

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2019

PRONOUNCED ON : 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

CRP (PD)No.1818 of 2014
and
CRP(PD) No.1735 of 2017
and
MP No.1 of 2014
and
CMP No.8216 of 2017

1. S. Dakshinamoorthy
2. D. Vasanthi

... Petitioners
in
both CRPs

1. E. Janaki
2. E. Balaji

Vs

... Respondents
in
both CRPs

Prayer in C.R.P. (PD) No.1818 of 2014

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 29.04.2014 passed in C.M.A. SR No.3713 of 2014 on the file of the Subordinate Court at Ponneri against the order in I.A. No.476 of 2014 in O.S. No.93 of 2014, on the file of the District Munsif Court, Tiruvottiyur by granting the ex-parte injunction till 16.6.2014.

Prayer in C.R.P. (PD) No.1735 of 2017

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 21.03.2017 in I.A. No.755 of 2014 in O.S.No.93 of 2014 on the file of the District Munsif, Tiruvottiyur by allowing the said application.

For petitioners in both CRPs : Mr.K. Bijaisundar
For respondents in both CRPs : Mr.P.V. Muralidhar

COMMON ORDER

CRP (PD) No.1735 of 2017 has been filed under Article 227 of the Constitution of India, challenging the order dated 21.03.2017 passed by the District Munsif Court, Tiruvottiyur in I.A. No.755 of 2014 in O.S. No.93 of 2014.

2. CRP (PD) No.1818 of 2014 has been filed under Article 227 of the Constitution of India, challenging the order dated 29.04.2014 passed by the Subordinate Court at Ponneri in CMA SR3713 of 2014 filed as against I.A. No.476 of 2014 in O.S. No.93 of 2014 on the file of the District Munsif, Tiruvottiyur.

Brief facts leading to the filing of the revision petitions:

3. The petitioners are the defendants in the suit O.S. No.93 of 2014 which was filed by the respondents before the District Munsif Court, Tiruvottiyur. The said suit was filed seeking for declaration and injunction in respect of the suit schedule property. The petitioners, who are the defendants in the suit filed I.A. No.755 of 2014 under Order 7 Rule 11 CPC seeking rejection of the plaint filed in O.S. No.93 of 2014 on the ground of under valuation of the suit. According to the petitioners, it was admitted by the respondents that the value of the suit schedule property is Rs.25,00,000/-, as per the settlement deed dated 11.04.2014 executed in favour of the respondents / plaintiffs. According to the petitioners, the respondents / plaintiffs have valued the suit only at Rs.1,000/- and have paid the court fees on the said valuation and hence, the suit before the learned District Munsif, Tiruvotiyur is not maintainable for lack of pecuniary jurisdiction and it has to be rejected.

4. A counter affidavit was filed by the respondents / plaintiff in I.A. No.755 of 2014 denying the allegations of the petitioners /

defendants. In the counter affidavit, they have stated that the property is an agricultural property and the suit was valued on the basis of Kist and hence, the suit was valued at Rs.1,000/- and the court fees was paid accordingly. According to the respondents / plaintiffs, the suit has been valued properly and there is no under valuation, as alleged by the petitioners / defendants.

5. By order dated 21.03.2017, the Trial Court dismissed I.A. No.755 of 2014 filed by the petitioners by rejecting the contention of the petitioners and observed that the respondents /plaintiffs have valued the suit schedule property, as per Section 7(2)(a) of the Tamil Nadu Court Fees and Suits Valuation Act, based on 30 times of kist value paid for cultivating punja land and have paid the court fees correctly. The Trial Court has rejected the contention of the petitioners that the settlement deed though has been valued at Rs.25,00,000/-, held that the suit schedule property being a cultivating punja land is a privilege given to agriculturists under the Tamil Nadu Court Fees and Suits Valuation Act for valuation at 30 times the Kist and hence, the valuation of the suit schedule property at Rs.1,000/- is a correct valuation. Aggrieved by the order dated 21.03.2017, passed

in I.A. No.755 of 2014, CRP (PD) No.1735 of 2017 has been filed by the petitioners / defendants.

