

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 24.10.2019

Pronounced On : 08.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.4845 of 2014

and M.P.No.1 of 2014

M.Aruldoss

...

Petitioner

..Vs..

1. Kumarasamy (died)
2. Lakshmi
3. Sathiyabama
4. Renukadevi
5. Virudhambal @ Sivagamasundari
6. Thirumurugan
7. Senthilkumar
8. Ibrahim Sahib
9. Ramasamy @ Kaliyabarathan
10. Manikaraj
11. Siva
12. Saravanan

13. The District Collector,
Villupuram.

14. The Thasildhar,
Villupuram.

... Respondents

[Respondents 2 to 7 are recorded as legal representatives of the deceased 1st respondent viz., Kumarasamy, vide Court [RPAJ] order dated 19.09.2019 made in CRP No.4845 of 2014 and as per memo dated 18.09.2019 (USR No.27465/19)]

Prayer: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the Fair and Decretal Order dated 09.06.2014 in I.A.No.587 of 2013 in O.S.No.66 of 2012 on the file of the learned Principal District Munsif, Villupuram.

For Petitioner : Mr.R.Krishna Prasad
for M/s.Sarvabhauman Associates
For Respondents : Mr.P.Jagadeesan (for R2 to R7)
Mr.N.Manikandan (for R13 & R14)
Government Advocate
R1-Died
No Appearance (for R8 to R12)

ORDER

The plaintiff in OS No.66 of 2012, on the file of learned Principal District Munsif, Villupuram, is the Civil Revision petitioner. Before the said Court, he has filed a suit as against the respondents herein for the following reliefs:

- (a) Declaring the plaintiff's exclusive title to the suit properties.
- (b) Directing the 8th defendant to deliver vacant possession of the suit item No.1
- (c) Directing the 8th defendant to pay future mesne profits to the plaintiff.
- (d) Directing the 8th defendant to pay future mesne profits in respect of suit item No.1 in a separate proceedings under Order 20 Rule 12 CPC.
- (e) Granting permanent injunction restraining the defendants 1 to 7 and 9 to 12 and their men, servants and agents from interfering in manner with the plaintiff's possession and enjoyment of the suit items 2 to 5.
- (f) Granting mandatory injunction directing the defendants 13 and 14

to transfer the patta for the suit properties in the name of the plaintiff.

(g) Directing the defendants to pay the cost of the suit to the plaintiff and

(h) Granting such other reliefs as to this Hon'ble Court may seem fit and proper in the circumstances of the case.

2. The respondents herein after entering appearance, filed a written statement and thereafter, they filed an application in IA No.587 of 2013 under Order 14 Rule 2(2) and Section 151 of Code of Civil Procedure, with a prayer to frame the following preliminary issues

- (i) whether the Hon'ble Court has got jurisdiction in the suit ?
- (ii) whether the suit is properly valued ?

3. The learned Principal District Munsif, Villupuram, after affording an opportunity to the revision petitioner/plaintiff, by order dated 09.06.2014, allowed the application filed by the respondents herein and framed the preliminary issues as prayed for by the respondents.

4. Aggrieved over the said order, the revision petitioner/plaintiff is before this Court, with the Civil Revision Petition and prays to set aside the fair and decreetal order dated 09.06.2014 passed in IA No.587 of 2013 in OS

No.66 of 2012.

5. Before the Court below, on behalf of respondents herein, the deceased 1st respondent in the Civil Revision Petition, filed an affidavit in support of the petition filed under Order 14 Rule 2(2) and Section 151 of Code of Civil Procedure, in which he has pleaded as follows:

(a) The plaintiff has not properly valued the suit and he has not paid sufficient Court fee for the suit. If the suit is properly valued, then the learned Principal District Munsif, Villupuram, may not have jurisdiction to try the suit filed by the Revision Petition / plaintiff.

6. Resisting the claim made by the respondents / defendants, the revision petitioner / plaintiff filed a counter affidavit before the Court below, wherein he has stated as follows:

(a) The respondents / defendants have filed the application, with sole intention of dragging on the proceedings for another 30 years. They have not made out any case, either in the written statement or in the affidavit to substantiate their claim to try the jurisdiction as preliminary issue, except a bald allegation that the suit has not been properly valued and sufficient Court fee, has not been paid.

