

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :05.09.2018

PRONOUNCED ON :23.01.2019

C.R.P(NPD). No.1950 of 2018

and

C.M.P.No.11307 of 2018

R.Sivakumar

..

Petitioner

..Vs..

1.R.Rajaganapathy

2.S.Sundari

..

Respondents

Prayer:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order dated 16.04.2018 passed in I.A.No.792 of 2017 in O.S.No.508 of 2016 on the file of the District Munsiff at Ambattur.

For Petitioner

:Mr.S.Shivakumar

For Respondents

:Mr.B.Deepak Narayanan

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ORDER

Plaintiff in the suit is the Revision Petitioner herein.

2. This Criminal Revision Petition is filed against the fair and decretal order dated 16.04.2018 passed in I.A.No.792 of 2017 in O.S.No.508 of 2016 on the file of the District Munsiff at Ambattur.

3. The learned counsel for the Revision Petitioner has submitted that the suit is filed against a person who is the brother of the petitioner and his possession was only permissive in nature which is not disputed by the respondent. While so, in the absence of any claim towards hostile title, the suit is maintainable as such. It is his further submission that the Trial Court ought not to have calculated the guideline value for the purpose of determining the court fee.

4. Heard both sides.

5. The plaintiff who is the revision petitioner is challenging the order passed by the learned District Munsiff at Ambattur in I.A.No.792 of 2017 in O.S.No.508 of 2016 requiring the petitioner to pay the requisite Court fee based on the market value of the suit property stating that it is erroneous. The first respondent is the brother of the petitioner and the respondents are permissive occupiers of the suit property and have agreed to vacate the suit property. Accordingly the suit cannot be valued under Section 30 of Tamil Nadu Court Fees and Suits Valuation Act ("Court Fees Act"). A plea for under valuation of Court fees can only be taken in the written statement and the Trial Court has wrongly allowed the petition filed under Order VII Rule 11(b) without framing an issue for determination of court fee. Accordingly the Impugned Order is liable to be set aside.

6. The learned counsel for the respondents/defendants has submitted that the respondents are not permissive occupiers of the suit

property and they have not agreed to vacate the suit property as alleged by the petitioner. The petitioner has filed a suit bearing O.S.No.508 of 2016 for Mandatory Injunction directing the defendants to vacate and deliver possession of the suit property and accordingly the suit for possession is liable to be valued under Section 30 of Court Fees Act. However the petitioner has wrongly valued the suit under Section 25(d) of Court Fees Act. The guideline value provided by the respondents to the Trial Court indicates that the suit property measuring 1225 sq.ft is valued at Rs.2200per sq.ft and accordingly the value of the suit property is Rs.26,95,000/-. Hence, the petitioner is liable to pay Court Fees at Rs.26,95,000/-.

7. During the course of arguments, the learned counsel for the respondents would contend that the respondents are in possession and have been living in the property from 2003 and the Settlement Deed executed was only in 2010. Hence there is no logic behind petitioner's stand that the respondents are permissive occupiers.

8. The respondents vehemently object to the Settlement Deed and will challenge the same as Counter claim when the suit is presented before appropriate Court based on pecuniary jurisdiction. Furthermore, contrary to the petitioner's allegation, a challenge to the settlement deed will be well within limitation period since the respondents came to know about the same only upon receipt of the notice from the petitioner dated 31.12.2015.

9. In any event the very Settlement Deed filed by the petitioner specifies that the market value in 2011 itself was Rs.20,00,000/-. Accordingly

while the entire case of the petitioner is based on the Settlement Deed, the petitioner herein ought to have valued the suit based on the market value available in the document. But nevertheless the petitioner failed to contest the guideline value provided by the respondent and hence is liable to pay the Court fee at that rate. Thus it is evident that the Munsiff Court will not have pecuniary jurisdiction to entertain the said suit filed by the petitioner. The trial Court has merely given time to the petitioner for payment of deficit Court fee and the merits of the case can be agitated before the appropriate forum after payment of requisite Court fee.

10. On perusal of the impugned order passed by the District Munsiff, Ambattur, the petitioner/plaintiff filed the suit for the relief of Mandatory Injunction and asked for delivery of vacant possession and accordingly paid the Court fee under Section 25(d) of the Tamil Nadu Court Fees Act which was found to be objected by the defendants by way of filing I.A.No.792 of 2017.