6. During the pendency of the suit O.S. No.93 of 2014, the respondents /plaintiffs filed I.A. No.476 of 2014 seeking for an interim injunction restraining the petitioners / defendants from in any manner interfering with the respondents / plaintiffs peaceful possession and enjoyment of the suit schedule property. It is the case of the respondents / plaintiffs that they are the absolute owners of the suit schedule property by virtue of the settlement deed dated 11.04.2014 executed in their favour by their father.

7. By order dated 21.04.2014, an ex-parte order of injunction was granted in favour of the respondents / plaintiff in I.A. No.476 of 2014 in O.S. No.93 of 2014. Aggrieved by the ex-parte order of injunction passed in I.A. No.476 of 2014, the petitioners / defendants filed an appeal in CMA. SR3713 of 2014 before the Subordinate Court at Ponneri.

8. By order dated 29.04.2014, the learned Subordinate Judge, Ponneri dismissed the appeal as not maintainable, since the said appeal was filed against an ex parte injunction granted in favour of the respondents/plaintiffs. Aggrieved by the dismissal, CRP No.1818 of 2014 has been filed by the petitioners / defendants.

9. Since the issues involved in both the civil revision petitions arise out of the same suit viz., O.S. No.93 of 2014 pending on the file of the District Munsif Court, Tiruvottiyur, both Civil Revision Petitions are disposed of by this common order.

Submissions of the learned counsels:

10. Heard Mr.Bijai Sundar, learned counsel for the petitioners and Mr.P.V. Muralidhar, learned counsel for the respondents in both Civil Revision Petitions.

11. The learned counsel for the petitioners would submit that even though I.A. No.755 of 2014 was filed by the petitioners / defendants under Order 7 Rule 11 CPC for rejection of plaint, the said application will have to be treated only as an application under Order

7 Rule 10 CPC for return a plaint on account of improper valuation of the suit. He drew the attention of this Court to the pleadings filed in support of I.A. No.755 of 2014 and submitted that the petitioners / defendants have categorically pleaded in paragraph 4 of the said affidavit that the plaint will have to be returned to the respondents / plaintiffs due to lack of jurisdiction by the court on account of improper valuation of the suit. According to him, even though the application has been filed for rejection of plaint under Order 7 Rule 11 CPC, it has to be treated only as an application under Order 7 Rule 10 CPC for return of plaint. Further he submits that quoting of wrong provision of law will not alter the nature of relief as the court will have to look into only the pleadings which in the instant case according to him, the relief sought for is only for the return of plaint under Order 7 Rule 10 CPC.

12. The learned counsel for the petitioners drew the attention of this Court to the settlement deed dated 11.04.2014 executed in favour of respondents / plaintiffs by their father, which discloses the market value of the property as Rs.25,00,000/-. He also drew the attention of this Court to a complaint lodged by the respondents/plaintiffs against the petitioners/defendants, wherein they have mentioned the value of

the property as Rs.25,00,000/-. Therefore, according to him, the District Munsif Court, Tiruvottiyur does not have the pecuniary jurisdiction to try the suit as the value of the property is more than 25,00,000/- at the time of filing the suit.

13. The Learned counsel for the petitioners in support of his submissions cited the following authorities:

(a) **S.R.Jeyaraman and another vs. G.Jothirlingam and others reported in 2008 (4) MLJ 86**

(b) **Syed Ahmed Kabir and others vs. Naina Mohammed Sahib reported in 2014 (2) TLNJ 191 (Civil)**

14. Per contra, the learned counsel for the respondents drew the attention of this Court to Section 7(2)(a) of the Tamil Nadu Court Fees and Suits valuation Act, prior to the amendment in G.O. Ms. No.36, dated 17.02.2017. Section 7(2)(a) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 prior to the amendment deals with determination of market value of a ryotwari land which is assessed for the purpose of court fees at 30 times on the survey assessment of the land. According to him, the suit has been properly valued at 30 times

of the kist (Survey assessment) as per Section 7(2)(a) and the court fees has been properly paid. He drew the attention of this Court to the Town Survey Field Register Extract issued by the Madhavaram Municipality, dated 26.06.2009 which is filed as Document No.5 along with the plaint, which will reveal that the suit schedule property is a Ryotwari land and it is a dry land. Therefore, according to him being a Ryotwari land and a dry land, the suit valuation has been done only in accordance with Section 7(2)(a) of the Tamil Nadu Court Fees and Suits Valuation Act, prior to amendment on 17.02.2017. According to him, the suit was filed in the year 2014 and hence, Section 7 (2)(a) of the Act prior to amendment is applicable.

