subordinate Judge, Pondicherry held that the Court fee paid by the plaintiffs is found correct and thereby the rejection order passed by the learned III Additional District Munsif, Pondicherry is erroneous in law. Feeling aggrieved over the same, the present petitioner who is

the first respondent in the C.M.A. is before this Court with the Civil Revision Petition.

3. On a close reading of the plaint filed by the plaintiffs it is seen that the suit was filed for the relief of mandatory injunction against the first to sixth defendants to compensate the plaintiffs for an extent of 1.26.49 hectares by giving lands of same quality or pay its value with cost of the suit.

4. In this aspect, the learned counsel for the petitioner would contend that since the prayer sought for by the plaintiffs before the trial court is for the relief of compensation it is necessary on the part of them to pay the court fee under Section 22 of Puducherry Court Fees and Suits Valuation Act, 1972. Instead of calculating the court fee under Section 22, the plaintiffs calculated the court fee under Section 27(c) which is manifestly error. He has further added that the learned Additional Subordinate Judge, Pondicherry, wrongly understood the prayer sought for by the plaintiffs and concluded that the plaintiffs filed the suit for relief of mandatory injunction for which they calculated the notional value as Rs.15,100/- and paid the court fee accordingly. The said view taken by the learned Additional

Subordinate Judge is nothing but against the settled provisions of law. Only because of the said reason, the learned Additional Subordinate Court committed error which should be rectified only by the order of this Court.

5. On the other hand, the learned counsel appearing for respondents 1 and 2 contended that the plaintiffs prayed for relief of mandatory injunction, through which they insisted the Court to direct the defendants to pay the compensation for an extent of 1.26.49 hectares. So, it cannot be said that the plaintiffs alternatively asked the relief of compensation thereby the reason stated for allowing the CMA by the learned Additional Subordinate Judge is found correct.

6. Submissions made by the learned counsel on either side have been considered. Before entering into merits and demerits of the petition filed by the petitioner, it would be appropriate to see Section 22 and 27(c) of Puducherry Court Fees and Suits Valuation Act, 1972. Section 22 reads as follows:

"22.Suits for money - In a suit for money (including a suit for damages or compensation, or arrears of maintenance, of annuities, or of other sums payable periodically), fee shall be computed on the amount claimed."

Section 27(c) reads as follows:

" 27.Suits for injunction -

(c) in any other case, whether the subject matter of the suit has a market-value or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees four hundred, whichever is higher."

7. On seeing the above sections, it is clear that if a suit is filed for the relief of compensation the fee shall be calculated on the amount claimed. Now on going through the impugned order passed by the learned Additional Subordinate Judge he has clearly held that the suit has been filed only for the relief of mandatory injunction and thus calculating the court fee for notional value is found correct.

8. In this regard, to decide the issue raised in this revision petition, necessarily we have to decide whether the relief asked by the plaintiffs is for mandatory injunction or for compensation, for which it is necessary to see the entire averments pleaded in the plaint. In the plaint averments, the plaintiffs have stated as follows:

"8.....For no fault of the plaintiffs an extent of 1.26.49 hectares was taken away from their properties allotted to them in the partition was given to Jayalakshmi's heirs. The other shares did not suffer as the properties allotted to them were not touched. The loss to the estate should be shared by

all the sharers. Having regard to this subsequent event, it is just and proper that plaintiffs are compensated. It is also open to the court to order re-partition of all the properties, but plaintiffs feel that the other sharers- defendants 1 to 6 may compensate to the plaintiffs by each of them equally contributing to make up for the loss of 1.26.49 hectares.

9. The plaintiffs submits that the plaintiffs in O.S.No.130 / 1980 took possession of 1.26.49 hectares on 31.03.2003 they are set out in schedule E hereunder there after plaintiffs approached the defendants herein for contribution equally to compensate the loss sustained by plaintiffs. Defence 1 to 5 refused to respond and informed the plaintiffs that they can have it through the process of court so plaintiffs are constrained to file suit for contribution

10. The present market value of the property namely 1.26.49 hectares in setharapet village is not less than 5 lakhs per hectares the value of 1.26.49 is 6 lakhs 30 thousand, defendants can give either the land of the same quality or pay rupees 6 lakhs 30 thousand in money. Plaintiffs are therefore seeking the relief of mandatory injunction directing defendants 1 to 6 to compensate the plaintiff for an extent of 1.26.49 hectares in the shape of lands equal quality or pay it's value."

9. Now on seeing the above averments, it is clear that the plaintiffs wanted to compensate them either by value or by giving them of the same quality of land. So the said averments made in the plaint would clearly reveal the fact that the suit is filed only for the relief of compensation and not for the relief of mandatory injunction. If the decree of mandatory injunction is granted against defendants 1 to 6, it is automatic that defendants 1 to 6 are bound to obey the decree. For obeying the decree they have to pay the land or money to the plaintiffs. So in either way plaintiffs are compensated by means of land or money. Therefore, in this regard, I am of the opinion that only in order to pay less court fee, the plaintiffs have asked the relief of mandatory injunction and filed the suit as above.

10. The learned Additional Subordinate Judge in the impugned order without correctly appreciating the said facts allowed the CMA filed by the first and second respondents. Therefore, the order passed in CMA is having material irregularity. Therefore, in the light of the discussion stated above, this Civil Revision Petition is allowed. Accordingly, respondents 1 and 2 are directed to pay the court fee based on the claim made by them, for example (6.30 lakhs) under Section 22 of Puducherry Court Fees and Suits Valuation Act, 1972,

within a period of two weeks from the date of receipt of a copy of this order. If not, the order dated 01.07.2011 passed in I.A.No.3153 of 2010 shall come in to effect. Consequently, connected miscellaneous petition is closed. No costs.

15.10.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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R.PONGIAPPAN,J.

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To

1. The Additional Subordinate Judge,
Pondicherry
2. The III Additional District Munsif Judge
at Pondicherry.



Pre Delivery order made in
CRP.PD.No.1033 of 2013 and
M.P.No.1 of 2013

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