

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 14.11.2019

Pronounced On : 18.12.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.114 of 2013

and

M.P.No.1 of 2013

1. Loganayagane @ Viramany
2. Calaiselvane
3. Viracandy
4. Sougouna

.. Petitioners

Vs

1. Narmatha @ Mahalakshmi
2. Chinnaponnu @ Nagammal
3. Parimaleswary
4. Chanemounganadane
5. Tamayandy
6. Yoganandam (died)
7. Baskaran
8. Pourandaran

.. Respondents

[R6 died (recorded)

RR2 to 5, 7 and 8, recorded as Lrs of the deceased R6 viz. Yoganadam as per Memo dated 12.11.2019 and order of the Court [RPAJ] dated 12.11.2019 made in CRP (PD) No.114 of 2013 in M.P.No.1 of 2013.

R3, notice dispensed with vide order of the Court [RPAJ] dated 12.11.2019 made in CRP (PD) No.114 of 2013 in M.P.No.1 of 2013 and as per the memo dt.12.11.19.]

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decree dated 14.08.2012 made in O.S.No.1029/2011, on the file of the II Additional District Munsif Court, Puducherry.

For Petitioners : Mr.T.Sathiyamoorthy

For Respondents : Mr.M.S.Govindarajan (for R1)
No appearance (for R2,4,5,7 & 8)

ORDER

The plaintiffs in OS No.1029 of 2011, on the file of the learned II Additional District Munsif, Puducherry, are the petitioners herein. Before the trial Court, they filed the suit as against the respondents herein, seeking the following reliefs.

- (1) to declare that the plaintiffs are the absolute owner of the suit schedule mentioned properties.
- (2) to declare the sale deeds in favour of the first defendant dt. 23.09.2010 vide document No.3402/2010; dt. 23.09.2010 vide document No.3403/2010; dt. 23.09.2010 vide document No.3404/2010; dt. 23.09.2010 vide document No.3406/2010; dt. 23.09.2010 vide document No.3408/2010, as null and void.
- (3) to eject the first defendant from the suit property.
- (4) To grant permanent injunction as against the defendants not to alter the nature of the suit property and create any encumbrance over the suit property.
- (5) to pay the cost of the suit.

2. After institution of the suit, the respondents/defendants entered into appearance and filed their written statement. In the written statement filed by the 1st respondent/defendant, she has categorically

stated that Court fee paid for the suit, is not in accordance with the Puducherry Court-Fees and Suits Valuation Act, 1972 [hereinafter referred to as the 'Act']. She has further stated that if correct Court fee is paid, by the revision petitioners/plaintiffs, the pecuniary limit of the II Additional District Munsif Court, Puducherry, exceeds and the said Court, would not have jurisdiction to try the suit filed by the revision petitioners/plaintiffs. However, She filed a petition in IA No.2792 of 2011 under Order XIV Rule 2 (2) and Section 151 CPC and prayed to frame a preliminary issue in respect to the payment of Court fee. Further, the 1st respondent/defendant has also filed IA No.2791 of 2011 under Order VII Rule 11 and Section 151 CPC and prayed to reject the plaint.

3. After affording an opportunity to the revision petitioners/plaintiffs, by order dated 14.08.2012 the learned II Additional District Munsif, Puducherry, returned the plaint so as to present it before the proper Court as the learned II Additional District Munsif, Puducherry, do not have pecuniary jurisdiction to entertain the same. Aggrieved over the same, the plaintiffs are before this Court with the present Civil Revision Petition.

4. The gist of the averments made in the affidavit filed by the 1st respondent/defendant is as follows:

(i) The suit property is not a ryotwari land. But the suit property has been valued on the basis of 30 times of the kist. The suit property is situated in the heart of the city of Pondicherry. It is a pucca commercial area. There is no land of ryotwari nature adjacent to the suit property. The suit property is situated in one of the four corners of the prime traffic signal in 100 ft road in Pondicherry. The other three corners are being occupied by star hotels as well as big commercial complexes. The adjoining and adjacent properties of the suit property are houses and shops constructed long back.

(ii) But, suppressing all the above facts, the revision petitioners/plaintiffs have valued the suit property on the basis of 30 times of kist, for the relief of declaration of title and possession of the suit property, as if the suit property is a ryotwari land. It is mandatory on the part of the revision petitioners/plaintiffs, to pay the Court fee under Section 25(a) read with Section 7 of the Act, for declaration of title and possession. Assuming without conceding that even as per the revenue record, if it is a ryotwari land, 30 times of the kist, cannot be taken as a value, as the suit property is a commercial site on ground and it is surrounded by houses and other commercial complexes. So, the valuation adopted by the revision petitioners/plaintiffs is totally wrong and Court fee paid is incorrect. So, this Court has no jurisdiction to entertain the suit.

