

Reserved on :08.03.2019

Pronounced on :21.03.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD) Nos.3552 & 3553 of 2013 &

M.P.Nos.1 and 1 of 2013

Mrs.Kamalaveni

Petitioner in both revisions

Vs.

1. Mr.C.Chokkalingam
2. Mrs.Lakshmi
3. Mrs.Rukmani

.. Respondents in both
revisions

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal Order passed in I.A.No.96 of 2013 and I.A.No.553 of 2012 in O.S.No.210 of 2011 dated 28.06.2013 and 16.07.2013 respectively pending on the file of the Court of the II Additional Subordinate Court, Erode.

For Petitioner : Mr.N.Manokaran
in both CRPs

For Respondents : Mr.P.Thirupathirai
in both CRPs

COMMON ORDER

The Civil Revision Petition in C.R.P.No.3553 of 2013 has been filed as against the Order of the trial Court in allowing the amendment application to amend the statement of valuation in the plaint filed under Order 6 Rule 17 and Civil Revision Petition in C.R.P.No.3552 of 2013 has been filed as against the Order of dismissal of the application filed Order 7 Rule 11 to reject the plaint under on the ground that the suit is not properly valued.

2. The brief facts leading to filing of these revision is as follows :

The respondent filed a suit inter alia contending that the decree obtained by the revision petitioner is null and void on the ground of fraud. It is the contention of the respondent that the suit property originally belonged to one Murugesu Gounder. He had only son namely, the first defendant and one daughter by name Seerayee Ammal. The second defendant is the son of the first defendant. The third and fourth defendants are daughters of Seerayee Ammal. The fifth defendant is the daughter of the first defendant. It is the contention of the respondent that after the death of his father, the first defendant has become as sole co-parcenor of their undivided ancestral estate. After the birth of the second defendant, the first and second defendants constituted joint Hindu Family and they are enjoying total extent of 0.49- ½ acres in the suit

survey filed and sold to an extent of 0.10 acres to one Kailasam and Palanisamy in the year 1984. On 26.07.1996, the first and second defendants had partitioned remaining extent of 39 ½ acers by registered partition deed. In the above partition, a sum of Rs.10,000 /- from the joint family funds was allotted to the first defendant towards his share. The second defendant, as an absolute owner of the property, entered into a sale agreement for sale of the suit property to the plaintiff for a sum of Rs.2,00,000/- and out of total sale consideration Rs.1,80,000/- has been paid as an advance and the balance sum of Rs.20,000/- to be paid by the plaintiff within one and half years. On the basis of the agreement, the second defendant sold the property to the plaintiff after receiving the sale consideration through his Power of Attorney. The plaintiff was put into possession by virtue of sale deed dated 03.05.2001. When that being so, the defendants colluded together fabricated records as if there was unregistered family partition and also Will said to have been executed by Seerayee Ammal and filed partition suit in O.S.No.131 of 2007 wherein the first and second defendants have remained exparte and the suit was decreed on 27.03.2007. Hence, the suit has been filed to set aside the above decree and judgment as null and void on the ground of fraud.

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3. It is the further contention of the plaintiff that he came to know about the above fraud on 30.07.2007 and immediately he filed the suit. The suit has been originally filed before the District Munsif Court, Erode on 21.08.2007.

Thereafter, an application has been taken by the defendants that the suit is under valued and that the Court has no jurisdiction in I.A.No.451 of 2008. The District Munsif has allowed the application and returned the plaint on 12.06.2008 to represent the same before the appropriate Court and for presentation of such suit, one month time is granted. Thereafter, the plaint has been again presented before the II Additional Subordinate Court on 27.04.2009.

4. It is to be noted that originally the suit was valued for 2000/- and a Court Fee of Rs.151/- was paid under section 25(b) and 25(d) of Court Fees and Suit Valuation Act before the District Munsif Court. The suit was filed before the II Additional Subordinate Court on 27.04.2009 without paying the additional Court Fees and the same was returned on 23.12.2010. Thereafter, it was again represented on 18.04.2011 with a delay of 289 days and 102 days on 29.04.2011. Even at the time of representation, the Court Fees of Rs.151/- has only been filed. Thereafter, it appears that the respondent has filed an application in I.A.No.96 of 2013 for amending the plaint on the ground that the above mistake has come to the knowledge of the petitioner recently and the same is not deliberate. The above application was opposed by the revision petitioner on the ground that the Court fee has not been paid and the allegation that the petitioner has no knowledge about the mistake is also denied. However, the trial Court has allowed the application for amendment. As against which Civil Revision Petition in C.R.P.No.3552 of 2013 has been filed.