(b) Further, it is averred that the Revision Petitioner/plaintiff has filed the above suit for declaration of title and for possession in respect of Item

No.1 of the suit schedule properties, which is part of the agricultural land. The 8th defendant is in illegal occupation of the said Item on the strength of an illegal sale deed, alleged to have been executed by the 1st defendant, who has no semblance of right over it. The 8th defendant has constructed a shed in part of Item No.1 and the same is now in a dilapidated condition. The revision petitioner / plaintiff has not prayed for any relief in respect of the said superstructure and therefore, the payment of Court fee in respect of the said building, does not arise. The 9th defendant in the suit has not constructed any superstructure in the suit property. In any event value of the property given by the 1st respondent/1st defendant in the written statement is highly exaggerated.

7. Having considered the materials placed before him, the learned Principal District Munsif, Villupuram, had allowed the application filed by the respondents/defendants.

8. In this context, the learned counsel appearing for the revision petitioner / plaintiff contended that for computing the Court fee, the averments set out in the plaintiff alone, has to be taken into account. In otherwise, the defence set out by the defendants cannot be taken into account for calculating the Court fee.

9. On the other hand, the learned counsel appearing for the respondents / defendants would contend that in paragraph No.3 of the counter filed in IA No.587 of 2013, the construction of building was admitted by the revision petitioner / plaintiff. Whereas, in the plaint, the existence of the building has not been mentioned. In fact, the suit schedule property was mentioned as a vacant land.

10. Submissions made by the learned counsel on either side are considered.

11. It is a general rule that ordinarily, the Court should try all the issues together and an issue may be taken up as a preliminary issue, only if it relates to the question of jurisdiction and is based purely on question of law. When determination of an issue requires evidence, the issue cannot be decided as a preliminary issue.

12. On the other hand, this Court in the case of **SG Badrinath Vs. V.Jagannathan and Another**, reported in **AIR 2004 Mad 161**, has held that merely on the ground that some evidence is required to be taken, Court would not refuse to decide as a preliminary issue, for example, the issue

regarding jurisdiction, maintainability of suit, court fee, etc. In otherwise, it is also well settled that the averments made in the plaint alone, has to be taken into account for calculation of the Court fee.

13. The learned counsel appearing for the revision petitioner / plaintiff placing reliance on the judgment of this Court in ***Nagarjuna Oil Corporation Limited, Cuddalore Vs. R.Revathi, W/o.Ravikumar***, reported in **2011 (2) CTC 763**, submitted that the question in respect of value of property can be decided by the Court only by permitting the party to let in evidence and the reason is that the Court fee is a mixed question of fact and law and cannot be decided as a preliminary issue. It is pertinent to note that in the judgment relied on by the learned counsel for the revision petitioner / plaintiff, this Court at paragraph No.9, has held as follows.

“Further in the judgement rendered in ***V.S.Jagadeesan v. Madar Saheb and other***, 2005 (2) MLJ 467; ***Suhrid Singh @ Sardool Singh v. Randhir Singh & Others***, 2010 (2) MWN (Civil) 221 (SC) : AIR 2010 SC 2807, this Court has held that the issue of valuation and jurisdiction cannot be decided as a preliminary issue as they are mixed question of fact and law.”

14. In support of the above contention, the learned counsel for the revision petitioner / plaintiff relied on the judgment of our Hon'ble Apex Court in ***Jones Jayakumar Vs. Karunanithi and another***, reported in **2016**

SCC OnLine Mad 5075 and also the judgment of this Court in *A Chinnaraj and another Vs. Saroja Ammal*, reported in 2007 (5) CTC 432.

15. In both the above judgments relied on by the learned counsel for the petitioner, our Hon'ble Apex Court and this Court have held and given express opinion that the issue relating to the payment of Court fee, cannot be decided as a preliminary issue.

16. On the other hand, the learned counsel appearing for the respondents/defendants relied on the judgment of our Hon'ble Apex Court, in *A.Nawab John & Others Vs. V.N.Subramaniam*, reported in 2012 (4) CTC 206 and made the submission that the Court is having the obligation to reject the plaint, if the plaintiff fails to pay the necessary Court fee, even after called upon by the Court.

17. In fact, in the above referred judgment, our Hon'ble Apex Court has dealt with the fact in respect of the rejection of plaint and held as above.