(iii) In the year 1965 itself, the suit property and its adjacent properties have been converted as house sites. The 1st revision petitioner/plaintiff has full knowledge of above facts, but, purposely suppressed the above material facts and caused a heavy loss to the judicial exchequer.

5. Except the above, since the other details found in the affidavit are in respect to the merits of the suit, it is not necessary to delve into the same in this order for disposing the Civil Revision Petition.

6. The averments made in the counter affidavit filed by the revision petitioners/plaintiffs, in short, are as follows:

(i) The contents of the application itself shows the mixed facts and law and therefore, it becomes just and necessary to try the suit and frame issue in respect of those aspects. The averments set out in the application viz., IA.No.2792 of 2011 filed under Order XIV Rule 2(2) and Section 151 of CPC, are self contradictory one. The respondents/defendants have raised all the contentions in their written statement, which was filed already. The revision petitioners/plaintiffs have admitted that there is a Will of Ramalinga Cramany, which is subjected to the merits of the suit. The respondents/defendants have conveniently avoided that the property in

question is purely of the Anandhachandrasekara Cramany and Palaniammal @ Amboujavally. Therefore, the revision petitioners/plaintiffs prayed for dismissal of the interlocutory applications, with exemplary costs.

7. Before the Court below, the following preliminary issue was framed and tried.

“Whether has the plaintiffs valued the suit properly as per the Pondicherry Court Fees and Suits Valuation Act?”

8. On the above preliminary issue, one Thiru V.Devadoss, Revenue Inspector and Thiru.A.Sivasankaran, Deputy Tahsildar, on behalf of Directorate of Survey and Land Records Settlement Officer, were examined as XW1 & XW2, respectively, and Ex.X1 to X4 were marked, on the side of the revision petitioners/plaintiffs. One Thiru.K.Manikandan, on behalf of the Tahsildar, Taluk Office, Oulgaret, has been examined as XW3 and Exs.X5 & X6, were marked on the side of the respondents/defendants.

9. Having considered all the materials placed before it, the learned II Additional District Munsif, Puducherry, by order dated 14.08.2012, rejected the plaint by holding that the Court fee paid along with the plaint is not in accordance with the Act. Further, it was held that the property under dispute is not a ryotwari land and it is necessary to pay the Court fee under

Section 25(a) read with Section 7 of Puducherry Court-Fees and Suits Valuation Act, on the market value of the suit property, which is valued about several lakhs and that the said Court has no jurisdiction to try the suit.

10. When the Civil Revision Petition came up for hearing, the learned counsel appearing for the revision petitioners/plaintiffs would contend that the revision petitioners/plaintiffs have purchased the property on 23.09.2010. At the time of purchase, the property under dispute, was a vacant land. Only at the time of approval, classification was changed and therefore, at the time of filing the suit the revision petitioners/plaintiffs, paid the Court fee under Section 25(a) read with Section 7(2)(a) of the Puducherry Court-Fees and Suits Valuation Act. Further, as per the revenue records the suit properties are punja lands. Therefore, the revision petitioners/plaintiff filed the suit based on the revenue assessment.

11. On the other hand, the learned counsel appearing for the 1st respondent/defendant would contend that the property under dispute was abutting the main road. Further the same was commercial in nature. The witnesses examined in the trial Court would prove the fact that the property under dispute is not a ryotwari land and therefore, the impugned order passed by the Court below is not having any material irregularity.

12. Upon considering the arguments advanced by either side, it is not in dispute that a question relating to the jurisdiction may be a pure question of law, or a mixed question of law and fact, and it will depend on the facts of each case whether of one or other category. It is clear from sub rule (2) that an issue to be tried as a preliminary issue must be not only an issue of law but it must be capable of disposing of the suit or any part of it.

13. However, now on going through Order VII Rule 10 of Code of Civil Procedure, it gives power to the Court to return the plaint. The said provision states that the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

14. In this connection, coming to the case of the revision petitioners/plaintiffs, at the time of presenting the suit before the learned II Additional District Munsif, Puducherry, they paid the Court fee under Section 25(d) of the Puducherry Court-Fees and Suits Valuation Act and accordingly, they paid 30 times of kist, as Court fee. However, for the relief of declaring the sale deeds as null and void, they paid the Court fee of Rs.30.50 under Section 25(a) read with Section 7(2)(a) of the Puducherry Court-Fees and Suits Valuation Act. Further for the relief of ejectment, they paid the Court fee of Rs.30.50p, under the same provision.