5. Similarly, the revision petitioner has filed an application to reject the plaint under Order 7 Rule 11 in I.A.No.3553 of 2013 and the above application has been dismissed. As against which C.R.P.No.3553 of 2013 has been filed.

6. The learned counsel appearing for the revision petitioner would contend that when the plaint was presented before the District Munsif Court, it was clearly pointed out that the Court has no pecuniary jurisdiction and the suit has not been valued properly and the memorandum of valuation has to be filed. The above plaint was returned in view of the application filed by the defendant in I.A.No.451 of 2008 with a direction to represent the same before appropriate Court within one month. Even thereafter, the Court Fee has not been paid. Thereafter a delay of 391 days has occurred. At that time also, the additional Court Fee has not been paid. Therefore, the lower Court allowed the amendment application and allowing the application by the trial Court enabling the plaintiff to pay the Court Fee is against law. The trial Court, though has power under section 149 of Code of Civil Procedure to extend time for payment of deficit Court Fee, has not exercised such power judicially. The suit was represented without paying additional Court Fee for setting aside the decree and the same is clearly barred by limitation and the trial Court ought to have rejected the suit. Whereas, the trial Court allowed the amendment in I.A.No.96 of 2013 which was filed with much delay, that too without paying the correct Court Fees. Hence, it is the contention of the learned Counsel that the trial Court instead of

rejecting the suit, allowed the amendment application, thereby giving undue advantage to the respondent, whose right to file a suit has already been lost by period of limitation. In support of his contention he relied upon the judgment of the Appex Court in **A.Nawab John and other Vs. V.N.Subramaniyam** reported in **2012 (7) Supreme Court Cases 738**.

7. The learned counsel for the respondent would contend that the II Additional Subordinate Court while representing the suit along with a delay of 289 and 102 days, entertained the suit. When the trial Court exercise its discretion, the revision petitioner cannot question the same. The trial Court also allowed the amendment of suit valuation to pay the correct Court Fees. Hence, it is the contention of the respondent that the Order of the trial Court, does not require interference and prayed for dismissal of the revision.

8. Heard both sides and perused the entire materials available on record.

9. The issue arise in this case is whether the trial Court has exercised discretion judicially to receive the Court fee with an inordinate delay and whether the trial Court is not proper in dismissing the application filed for rejection of the plaint under Order 7 Rule 11.

10. As referred above, the suit was originally filed before the District Munsif Court, Erode to set aside the decree and judgment passed in O.S.No.131 of 2007. It is the contention of the plaintiff that the defendants colluded together and obtained collusive decree to non suit the sale made in favour of the plaintiff. According to him, he came to know about the exparte decree and judgment on 30.07.2007. Therefore, he filed a suit to set aside the above decree and judgment passed in O.S.No.131 of 2007 and the said suit was taken on file in O.S.No.575 of 2007 by the learned District Munsif, Erode. The records, particularly the entries made by the District Munsif Court clearly indicate that the suit was filed within a period of three years from the date of knowledge of alleged fraud.

11. Originally, the suit was presented on 31.08.2007 before the District Munsif Court. Thereafter, I.A.No.451 of 2008 was filed by the defendant stating that the value of the suit property is not correct and the suit should be laid in the higher forum. The above application was allowed on 12.06.2008 and plaint filed by the plaintiff was returned with a direction to present the plaint before the appropriate Court within one month. However, the fact remains that though the District Munsif Court returned the plaint on 12.06.2008 with a direction to present the plaint within one month, the plaint has not been presented before the II Additional Subordinate Court, which has pecuniary jurisdiction, within one month as directed by the District Munsif.