18. Further, the learned counsel appearing for the respondents/defendants, relied on the judgment of this Court in *V.R.Gopalakrishnan Vs. Andiammal*, reported in 2002 (2) CTC 513, wherein

at paragraph Nos.12 to 14, it is held as follows:

“12. According to Order-14 Rule-2, the defendant can raise an objection with regard to the jurisdiction of the court. The jurisdiction has to be understood both territorial and pecuniary jurisdiction. If the schedule mentioned property is situated outside the jurisdiction of the court then certainly that court will have no jurisdiction to hear the matter. Similarly, if the value of the suit exceeds the pecuniary jurisdiction of the court in which the suit is instituted, then again that court will have no jurisdiction. In the course of considering a preliminary issue as to whether there is a statutory bar to the suit, Court can record such evidence as parties desire to let in only in relation to that issue/aspect (1985 Mad. 300 D.B. MITSUBISHI FRANCE vs. NEYVELI LIGNITE CORPORATION LIMITED.)

13. There is also a provision in the Tamil Nadu Court Fees and Suits Valuation Act, 1955 viz., Section-12 which lays down that the Court shall decide on the materials and allegations available in the plaint, the proper court fee payable thereon. Section 12(2) of the Act reads thus:

" Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding subsection, not later, plead that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the court decides that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid

within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit. "

According to the above provision, all questions arising as such pleas shall be heard and hence no discretion is vested with the Court. If on the basis of the materials and allegations contained in the plaint, the Court comes to the conclusion that the suit has not been properly valued or that the fee paid is not sufficient, the Court can call upon the plaintiff to amend the plaint and also pay the deficit court fee. If the plaintiff fails to do that, the Court shall reject the plaint and pass appropriate orders. Once the Court decides that the subject matter of the suit has not been properly valued or that the court fee paid is not sufficient, the Court has no option except to fix a date and call upon the plaintiff to comply the defect viz., by amending the plaint and also by paying necessary court fee. It has to be noticed that in this Section, the word "shall" has been employed as against the word "may" that occurs in Order-14 Rule-2 CPC. Of course, it is the settled legal position that the question of valuation must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits and further all the material allegations contained in the plaint should be construed and taken as a whole. It is the substance and not the form matters (vide 1980 SC 691 {Neelavathi v. N.Natarajan}& AIR 1987 SC 2 085 {Tara Devi vs. Thakur Radha Krishna Maharaj}

14. There appears to be some conflict between the provisions in C.P.C. (ie) Order 14 Rule 2 when read with Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act with reference to deciding the pecuniary jurisdiction of the Court. Suppose in a given case, the defendant comes forward with an application requesting the court to decide an issue relating to valuation of the suit property

or the payment of court fee as a preliminary issue, the Court may applying the provision Order 14 Rule 2, decide to consider along with other issues and not as a preliminary issue. Then the defendant may file an application to consider the issue as per the provisions of Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, then the Court will have no discretion and it has to consider the same. The Tamil Nadu Court Fees and Suits Valuation Act is a substantial law while C.P.C is a procedural law. The substantial law will prevail over the procedural code and consequently, it follows whenever the defendant files an application, requesting the court to decide the issue of valuation of the suit property or the payment of court fee and all questions arising on such pleas as a preliminary issue, the Court has to necessarily consider as per the provisions of Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act. Not in all cases where the defendant has disputed in the written statement, the valuation of the suit property or contended that the suit has not been properly valued, the court has to consider it as a preliminary issue. Only where the defendant makes an application, the Court is bound to consider under Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act.

19. Finally to sum up the legal position, this Court has held as follows:

{a} As per the amended Order-14 Rule-2, though a case may be capable of being disposed of on a preliminary issue, the Court is given a mandate to try all the issues together.

{b} However, an exception is made to this mandate by giving discretion to try an issue as to jurisdiction or a statutory bar to the suit as a preliminary issue.

{c} In a given case, the Court may decline to try even an

issue relating to its jurisdiction or to a statutory bar to the suit as a preliminary issue if it considers expedient to do so.

{d} The discretion vested with the court has to be exercised judiciously.

{e} The parties will be at liberty to adduce such evidence as they may desire only in relation to that issue.

{f} Ordinarily, no revision under Section 151 CPC will be entertained against the order of the trial court once such a discretion is used. But however, it is not an absolute one and in exceptional cases, the Court can entertain Revision and interfere.

{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.

{h} In the course of considering a preliminary issue, the Court is empowered to record such evidence as parties desire to let in only in relation to that issue/aspect.

{i} The allegations in the plaint have to be taken as a basis and the claim must be read as a whole. The accepted Rule is that substance alone matters and not the form.

{j} When a suit is filed seeking a decree to set aside the sale, Court Fee has to be paid on the market value of the property on the date of filing of the suit.

