

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.01.2019

Pronounced on : 18.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CRP.(PD).No.3109 of 2015

and

M.P.No.1 of 2015

Thulasimani

.. Petitioner

V.

Maheswari

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.01.2015 made in I.A.No.416 of 2014 in O.S.No.31 of 2013 on the file of the learned Subordinate Judge, Udumalpet.

For Petitioner : Mr.M.Purushothaman

For Respondent : Mr.Rahul Balaji
for Mr.Sathish Parasaran

ORDER

The order under challenge in the present revision petition is one, rejecting the petitioner's application, purportedly filed under Order 7 Rule 11 of the Civil Procedure Code.

2.Heard Mr.M.Purushothaman, learned counsel for the petitioner and Mr.Rahul Balaji, learned counsel appearing on behalf of the respondent.

3.Though the application seems to have been filed under Order 7 Rule 11 of the Civil Procedure Code, the arguments placed by the learned counsel for the petitioner before this Court was to the effect that the plaint requires to be returned under Order 7 Rule 10 of the Civil Procedure Code, on the ground of lack of pecuniary jurisdiction.

4.The learned counsel for the petitioner places his arguments on two folds. Firstly, he would submit that in view of the provisions under Section 15 of the Civil Procedure Code, the suit in O.S.No.31 of 2013, that was presented before the Subordinate Court, Udumalpet by the respondent herein, ought to have been presented before the District Munsif Court, Udumalpet, wherein the petitioner's earlier suit O.S.No.299 of 2012 was already pending. Secondly, he would submit that though the application in I.A.No.416 of 2014 was filed under Order 7 Rule 11 CPC, the averments in the application, as well as the arguments before the trial Court, was for return of the plaint under Order 7 Rule 10 of CPC., and therefore, this Court has ample powers to convert the provision of law from Order 7 Rule

11 to Order 7 Rule 10 by exercising its revisional powers.

5.The learned counsel for the respondent opposes the said arguments by submitting that the plaintiff's valuation in his plaint determines the Court of presentation and that there is no total bar in presenting the suit before an higher forum, by valuing the plaint accordingly. He would further submit that the application has been made only under Order 7 Rule 11 CPC and as such, the Court below ought not to have traversed beyond the scope of Order 7 Rule 11 and render a finding on the ground raised under Order 7 Rule 10. In support of his submissions, he placed reliance on various judgments of the Hon'ble Apex Court as well as this Court.

6.Insofar as the quoting of the provision of law is concerned, I am of the affirmed view that when an application has been filed under Order 7 Rule 11 CPC., the trial Court ought not to have traversed beyond the scope of the application and rendered a finding just because the arguments and certain averments in the application have been raised, touching upon Order 7 Rule 10, CPC. Nevertheless, since arguments have been advanced extensively on the scope of Section 15 of the Civil Procedure Code, I propose to address on the scope of Section 15, in this order, which could determine the issues involved in this case.

7.The grievance of the petitioner is that the petitioner herein had earlier filed a suit in O.S.No.299 of 2012 before the District Munsif Court, Udumalpet seeking for the reliefs of permanent and mandatory injunctions and consequently, the respondent had filed another suit in O.S.No.31 of 2013 before the Sub Court, Udulmalpet seeking for the reliefs of permanent and mandatory injunctions. According to the learned counsel, the second suit initiated by the respondent herein was not before the Court of original jurisdiction and as such, it is opposed to the provisions of Section 15 of the Civil Procedure Code.

8.By relying upon a judgment of the Hon'ble Apex Court in ***Smt.Nadita Bose Vs. Ratanlal Nahata*** reported in **1987 (3) SCC 705** and an order of this Court dated 30.09.2011 passed in ***CRP.(PD) No.3627 of 2011 [Britannia Industries Ltd., rep. by its Authorized Signatory, Mr.Sanjay K.Handur Vs. Sulochana Cotton Spinning Mills pvt. Ltd., rep. by its General Manager and The State Bank of India, Samg Branch, No.61, 4th Floor, Residency Plaza, Residency Road, Bangalore-25]***, the learned counsel submitted that, every plaint requires to be instituted in the Court of lowest grade competent to try it alone and that the plaintiff cannot chose the jurisdiction of a higher forum by increasing the valuation of the plaint.