15. In this connection, it is relevant to see Section 25 (a) of Puducherry Court-Fees and Suits Valuation Act, 1972, which reads as follows:

“25. Suits for declaration:- In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 26.-

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees three hundred whichever is higher;”

16. Further, in respect of the determination of market value, Section 7 of the same Act, reads as follows:

“7. Determination of market value- (1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

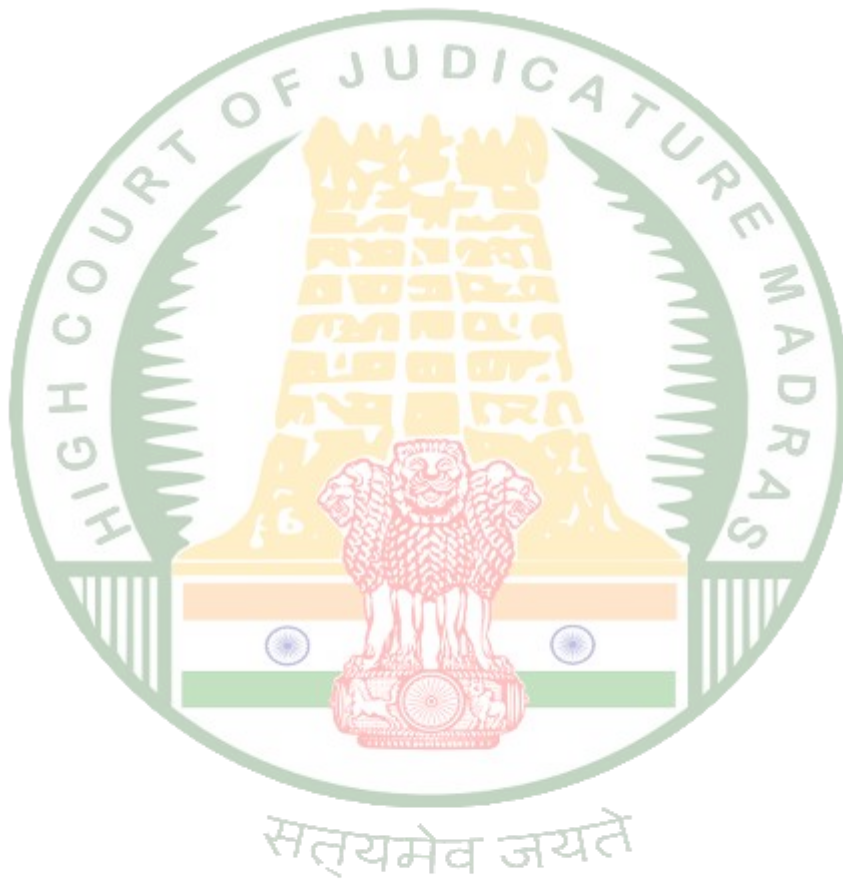
(2) The market value of land in suits falling under (section 25(a)), (section 25(b)), (section 27(a)), (section 29), (section 30), (section 37(1)), (section 37(3)), (section 38), (section 45) or (section 48) shall be deemed to be-

(a) where the land is assessed, thirty times the survey assessment on the land: Provided that, where the land forms part of a survey field and is not separately assessed to

revenue, the value of such part shall be deemed to be thirty times such proportion of the survey assessment as the part bears to the entire survey field.

(b) where the land is a house-site whether assessed to full revenue or not, poramboke land, or any other land not falling under clause (a), - its market value.”

17. So, applying the above said sections to the case in our hand, we have to decide whether the property under dispute is a ryotwari land or house site. In this regard, before passing the impugned order, as stated above, three witnesses have been examined. XW1, Mr.V.Devadass, Revenue Inspector on behalf of Directorate of Survey and Land Records Settlement Officer, has clearly stated in his evidence that after 1972, the property under dispute i.e Suvery No.257/2 was converted as a plot. Similarly XW3, Mr.K.Manikandan, on behalf of Tahsildar, Taluk office, Oulgaret, has stated in his evidence that the property under dispute is situated near to Rajeev Gandhi Signal. Further, in the said Survey number, no agricultural activities are undertaken. He has specifically stated that the suit property is situated in a commercial area. Further star hotels and other valuable properties are situated near the suit property.



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18. Therefore, the evidences of XWs.1 & 3 would clearly reveal the fact that the suit property is commercial in nature. Accordingly, Court fee have to be calculated under Section 25(a) r/w, Section 7(2)(b) of the Puducherry Court-Fees and Suits Valuation Act, based on the market value of the suit scheduled property. On that score, the learned II Additional District Munsif, Puducherry, has correctly decided the preliminary issue, in accordance with law.