15. The learned counsel for the respondents in support of his submission, also drew the attention of this Court to the following authorities ;-

- 1) Aathi Chettiar Vs P. Vaikuntavalli and 6 others**
reported in 2009 SCC Online Mad 1578
- 2) Raman versus Ramathunnisa and two others**
reported in 1999 (III) CTC 88

Discussion :

16. The respondents/plaintiffs filed a suit for declaration and injunction in O.S. No.93 of 2014, which has been valued for the purpose of Court fees under Section 25 (b) of the Tamil Nadu Court Fees and Suits Valuation Act. The suit was filed in the year 2014. Hence Section 25(b) of the Act prior to the amendment is applicable for the instant case. Section 25 (b) of the Act reads as follows :-

“(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on [rupees one thousand], whichever is higher;”

17. It is clear from Section 7(2)(a) of the Act that if the subject land is a Ryotwari land, the market value of the property has to be determined based on the assessment of land by revenue authorities multiplied by 30 times. The respondents /plaintiffs have filed the plaint along with the Town Survey Field Register Extract issued by the Madhavaram Municipality as Document No.5, which reveals that the suit schedule property is a Ryotwari dry land. Hence as per

Section 7(2)(a) read with 25 (b) of the Tamil Nadu Court fees and suit valuation Act, 1955, the market value for the Ryotwari Dry land has to be determined based on the assessment of the land by the revenue authorities multiplied by 30 times. Section 7(2)(a) is extracted hereunder:

7. Determination of market value : (1)

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

(a) Where the land is ryotwari land – thirty times the survey assessment on the land ;

Provided that, where the land forms part of a survey filed 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.

18. In the case on hand, the valuation has been done based on the kist which is the revenue assessment and the subject land is a Ryotwari land as evidenced by the Town Survey Land Register Extract issued by the Madhavaram Municipality. The respondents/ plaintiffs have also pleaded in the plaint that the subject land is a Ryotwari dry

land and there is no suppression of any material fact for the purpose of the valuation of the suit. While deciding an application either under Order 7 Rule 10 or 11 CPC, the court will have to look only into the plaint averments. In the case on hand, as observed earlier, the respondents/ plaintiffs have pleaded that the suit schedule property is a ryotwari dry land. The decisions relied upon by the learned counsel for the respondent viz., i) ***Aathi Chettiar Vs P. Vaikuntavalli and 6 others reported in 2009 SCC Online Mad 1578*** and (ii) ***Raman versus Ramathunnisa and two others reported in 1999 (III) CTC 88*** are squarely applicable to the facts of the instant case as it has been made clear in those judgments that insofar as determination of the market value for the purpose of Court fee valuation for ryotwari land is concerned, it must be based on assessment of land by revenue authorities multiplied by 30 times. It is also well settled that for the purpose of payment of court fees averments in the plaint alone will have to be considered.

19. The Trial Court has considered all these aspects and has rightly rejected the application viz. I.A. No.755 of 2014 filed by the petitioners / defendants. Further one more aspect has to be taken

note of in the instant case. I.A. No.755 of 2014 was filed by the petitioners / defendants under Order 7 Rule 11 CPC. But the averment in paragraph No.4 of the affidavit filed in support of I.A. No.755 of 2014 seeks for return of plaint. Insofar as the return plaint is concerned, the correct provision is Order 7 Rule 10 CPC. However, the prayer sought in I.A.No.755 of 2014 is only for rejection of plaint under Order 7 Rule 11 CPC. The Trial Court has rightly rejected the application.

