

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	11.02.2019
Pronounced On	18.03.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.3312 of 2015

and

M.P.No.1 of 2015

1.Zeenath Beevi

2.M.D.Mohamed Siddique

... Petitioners

vs.

1.M.D.Shanavas Sadiq Basha

2.Naseem Fathima

3.Khaja Najmuddin

4.Manager,
Canara Bank,
Dindigul Main Branch, Salai Road,
Dindigul-1.

... Respondents

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PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order passed in I.A.No.5708 of 2015 in O.S.No.65 of 2015 on the file of III Additional City Civil Court, Chennai dated 24.06.2015 and reject the above O.S.No.65 of 2015.

For Petitioners : Mr.A.Abdul Ravoof

For Respondents : Mr.T.Velumani

ORDER

The petitioners have filed the present civil revision petition against the fair and decretal order dated 24.06.2015 in I.A. No. 5708 of 2015 in O.S No. 65 of 2015 passed by III Additional Judge, City Civil Court, Chennai.

2. By the impugned fair and decretal order, the III Additional Judge, City Civil Court, Chennai has dismissed the application filed by the petitioners (Defendant No.1 and 2) under Order VII Rule 11(d) of C.P.C for rejecting the plaint in the above suit.

3. Aggrieved by the same, the present civil revision petition has been filed to set aside the same with consequential relief.

4. The order is challenged on the ground that the suit filed by the respondents/plaintiffs herein in O.S.No.65 of 2015 before the III Additional Judge, City Civil Court, Chennai was without jurisdiction and therefore barred by law.

5. The above suit was filed to partition the suit schedule properties which include immovable property situated outside the jurisdiction of the Court in Chennai and to partition the immovable property of registered in the name of a company by name Tentax Investment and Finance Private Limited Madras.

6. The immovable property of the said company's is situated within the jurisdiction of the III Additional Judge, City Civil Court, Chennai.

7. The petitioners first filed I.A. No. 5708 of 2015 in O.S No. 65 of 2015 on 5.2.2015. Thereafter, on 6.7.2015 the petitioners also filed their written statement.

8. It is the case of the petitioners that the court below did not have jurisdiction to entertain the suit as all the immovable properties which could be partitioned are situated outside the jurisdiction of the court and the immovable property situated in Chennai is the said company and therefore cannot be partitioned as that of the members of the family.

9. It was submitted that even otherwise the court had no jurisdiction under the provisions of the Companies Act, 1956 as replaced by Companies Act, 2013 in respect of the properties of the company situated in Chennai.

10. It is stated that the jurisdiction of the Court has been contrived by including a prayer to partition of the property which belongs to the company.

11. It was further submitted that the suit properties have been under valued. This Court while admitting the present Civil Revision Petition passed an order on 19.08.2015 and permitted the said Court to proceed with the trial to await for the outcome of the present civil revision petition.

12. During the hearing it was informed that the trial has been completed and the Court below was awaiting for the orders of this Court.

13. In this connection, the learned counsel appearing for the petitioners has referred the following decisions:-

a. Mrs.Bacha F.Guzdar, Vs.Commissioner of Income Tax, in C.A.No.104 of 1954 dated 28.10.1954. 1955 AIR (SC) 74.

b. 2. Floating Services Limited Vs. Mv.San Fransceco Dipalola. Equivalent 2004 52 SCL 762 Guj.

c. Purna Investment Ltd. - Purna Investment vs. Bank of India Ltd and others. 1984 (55) Comp cases 737.

14. The learned counsel for the petitioners/defendants would further refer to a letter from a practicing Company Secretary by letter dated 17.12.2012 wherein, list of shareholders of the Company in the meeting held on 29.09.2000 was referred to.

15. As per the Form-32 filed on 12.02.2004, the petitioners and the first respondent held 1250 shares each out of total 25,000/- shares of Rs.100/-.

16. Per contra, learned counsel for the respondents/plaintiffs would submit that there is no error in jurisdiction in entertaining the suit by the III Additional Judge, City Civil Court, Chennai.

17. The learned counsel for the respondents/plaintiffs further submitted that the business was carried out by 5 different branches of the same family and several estates came to be divided among them pursuant to which properties in schedule 'E' properties of the Family Arrangement fell in the hands of the petitioners and the respondents herein.