19. However, after concluding as above, by following Order VII Rule 10 of CPC, the learned II Additional District Munsif, Puducherry, returned the plaint, so as to present it before the proper Court, by saying that the said Court is not having pecuniary jurisdiction. The said order has been passed without determining the market value of the suit property and also without giving an opportunity to the revision petitioners/plaintiffs for payment of deficit/additional Court fee.

20. Usually, if an issue is framed in respect of Court fee and it is decided that the party who filed application is liable to pay the additional Court fee, then, he should be provided with an opportunity to pay the same. Only thereafter, if the said Court do not have jurisdiction, Order VII Rule 10A of CPC has to be invoked. In this regard, it is necessary to see Section 12 of the Act, which reads as follows:

“12. Additional fee on issues framed: Where a party becomes liable to pay additional fee by reason of an issue framed in the suit, the provisions of (section 11) shall apply to the determination and levy of such additional fee subject to the modification that where the party liable does not pay such additional fee within the time allowed, the Court shall strike off the issue and proceed to hear and decide the other issues in the case.”

21. So, the learned II Additional District Munsif, Puducherry, without adopting the procedure which are necessary to decide the issue involved in this matter, directly returned the plaint, with a direction to present the same before the Court, which is having the jurisdiction. Therefore, the said portion of the impugned order has to be necessarily interfered with.

22. Accordingly, the order passed by the learned II Additional District Munsif, Puducherry in O.S.No.1029 of 2011 dated 14.08.2012, is set aside and the matter is remitted back to the learned II Additional District Munsif, Puducherry. The learned II Additional District Munsif, Puducherry, is directed to give an opportunity to either side, in compliance with Sections 11 and 12 of the Puducherry Court-Fees and Suits Valuation Act, 1972 and determine the Court fee which is liable to be paid by the revision petitioners/plaintiffs and thereafter, dispose of the same, in accordance with the observation made above, within a period of three months from the date of receipt of a copy of this order.

23. In the light of the above discussion and directions, the Civil Revision Petition is disposed of. No Costs. Consequently, the connected Miscellaneous Petition is closed.

18.12.2019

Speaking/Non-speaking order
Index: Yes/No
Internet: Yes

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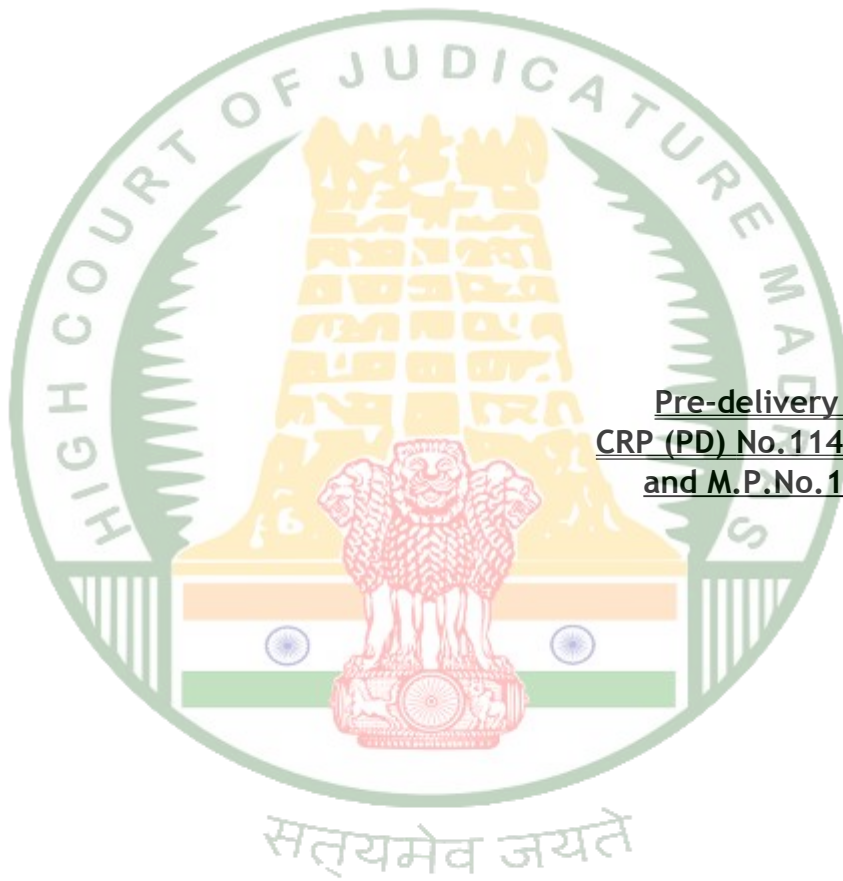
The II Additional District Munsif Court, Puducherry.



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R.PONGIAPPAN, J.,

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Pre-delivery order in
CRP (PD) No.114 of 2013
and M.P.No.1 of 2013

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