11. The plaintiff relies upon the settlement deed in his favour said to have been executed in the year 2011. According to the respondents/defendants, the guideline value provided by the respondents before the trial Court indicates that the suit property is measuring 1225 sq.ft at the rate of Rs.2200 per sq.ft and the just value of the suit is Rs.26,95,000/-

12. As rightly contended by the learned counsel for the respondents that if the guideline value is taken up for consideration the value of the suit comes around Rs.26,95,000/- and hence, the Munsiff Court will not

have pecuniary jurisdiction to entertain the suit filed by the petitioner/plaintiff and hence, should file the written statement before the competent Civil Court is found to have force.

13. In the decision reported in Gnanasekaran Vs.Main 2005-4-L.W.246 (Madras High Court) is as follows:-

"Suit filed for mandatory injunction directing respondent to vacate and deliver vacant possession on the averment that defendant is a permissive occupier- Court held "This Court is of the considered opinion that this revision itself does not require even an admission either, or a notice to be issued to the respondent/defendant for the simple reason that a reading of the plaint would clearly indicate that what was the relief sought for by the plaintiff was one for recovery of possession of an immovable property from the hands of the defendant. "A reading of the above provisions of Sec.27(c) would clearly reveal that otherwise cases are provided therefor. In the instant case, it can be stated that the Court fee is expected to be paid under Section 30 of the Act, as rightly found by the learned Subordinate Judge. Under the circumstances, it is a fit case where the Court Fee for Rs.1,83,125/- as found by the Court Fee Examiner of this Court, has got to be paid, and if to be so, the District Munsif cannot entertain the suit in

view of the pecuniary jurisdiction, and thus, he has rightly returned the plaint on that ground. This Court is unable to notice any reason to entertain the revision petition."

ii) Kamaleswar Kishore Singh Vs.Paras Nath Singh - 2002 (1) SCC

304 (Supreme Court) is as follows:-

"Court fees has to be paid based on plaint, unless while drafting plaint plaintiff had attempted evading payment of Court Fee by his astuteness in drafting - "It is substance of relief and not form which will be determinative of valuation and payment of Court fee".

iii. Krishnakanthan & Anr vs.Esakki Ammal & Ors - 2006 (3) CTC

151 (Madras High Court) is as follows:-

Rejection of Plaint for non-payment of Court Fees

- "Arbitrary valuation without basis made to evade Court Fee or to confer jurisdiction are cases where Courts can interfere"

14. Hence, this Court finds that by clever vet on drafting, it appears that the recovery of possession has been sought for and designed as if for Mandatory Injunction and hence, the order passed by the trial Court to calculate the Court Fee is proper.

15. As per Section 30 of the Court Fees Act is just and reasonable order and in the absence of any other documents except the documents filed by the respondents/defendants regarding the guideline value, the Court fee the slip and time granted by the trial Court cannot be found fault with and hence, the finding of the trial Court that it has given only time for petitioner for payment of deposit Court Fee and the merits of the case have to be agitated before the appropriate forum after the payment of the requisite Court fee as observed by the District Court Munsiff in the impugned order and in view of the above referred citations and also taking note of the fact that it is substance of relief and not form which will be determinative of valuation and payment of Court fee, the trial Court has rightly held that the Court Fee has to be calculated as per Section 30 of the Court Fees Act and not under Section 27 of the Court Fees Act and in this view of the matter, the order of the trial Court does not suffer from any illegality or irregularity warranting interference of this Court. सत्यमेव जयते