Whereas the plaint was presented before the II Additional Subordinate Court only on 27.04.2009 with the same Court Fee paid before the District Munsif Court and again it was returned and two weeks time has been granted for compliance and the same was represented only on 18.04.2011 with a delay of 289 days and the delay has been condoned in I.A.No.376 2009. At this stage also sufficient Court fee has not been paid. Thereafter, again the plaint was returned and represented with a delay of 102 days. The above delay has also been condoned on 29.05.2011. Till such time, the Court Fee as decided by the District Munsif has not been paid.

12. It is relevant to refer the provision of Order 7 Rule 10 of Code of Civil Procedure, which deals with return of plaint at any stage of the suit for presentation to the Court in which the suit should have been instituted. Rule 10 Sub Clause (2) deals with procedure on returning the plaint. On such return, the endorsement shall be made as to the date of presentation and also reasoning for such return. Order 10(A) deals with the power of the Court to fix the date of appearance in the Court where the plaint is to be filed after its return. Under Order 10(A), the Court may also fix for the date of appearance of the parties in the Court where the plaint is proposed to be presented. The Court can also give the plaintiff and the defendant notice of such date. Therefore, the District Munsif, while returning the plaint on the basis of the valuation on pecuniary jurisdiction fixed time limit for presentation before appropriate Court,

i.e., one month from the date of said return dated 31.08.2007. However, the plaint has not been represented with correct Court Fee before II Additional Subordinate Court, Erode which was filed only on 18.04.2011 with a delay. There again, it was returned as stated above, represented with 287 days delay. Finally, the suit was taken on file on 09.06.2011. Till such time, the suit has not been valued before the II Additional Subordinate Court.

13. It is to be noted that the District Munsif Court in I.A.No.451 of 2008 has determined the value of the property and held that the Court fee has to be paid on the value of Rs.two lakhs. The said finding has been arrived on the basis of the pleadings in the plaint. In the plaint itself, it is pleaded that the suit property is worth about Rs.two lakhs. The Court Fee has been paid only on Rs.2000/-. Hence, the District Munsif Court has rightly returned the plaint.

14. It is further to be noted that a suit, to set aside the decree and judgment, ought to have been filed within a period of three years under Article 59 of the Limitation Act. Limitation starts from the date when the facts entitling plaintiff to have the decree set aside. Admittedly in this case, as per the own pleadings of the plaintiff, he came to know about the decree sought to be set aside on 30.07.2007. In such case, the suit ought to have been filed within three years on 30.07.2010. Though the suit has been filed within a period of limitation on 21.08.2007, the suit was not valued for the value mentioned in the plaint.

Thereafter, the suit has been returned on 12.06.2008 and presented before the II Additional Subordinate Court on 27.04.2009 and again it was returned on 23.12.2010. Thereafter, there was a huge delay in representing and finally the suit has been taken on file on 09.06.2011. Therefore, within a period of three years, the suit has not been laid by paying correct Court Fees.

15. The Court Fee of Rs.two lakhs has been fixed by the District Munsif. Whereas, the plaintiff has filed an application to amend the valuation of the plaint for the first time only on 05.02.2013. The above application has been allowed on 28.06.2013. In the affidavit filed for amendment, it is the contention of the respondent/plaintiff that while presenting the plaint before the District Munsif as he did not pay relevant Court Fee and also failed to amend the valuation in the plaint. The above mistake came to his knowledge only recently. The above mistake is not due to deliberate or wanton. Therefore, he sought to allow the application.

16. Of Course, Section 149 Code of Civil Procedure gives power to the Court to exercise its discretion at any stage of the suit to call upon the plaintiff to pay necessary Court Fees. However, the power under section 149 of Code of Procedure required to be exercised in accordance with the settled procedure of law. Such a power cannot be exercised in order to confer unfair advantage on any one of the parties to the limitation. Admittedly, in this case, on the date of

application for amending the plaint filed in the year 2013, appropriate Court Fee has not been paid, though the plaint has been filed within a period of limitation. When the plaintiff wants to make good the deficit of Court Fee at the relevant point of time limitation period of three years has already been lapsed, to seek a declaration to set aside the document.