{k} But however, if a plea is raised that the signature was obtained in a blank paper or that some misrepresentation was made

and thereby fraud was played on the executor, then Court fee need not be paid for setting aside the same.”

20. So, applying the above said principle laid down by this Court, to the present case, after objecting the valuation of Court fee in the written statement, the respondents/defendants have filed a petition under Order 14 Rule 2(2) and Section 151 of Code of Civil Procedure and prayed to frame a preliminary issue in respect of payment of Court fee.

21. Further, in this case, in the counter filed by the plaintiff/revision petitioner, he himself has admitted that there is a building situated in the suit property, in a dilapidated condition. In this regard, in the written statement filed by the defendants, they have objected that the Court fee has not been computed for the superstructure found in the suit property. Therefore, this Court is in complete agreement with the judgment of this Court **V.R.Gopalakrishnan Vs. Andiammal**, reported in **2002 (2) CTC 513** and is of the view that the facts and circumstances of the case presented before the Court of learned Principal District Munsif, Villupuram needs some clarification in respect of the payment of Court fee. Hence, ordering for framing preliminary issue in respect of payment of Court fee, by the learned Principal District Munsif, Villupuram, is perfectly within the legal principles of law. Therefore, the fair and decreetal order dated 09.06.2014 passed in IA

No.587 of 2013 in OS No.66 of 2012 on the file of the learned Principal District Munsif, Villupuram, is confirmed and the Civil Revision Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

22. On going through the other circumstances found in this case, since the suit pertaining to this Civil Revision Petition has been filed in the year 2012, it is appropriate to give some directions to dispose of the suit in O.S.No.66 of 2012, within a reasonable period. Accordingly, the learned Principal District Munsif, Villupuram, is directed to decide the preliminary issue within a period of two months from the date of receipt of a copy of this order.

08.11.2019

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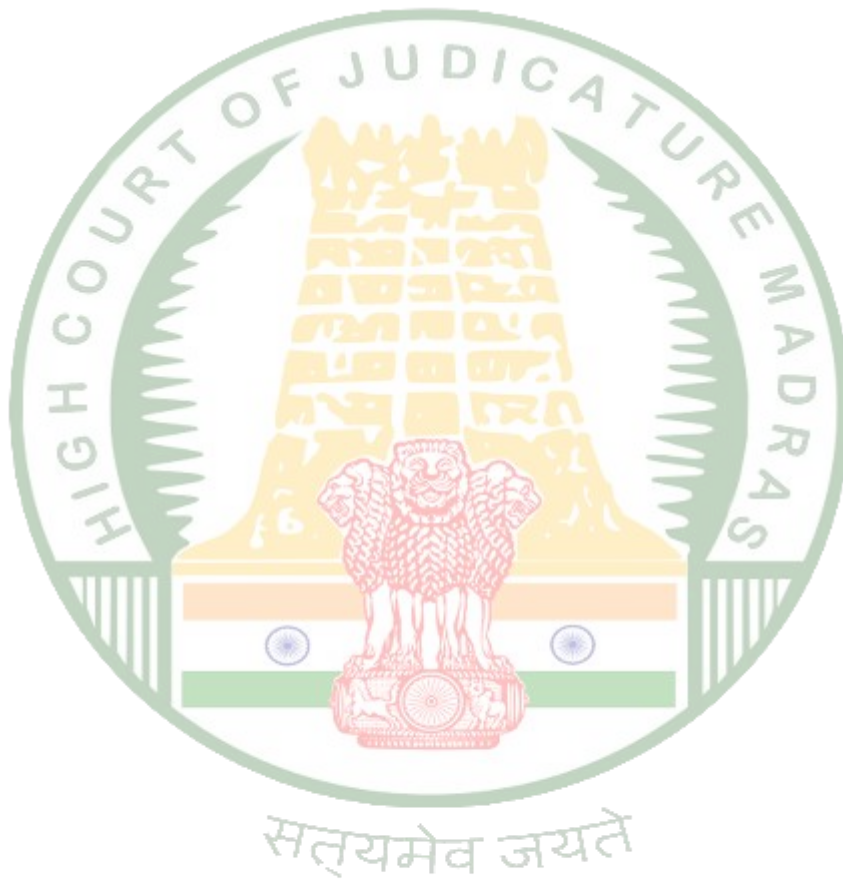
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Speaking / Non-speaking Order

To

The Principal District Munsif, Villupuram



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R.PONGIAPPAN, J.,

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Pre-delivery order

CRP (PD) No.4845 of 2014
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