

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 20.11.2019

Pronounced On : 10.12.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.4874 of 2013

and

M.P.No.1 of 2013

1. Smt.Saraswathi
2. Smt.Vanajachi
3. R.Ayyasamy
4. V.Geetha Ramani
5. Smt.Sundarambal

.. Petitioners

Vs

1. P.V. Gurusamy
2. V.Ranganathan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 21.09.2013 made in I.A.No.679 of 2008 in O.S.No.194 of 2008 on the file of the learned III Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.C.R.Prasanan

For Respondents : Mr.V.Radhakrishnan, Sr. Counsel
for Mr.S.Kadarkarai

ORDER

Plaintiffs in OS No.194 of 2008 on the file of the learned III Additional Subordinate Judge, Coimbatore, are the petitioners herein. Before the said Court, the petitioners herein filed a suit as against the respondents and two

others, seeking the relief of declaration, declaring that the plaintiffs and the 4th defendant, are the absolute owners of the suit scheduled property and directing the defendants 1 to 3 to deliver the possession of the suit scheduled property.

2. In the said suit, the defendants entered appearance and filed their written statement. Thereafter, before the commencement of trial, the respondents/defendants filed an interlocutory application in IA.No.679 of 2008, under Order XIV Rule 2 CPC and Section 12(5) of the Tamil Nadu Court Fees and Suit Valuation Act [hereinafter referred as 'Act'] and under Section 151 of CPC. Through the said application, they prayed the Court below to take up the issue of valuation of the suit property at market value and payment of proper Court fee thereon, as a preliminary issue.

3. The learned III Additional Subordinate Judge, Coimbatore, after affording an opportunity to the revision petitioners/plaintiffs for raising their objection, by order dated 21.09.2013, allowed the application filed by the respondents/defendants. Aggrieved over the same the plaintiffs are before this Court with the present Civil Revision Petition.

4. When the Civil Revision Petition came up for hearing, the learned counsel appearing for the revision petitioners/plaintiffs would contend that

even in OS No.748 of 1998 on the file of the Sub Court, Coimbatore, the value of the entire 4.50 acres in SF No.480/2A, Vilankuruchi has been valued at Rs.2,00,000/- by the respondents/defendants and after knowing the same, they cannot now dispute that the revision petitioners/plaintiffs have undervalued 2.35 acres in SF No.473/2 at Rs.2,00,000/-.

5. According to the learned counsel for the revision petitioners/plaintiffs, the averment of the respondents/defendants that the market value of the suit scheduled property is Rs.3 Crores is false and imaginary, since the suit scheduled property, is an agricultural property and also situated at a remote area. Without going into the merits of the counter filed by the revision petitioners/plaintiffs, the Court below allowed the application filed by the respondents/defendants, which is erroneous in law.

6. Per contra, the learned senior counsel appearing for the respondents/defendants would contend that the present market value of the suit property is not less than Rs.3 Crores and therefore, the petitioners are liable to pay the *ad valorem* Court fee on the market value of the suit scheduled property under Section 25(a) of the Act.

7. According to the learned Senior counsel for the respondents/defendants, the revision petitioners/plaintiffs have

deliberately undervalued the suit property and attempted to escape from the payment of proper Court fee. Further he would submit that if the suit property is properly valued, the Subordinate Court, would not have pecuniary jurisdiction to try the suit filed by the revision petitioners/plaintiffs. Therefore, the Court below has rightly considered the above aspects and allowed the application filed by respondents/defendants, which does not have any material irregularity.

8. Upon considering the arguments advanced by either side, it is not in dispute that earlier this Court, on 29.11.2011, while disposing CRP (PD) No.120 of 2011, which was also filed in respect to valuation of the suit property and payment of Court fee in the suit, has directed the learned III Additional Subordinate Judge, Coimbatore, as follows:

“7. ... directed to first decide regarding the valuation of the suit property at market value and payment of Court fee thereon shall be taken as preliminary issue or not and if it decides so, then it shall given opportunity to both the sides to put forth their case and thereafter the issue has to be decided.”

9. Only based on the said direction the learned III Additional Subordinate Judge, Coimbatore, came to the conclusion that the issue of Court fee has to be decided at the first instance, before commencement of trial and not thereafter. Further, he has held that since the

respondents/defendants have raised the issue of valuation of the suit scheduled property and payment of proper Court fee in the written statement itself, it is necessary to frame a preliminary issue in respect of determination of the market value of the suit scheduled property and payment of Court fee.

10. In this regard, it is necessary to see the judgment of this Court in **V.R.Gopalakrishnan Vs. Andiammal**, reported in 2002 (2) CTC 513, wherein this Court has categorically held as follows:

“19.{g} When the defendant comes forward with an application disputing the valuation of the property or contends that the suit has not been properly valued, the Court has to consider the same. Such consideration shall be as per Section 12 (2) of the Tamil Court Fees and Suits Valuation Act and the Court cannot choose to decide that issue along with other issues. This provision viz., Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act 1955, which is a substantial law shall prevail over Order 14 Rule 2 CPC which is a procedural law.”

11. Applying the principles set out earlier by this Court, in this case also, as stated above, the respondents/defendants have filed an application for framing the issue, in respect of valuation of the suit scheduled property and payment of Court fee, before the commencement of trial itself. Therefore, this Court is of the considered view that there is no material

irregularity in the order passed by the Court below. Accordingly, the order dated 21.09.2013 made in I.A.No.679 of 2008 in O.S.No.194 of 2008 on the file of the learned III Additional Subordinate Judge, Coimbatore, is sustained and Civil Revision Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

10.12.2019

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

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To
The III Additional Subordinate Judge, Coimbatore.



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R.PONGIAPPAN, J.,

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Pre-delivery order in
CRP (PD) No.4874 of 2013
and M.P.No.1 of 2013

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