17. In this regard it is useful to refer the judgment of the Honourable Supreme Court in **A.Nawab John and other Vs. V.N.Subramaniyam** reported in **2012 (7) Supreme Court Cases 738**

“44. It is well settled that the judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficit of the court fee beyond the period of limitation, the Court, though has discretion under Section 149 CPC, must scrutinise the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants or persons claiming through the defendants. (The

case on hand is a classic example of such a situation.) It necessarily follows from the above that Section 149 CPC does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the Court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation.

45. On the facts of the case on hand, the High Court recorded its conclusion as follows:

“16..... the Subordinate Judge has erred in allowing the I.A. Nos.75 and 76 of 2004 by exercising the discretion without analysing the bona fides of the plaintiffs case and without giving notice to the defendant.” Such a conclusion was recorded on the basis of the finding:

“8. Apart from that sufficient cause was not shown in the two affidavits filed in support of the application to condone the delay of representation in I.A. No.76/2004 the reason given was that due to non availability of stamp paper, proper court fee

could not be paid. In I.A. No.75/2004 no reason has been stated for such deficit court fee. Even for the delay also the conventional reason of jaundice has been stated and the plaintiffs alleged that they have been taking Siddha treatment for such ailment. Even such affidavits have been filed only by the counsels and not by the parties. But accepting such reasons, the delay in representation as well as the payment of deficit court fee has been accepted by the court below.” [Emphasis supplied].”

18. Applying the above principal of law, the case on hand when carefully perused, the application filed by the plaintiff to amend the plaint do not contain any reason. Except contending that at the time of presentation of the suit before Sub Court, he did not amend the valuation and failed to pay the Court Fee and such mistake has come to his knowledge recently except no other sufficient cause, whatsoever, pleaded in the affidavit. It is not the case of the respondent that the Court fee is not available or he was prevented from paying the Court Fee by any other sufficient cause. There was no reason assigned for such deficit Court Fee. When there was no sufficient cause shown by him for nonpayment of necessary Court Fee, the trial Court Ordering the amendment for payment of Court Fee in the year 2013, much beyond the period of limitation, is erroneous and the trial Court ought not to have allowed such application, giving unfair

advantage to the respondent/plaintiff to make good the deficit Court Fee. The power under Section 149 of Code of Civil Procedure is not the absolute right in favour of the plaintiff to pay Court Fee as and when it pleases the plaintiff. The exercise of discretion by the Court is condition upon the satisfaction of the Court that the plaintiff averred legally acceptable explanation for not paying the Court Fee within the period of limitation as stated in the judgment of the Apex Court referred above. Therefore, the trial Court allowing the application without any reason, for payment of deficit Court Fee beyond the period of limitation is not according to the settled position law. In fact, the trial Court has not exercised discretion on the legal parameter. Therefore, the Order of the trial Court is certainly liable to interfered.

19. Similarly, when the plaintiff himself has failed to pay the Court Fees despite the District Munsif fixing the value of the property and giving time of one month for presentation of the plaint, even thereafter, the plaintiff failed to pay necessary Court Fee despite returns made by the II Additional Subordinate Court, the Court ought to have rejected the plaint itself under Order VII Rule 11. Therefore, the trial Court rejecting the application under Order VII Rule 11 is also not according to law. The trial Court has dismissed the application for return of the plaint only on the ground that since the amendment application is allowed. It is to be noted that the Court Fee has not been paid despite the Order of the District Munsif in time. Till 2013, when the application for amendment has been

filed, the Court Fee has not been paid. Since, this Court has held that exercise of jurisdiction of the Court receiving the Court Fee without any valid reason is not correct and the same has to be rejected.

20. Accordingly, these revisions are allowed and the Order passed by the trial Court in both the applications in I.A.No.96 of 2013 and I.A.No.553 of 2012 are set aside and the suit in O.S.No.575 of 2007 is rejected from the file of the II Additional Subordinate Judge, Erode. Consequently, the connected miscellaneous petitions are closed. No cost.

21.03.2019

vrc

To

1. The District Munsif,
Erode.
2. The II Additional Subordinate Judge,
Erode.

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N.SATHISH KUMAR, J.

VRC



Order in

CRP.(PD) Nos. 3552 & 3553 of 2013

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