20. For the foregoing reasons, this Court is of the considered view that the petitioners have neither satisfied the requirements of Order 7 Rule 10 CPC or Order 7 Rule 11 CPC. The judgments relied upon by the learned counsel for the petitioners in a) **S.R. Jeyaraman and another versus G. Jothirlingam and Others reported in (2008) 4 MLJ 86** b) **Syed Ahamed Kabir and 3 others versus Naina Mohamed Sahib reported in 2014 (2) TLNJ 191 (Civil)** are not applicable for the facts of the instant case as the valuation of the suit has been done only in accordance with section 7(2)(a) of the Tamil Nadu Court Fees and Suits Valuation Act and is the correct valuation.

21. This Court has also perused and examined the impugned order passed in CMA SR 3713 of 2014 and the Appellate Court has rightly dismissed the said appeal as not maintainable as the petitioners/defendants even without contesting I.A. No.476 of 2014 have preferred an appeal. This Court does not find any infirmity in the said order.

Conclusion:

22. For the foregoing reasons, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

06.08.2019

Index: Yes/ No

Internet: Yes/No

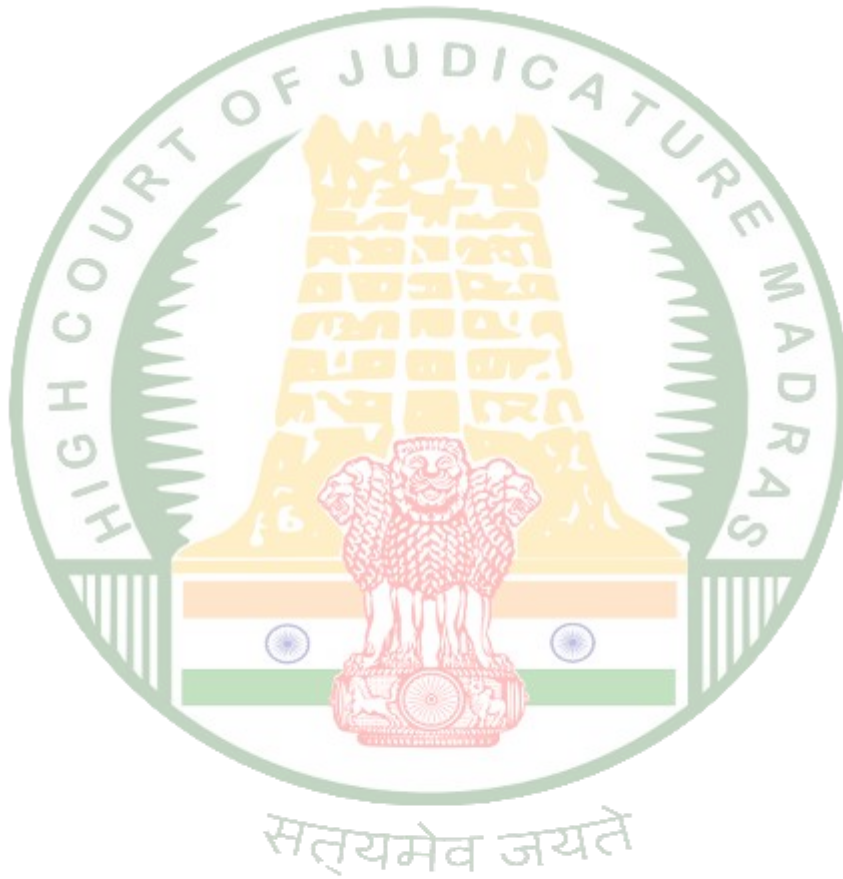
Speaking Order/Non-speaking Order

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To

1. The Subordinate Judge,
Ponneri.
2. The District Munsif, Tiruvottiyur



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CRP (PD)No.1818 of 2014

ABDUL QUDDHOSE, J.

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Pre-Delivery Order of
CRP (PD)Nos.1818 of 2014
and
CRP (PD) No.1735 of 2017

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