18. It was stated that the parties have treated the assets belonging to the said company also as that of the family and therefore technical objection cannot be raised. It was submitted that the respondents/plaintiffs were entitled to partition them as well.

19. I have considered the arguments of the respective counsels for the parties.

20. The Court below by its order dated 24.06.2015 has rejected the application filed under Order VII Rule 11(b) and (d) of CPC filed by the petitioners.

21. The Memorandum of Understanding has been signed allocating and dividing the business concerns and assets of the family between the family members who had originally carried out on business together. Thereafter, a Family Arrangement dated 07.07.2005 was signed.

22. Thus, assets and company and its properties which are the subject matter of the above suit came into the hands of the petitioners and the respondents. Partition is sought for in respect of properties which fell in the

hands of the petitioners and the respondents pursuant to the said family arrangement.

23. Item Nos. II to V are outside of the jurisdiction of the said Court. Only item No.1 is situated within the jurisdiction of the Court but is registered in the name of the Tentex Investments and Finance Private Limited. It is not the asset of the family. It is the asset of the company in which the family has interest. Therefore, the lands of the said company cannot be partitioned as that of the members of the same family.

24. Parties can only claim divided in the said company or for allotment of shares if there is improper allotment of the shares in the company in which case remedy lies before National Company Law Tribunal.

25. If there were any allegations of misappropriation of any amount again remedy lies before NCLT. If the immovable property in the said property has to be divided, it has to be first wound up and liquidated in the manner known to law or in the alternative there should be sale of shares after valuation in favour of one of the properties.

26. Any dispute relating to oppression and mismanagement in the affairs of the company again is outside the purview of the jurisdiction of the lower Court. Therefore, immovable properties of company cannot be partitioned.

27. The Court below had no jurisdiction to entrain the suit to partition even though as the properties which can be partitioned are situated outside the jurisdiction of the Court and the properties within the jurisdiction of the Court cannot be partitioned.

28. The Hon'ble Supreme Court in **Shivnarayan (D) by Lrs. vs Maniklal (D) Thr.Lrs, and Others** (2019) SCC Online SC 136 dated 06.02.2019 has summarized the legal position in the following passage:-

29. Sections 16 and 17 of the C.P.C are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16. From the foregoing discussions, we arrive at following conclusions with regard to ambit and scope of Section 17 of C.P.C

i. The word 'property occurring in Section 17 although has been used in 'singular' but by virtue of Section 13 of the General Clauses Act it may also be read as 'plural', i.e, "properties".

ii. The expression any portion of the property can be read as portion of one or more properties situated in jurisdiction

of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

iii. A suit in respect to immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

iv. A suit in respect to more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.

29. The suit thus filed was not maintainable before the Lower Court, in view of the following reasons:-

i) suit schedule properties viz., item Nos.II to V which can be the subject matter of parties are located outside the jurisdiction of the Court below.

ii) Rest of the suit schedule properties though located in Chennai are not the properties of the individual but that of the companies.

1. The issue relating to valuation for the purpose of payment of court fee also has been passed.

2.

31. Under Section 12(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, the court shall before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under Section 10, determine the proper fee payable thereon. The decision is however subject to review, further review and correction in the manner specified in the succeeding Sub-sections of that section.

32. Thus, assessment of the Court fee at the time of registration of the plaint is provisional and is subject to review and correction in the manner specified in the Section.

33. A defendant may in the written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the Sub-section and not later, plead that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient. This is what the petitioners have done.

34. All questions arising out of such pleas has to be heard and decided before evidence is recorded affecting such defendant, on the merits of the

claim. If the court decides that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the court shall pass such order as it deems just regarding costs of the suit.

35. In the present case, the Court below has also rejected the plea of the petitioners regarding undervaluation of the property on the ground that valuation of the property cannot be decided at the preliminary stage without counter of the respondents/plaintiffs and can be done only later therefore the plaint cannot be rejected.

36. The impugned order has been passed contrary to the mandate of Section 12 of the Suits Valuation Act, 1955. Therefore, the interim order deserves to be interfered on the point well.

37. The petitioners have discharged their burden by sensitizing the Court regarding the alleged deficiency in the Court fee. The lower Court has instead dismissed the petition.