9. The Hon'ble Apex Court in the judgment relied upon by the petitioner herein reported in **1987 (3) SCC 705** had observed that in normal courses, the valuation of a suit would depend upon the reliefs claimed therein and the valuation in the plaint determines the Court in which the plaint requires to be presented. Nevertheless, it was not the ruling of the Hon'ble Apex Court that the higher Court will not have concurrent jurisdiction over an issue with the lower court.

10. For a proper appreciation of this proposition, Section 15 of the Civil Procedure Code is extracted hereunder:

Section 15:- Court in which suits to be instituted. - "Every suit shall be instituted in the Court of the lowest grade competent to try it".

The phrase "place of suing" in Section 15, would ordinarily mean the venue for trial and cannot have reference to the competency of the Court. This Section lays down the rule of procedure and not the rule of jurisdiction and as such, the word "shall" employed under Section 15, would become imperative on the suitor. The object of Section 15 is not merely to avoid overcrowding in the higher Court, but also to suit the convenience of the parties and witnesses. Since Section 15 lays down the procedure to be adopted for institution of suits and does not lay down the rule of jurisdiction, it naturally follows that the jurisdiction of the higher Courts will not be ousted. In other words, the Courts of higher grades will not be precluded

from trying a suit whose pecuniary value would ordinarily lie within the jurisdiction of the Court of the lowest grade, but could exercise concurrent jurisdiction on the issues.

11. In this background, we shall now analyse the findings of the Hon'ble Apex Court in Nandita Bose case (supra). The relevant portion of the said judgment is extracted hereunder:

"4. Under section 15 of the Code every plaint should be instituted in the court of the lowest grade competent to try it and if the value of the suit was Rs.42,000 only it had to be filed in the City Civil Court of Calcutta and not on the Original Side of the High Court. The principles which regulate the pecuniary jurisdiction of civil courts are well settled. Ordinarily, the valuation of a suit depends upon the reliefs claimed therein and the plaintiff's valuation in his plaint determines the Court in which it can be presented. It is also true that the plaintiff cannot invoke the jurisdiction of a court by either grossly over-valuing or grossly under-valuing a suit. The Court always has the jurisdiction to prevent the abuse of the process of law. Under rule 10 of Order 7 of the Code, the plaint can be returned at any stage of the suit for presentation to the court in which the suit should have been instituted. The question for consideration in this case is whether in the present case, the plaint has been grossly over-valued with the object of bringing it within the jurisdiction of the High

Court. When the suit is filed for the recovery of money, the amount claimed has to be included in determining the value of the suit. In the instant case the appellant has claimed a decree for Rs.78,000 (at the rate of Rs.7,800 per month) for the period between 1st February, 1985 and 30th November, 1985 on the footing that the respondent's possession was unauthorised or illegal and he was liable to pay mesne profits or damages. The question whether the appellant would be entitled to a decree for mesne profits/damages at the rate of Rs.7,800 per month or at any other rate after the termination of the tenancy is a matter which has to be decided in the suit. If ultimately it is found that the appellant is not entitled to get mesne profits or damages for the period subsequent to 1st February, 1985 and that she is only entitled to receive Rs. 1,400 per month, the suit in respect of the claim over and above Rs. 1,400 per month, will have to be dismissed. But the question whether she was entitled to claim mesne profits or damages in respect of the period subsequent to 1st February, 1985 could not have been disposed of at a preliminary stage even before the trial had commenced. That question has to be decided at the conclusion of the trial along with other issues arising in the suit. Having regard to some of the decisions on which reliance is placed by the appellant in the course of the appeal we are of the view that the matter is not free from doubt. The claim for

mesne profits/ damages is neither palpably absurd nor imaginary. It needs judicial consideration. The acceptance of the view put forward by the respondent may lead to encouraging a tenant who has forfeited his right to the tenancy to carry on a dilatory litigation without compensating the landlord suitably for the loss suffered by him on account of the unreasonable deprivation of the possession of his premises over a long period until he is able to get possession of the premises through the Court. We cannot, therefore, state at this stage that the claim for mesne profits/damages had been made without good faith and with the sole object of instituting the said suit before the High Court of Calcutta even though it had no jurisdiction to try it. We do not agree with the submission made on behalf of the respondent that the appellant had "dishonestly and intentionally inflated the value of the suit in order to invite the jurisdiction of a particular court which has no jurisdiction otherwise." If mesne profits/damages are found to be payable then the claim made at the rate of Rs.7,800 per month for a premises of the nature in question which is situated in Calcutta does not appear to be fanciful having regard to the prevailing situation. We however express no opinion on the actual amount that may be awarded as mesne profits/damages in the event of the liability to pay it being established."