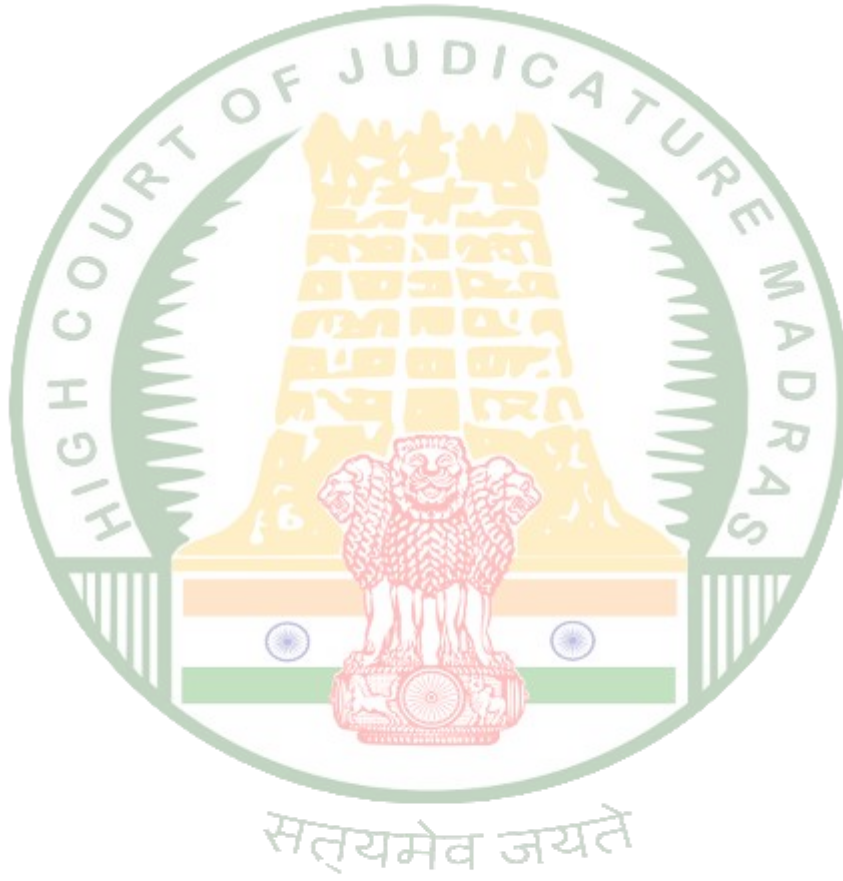
16. Accordingly, this Civil Revision Petition is dismissed. Time for payment of deficit Court Fee, as ordered by the trial Court is extended and the payment has to be made within a period of one month from the date of receipt of a copy of this order. The Registry is directed to issue the order copy within three days. Consequently, connected M.P. is closed.

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

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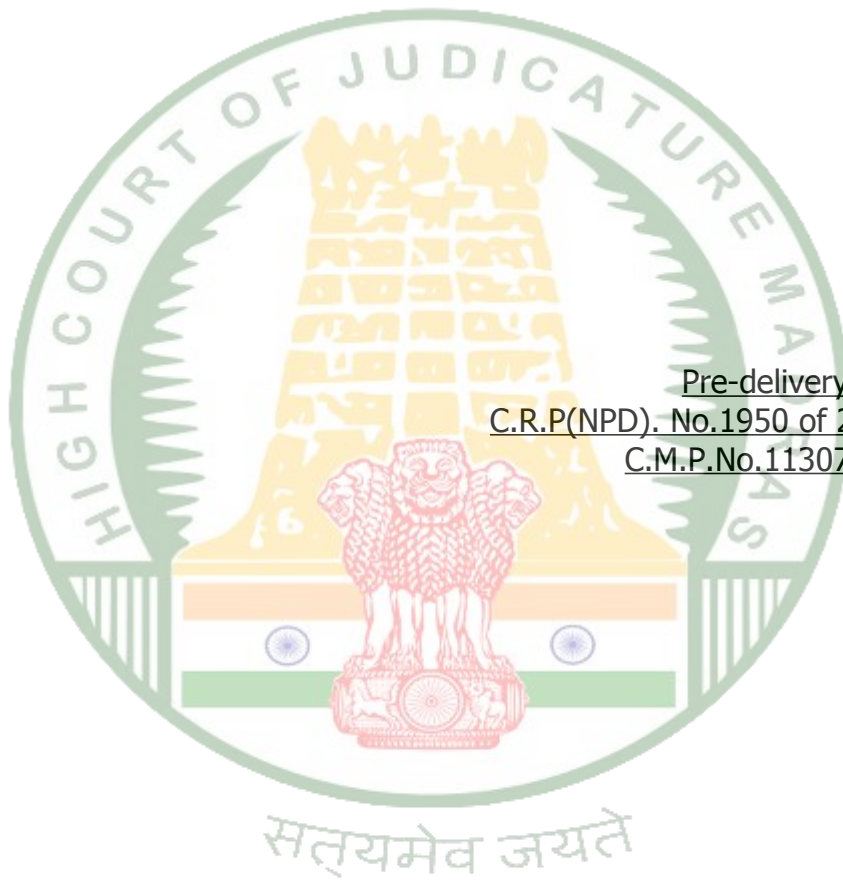
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RMT.TEEKAA RAMAN,J.,

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Pre-delivery order in
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