38. This Court by its interim order has directed the Court below to proceed with the trial. However, defect on account of alleged under valuation of Court fee are curable defects the impugned order and the interim order of this Court directing the lower Court to proceed with the trial cannot be allowed to become a *fait accompli*. Further the State also should not be deprived of the revenue from Court fee if indeed there was any undervaluation of Court fee.

39. It is noticed that the parties are from Chennai. Therefore, even though item Nos. II to V to the suit schedule of properties are outside the jurisdiction of the Court, Court may as well proceed further and author a Judgment for a preliminary decree to partition the properties. In the light of interim order of the Court as otherwise the time spent in the Court will be completely wasted resulting work of Judicial time.

40. The Court below can further mould the relief and can grant the relief to the extent of the shares in the said company by having it, valued and offer one of the party to buy out the shares of the other to put an end to the dispute between the members of the family.

41. Therefore, to meet the ends of justice in the peculiar facts of the case, the Court below is directed to comply with the following:-

- i. complete hearing and proceed to author a judgment for a preliminary decree and keep it in a sealed cover;
- ii. pass order on the appropriate court fee payable as on the date of institution of the suit within a period of 4 weeks from the date of the communication of this order if indeed there was any deficiency /undervaluation in the Court fee on the date of registration of the suit after holding enquiry and collect the same from the respondents/plaintiffs.

iii. On such payment, proceed to pronounce the judgment and thereafter draft the preliminary decree in the suit.

iv. The above exercise shall be completed within a period of 12 weeks from the date of receipt/communication of this order.

v. Thereafter, pass a final decree within a period of nine month of the receipt of communication of this Order.

C.SARAVANAN,J.

kkd

42. The present Civil Revision Petition is disposed with the above observations. Consequently, connected miscellaneous petition is closed. No Cost.

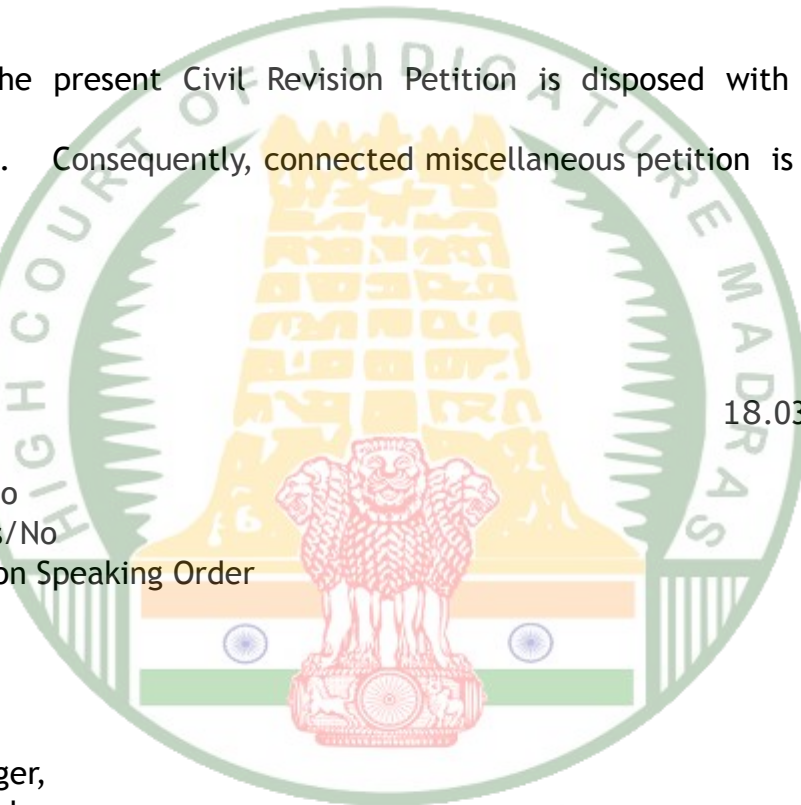
18.03.2019

Index :Yes/No
Internet :Yes/No
Speaking /Non Speaking Order
kkd

To

1. The Manager,
Canara Bank,
Dindigul Main Branch,
Salai Road, Dindigul-1.

2. The III Additional Judge,
City Civil Court, Chennai.



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Pre-delivery order in
C.R.P.(PD).No.3312 of 2015
and
M.P.No.1 of 2015