Industries Limited case (supra), the following observations were made:

"28. More often than not, most of the valuable claims and money suits relating to valuable properties involving huge market value are filed under Section 27(c) stating 'incapable of valuation' and notionally valuing the same at Rs.400. This tendency of filing the suits relating to the properties of huge valuation under Section 27(c) need to be arrested. Courts would have to be vigilant in verifying the plaint carefully and with circumspection. Duty cast upon the Subordinate Courts in verifying the plaint and collecting the proper Court fee cannot be disowned saying that the Court is bound to accept the plaint averments. Duty is cast upon the Judicial Officers and also the Head Ministerial Officers who are in charge of verifying the plaint with regard to the valuation and the payment of Court fee.

29 (22). Further more, pecuniary jurisdiction of the District Munsif to decide the suit is upto Rs.1 lakh and perhaps to bring the suit within the jurisdiction of the Subordinate Judge, Rs.100/- has been added more and the suit has been valued at 1,00,100/-. As stated already, how the suit value was arrived at, is a million dollar question."

On an overall reading of the above observations, it is seen that the findings therein are to the effect that the jurisdiction of the Court in

which a plaint is presented, is determined by the valuation made therein. But it is not the law laid down in the aforesaid case that the higher court is precluded of its jurisdiction, on an issue, in view of the language of Section 15.

13.The learned counsel for the respondent had also relied upon certain observations of the Hon'ble Apex Court in Nandita Bose case (supra) and submitted that the valuation of the suit depends upon the reliefs claimed therein and the plaintiff's valuation in his plaint determines the Court in which it can be presented.

14.In a decision of a Full Bench of this Court in **R.Rama Subbarayalu Reddiar Vs. Rengammal** reported in **AIR 1962 Madras 450**, the scope of Section 15 came to be analysed and the following observations were made:

"16.But this conclusion does not dispose of the appeal. Vesting of authority in a subordinate Judge to entertain and dispose of contentious applications for probate, etc., under S.29(1) of Madras Civil Courts Act cannot take away the jurisdiction of the District Judge over such matters. The result is that both the subordinate judge and the District Judge will have concurrent jurisdiction to take cognizance of contentious applications for probate etc., relating to matters arising within the jurisdiction of the former. Under S.15 of the Civil Procedure

Code, where more than one Court has a jurisdiction over a matter, the case should be instituted only in the Court of the lower grade competent to try it. The Sub Court being a court lower to the District Court in the hierarchy of Courts the application for grant of probate or letters of administration will have to be instituted only in that Court. But this is only a rule of procedure. Therefore, S.15 of the Civil Procedure Code does not deprive the District Court of its jurisdiction. As observed by Petheram, C.J., in Nidhi Lal v. Mazhar Hussain, ILR 7 All 230 at P.233 (FB)

"The word 'shall' is in my opinion imperative on the suitor; the word is used for the purpose of protecting the Courts. The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the legislature is that the Court of the higher grade shall not be over-crowded with suits;..... The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit it may refuse to entertain it. If it wishes to retain the suit in its court it may do so. It is not bound to refuse to entertain it."

17. These observations were made with reference to a provision in the Civil Procedure Code of 1882 (Sec.15) corresponding to S.15 of the Civil Procedure Code of 1908."

same proposition was reiterated and the relevant portions of the judgment in **V.Ramamirtham, Sole Proprietor, Glorious Pictures V. Rama Film Service reported in AIR 1951 Madras 93** are as follows:

"6.The first of the questions referred to us relates to the applicability of Section 15, CPC., to Chartered High Courts. In other words, the question is if a suit is below rupees ten thousand in value, is the litigant bound to institute it in the City Civil Court, as the Court of the lowest grade competent to try it. Section 15 of the Code directs that every suit shall be instituted in the Court of the lowest grade competent to try it. Under clause 12 of the Letters Patent, subject to one qualification, the High Court has unlimited original jurisdiction and this jurisdiction was saved under S.16, City Civil Court Act (VII [7] of 1892). Competency contemplated by this Section is pecuniary competency and it has been held that this section lays down a rule of procedure and not of jurisdiction. While it enjoins the institution of a suit in the Court of the lowest grade competent to try it, it does not oust the jurisdiction of the Court of a higher grade. Even if the Court of a higher grade tries and disposes of a suit which could have been instituted in a Court of a lowest grade, the decision rendered is not without jurisdiction is not a nullity-(See *Nidhilal V. Mazhar Hussain*, 7 ALL.230:1885 A.W.N.1 F.B.), *Matra Mondal Vs. Hari Mohan*, 17 Cal. 155; *Krishnasami V. Kanakasabai*, 14 Mad.

183: (1 M.L.J. 234) and Gowrachandra V. Vikrama Deo, 23 Mad. 367]"

16. The learned counsel for the respondent also relied upon the judgment of the Hon'ble Apex Court in **Tara Devi Vs. Sri Thakur Radha Krishna Maharaj through Sebait Chandeshwar Prasad and Meshwar Prasad and another** reported in **1987 (4) SCC 69** and submitted that the plaintiff has right to value the relief claimed as per his own estimation and such valuation would normally require to be accepted. The relevant portion of the said judgment reads as follows:

"3. Against this judgment and order a Revision Petition being Civil Revision No. 1385 of the 1985 was filed in the High Court Patna. The said Revision Petition was admitted and thereafter it was referred to the full bench for decision of the question whether in a suit for declaration with consequential relief falling under Clause (iv)(c) of [Section 7](#) of Court Fees Act, 1870, the Court has jurisdiction to examine the correctness of the valuation given by the plaintiff and whether the plaintiff has an absolute right or option to place any valuation whatever on the relief claimed in such a suit. It has been held by the High Court considering several decisions including the decisions of this Court in [Sathappa Chettiar v. Ramanathan Chettiar](#) as well as [Meenakshisundaram Chettiar v. Venkatachalam Chettiar](#) that the plaintiff has the right to value the relief claimed according to his own estimation

and such valuation has to be ordinarily accepted. The plaintiff however, has not been given the absolute right or option to place any valuation whatever on such relief and where the plaintiff manifestly and deliberately underestimates the relief the Court is entitled to examine the correctness of the valuation given by the plaintiff and to revise the same if it is patently arbitrary or unreasonable. The High Court held that the Munsif came to a clear finding that the valuation given by the plaintiff was not at all arbitrary or unreasonable and as such there was no scope for interference with the said order under revision. The revision application was so dismissed."

17. On an overall understanding of the findings in the aforesaid decisions rendered, it can be only summed up that Section 15 of the Civil Procedure Code lays down the rule of procedure only and does not affect the jurisdiction of the Courts of higher grades to try a suit entertainable by a Courts of lower grades. In other words, the Court of higher grades would have concurrent jurisdiction with that of the Court of lower grades, subject to the valuation being made appropriately. In cases, when such complaints are presented before the Court of higher grade, there would be a discretion caused on that Court either to try the suit itself or return the complaint for presentation before the Court of lower grade. As such, there is no absolute bar under Section 15 of the Civil Procedure Code for the Court of higher grades to admit a complaint whose jurisdiction is also vested with a Court of lower grades. The issue stands answered accordingly.

18. Though the learned counsel for the petitioner had addressed on the facts and background of the case, trying to impress this Court about the intention of the respondent of having presented the plaint before the higher forum, I do not intend to go into such aspects for the reason that, even assuming there was a mala fide intention of not presenting the suit in the lower court of the original jurisdiction, there is no bar as the law precludes such presentation, as discussed above and as such there may not be any illegality or infirmity on such presentation.

19. In the light of the above observations, I do not find any reason to interfere with the order of the Court below in rejecting the petitioner's application. Hence the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes

Order : Speaking

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<http://www.judis.nic.in> To

The Subordinate Judge, Udumalpet.

M.S.RAMESH, J.

DP



Order made in

**CRP.(PD).No.3109 of 2015
and
M.P.No.1 of 2015**

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