

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. PD No.3560 of 2018

and

CMP No.19959 of 2018

1.K.V.Varadharaj
2.V.Jagadeeswari
3.V.Sujakar
4.M.Vimala Ganesh

.. Petitioners

Vs.

1.M.Gopalsamy
2.D.Senthil Kumar

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the District Munsif of Pollachi in I.A.No.1669 of 2017 in O.S.No.40 of 2017 dated 07.07.2018.

For Petitioners : Mr.V.Lakshminarayanan

For respondents : Mr.N.Umapathi

ORDER

The above Civil Revision Petition is filed challenging the dismissal of the application filed by the defendants 2, 5 and 7 in I.A. No.1669 of 2017 in O.S. No.40 of 2017 for framing an issue regarding the pecuniary jurisdiction of the case.

2. The brief facts that are necessary for disposal of the Civil Revision Petition are as follows :-

3. The respondents 1 and 2 herein have filed the suit in O.S. No.40 of 2017 on the file of the District Munsif Court, Pollachi for a declaration that the suit "B" schedule properties are the absolute properties of the 1st defendant firm and for a consequential permanent injunction restraining the other defendants from alienating or encumbering the suit "B" schedule properties by way of sale or mortgage or lease. The suit had been valued at a sum of Rs.1000/- and the Court fee of Rs.75.50 had been paid.

4. The defendants on entering appearance in the above suit had taken out a defence that the valuation as made is erroneous and the

plaintiffs are not entitled to invoke the provisions Section 25 (b) of the Tamil Nadu Court Fees and Suit Valuation Act. It was their case that the suit property is not an agricultural land on the date of the filing of the suit and that even under the sale deeds the property was not shown as an agricultural property. The revenue records did not describe the same as an agricultural land. The defendants would rely on the two sale deeds to show that even under the sale deeds, the market value of the property was Rupees Two crores. Besides, they had also taken other defences. Thereafter, in the month of November 2017, the defendants had come up with the petition, which is the subject matter of the civil revision. The plaintiffs had countered the said application by contending that the properties are the agricultural properties and, therefore, their valuation under Section 7 of the Tamil Nadu Court Fees and Suit Valuation Act is in order. They were also produced a certificate of the Tahsildhar as Ex.R12 to show that there was no building in the 'B' schedule property.

5. The learned District Munsif, after an enquiry, proceeded to dismiss the said application stating that the properties are classified as

agricultural lands and, therefore, the Court fee calculated on the basis of revenue records is in order. Challenging the same, the revision petitioners are before this Court.

6. Heard Mr. V. Lakshminarayanan, learned counsel for the revision petitioners and Mr.N.Umapathi, learned counsel appearing for the respondents.

7. The learned counsel for the petitioners would argue that even in the sale deeds under which the properties have been purchased by the first defendant firm, it is clearly described that the lands in question were being used for the purpose of the factory and the market value has been fixed at a sum of Rs.12,00,000/- and odd for the A schedule property and over a sum of Rs.Two crores for the B Schedule properties.

8. The learned counsel would further argue that the respondents have not let in any evidence whatsoever to show that the properties are enjoyed as agricultural lands, except producing Ex.R12, which does not give details about the classification of the land, etc. He would also rely on the judgement reported in **(2017) 11 SCC 852 (J. Vasanthi and**

others versus N. Ramani Kanthammal (Dead) Represented by legal representatives and others)

9. Per contra, Mr. N. Umapathi, learned counsel appearing on behalf of the respondents/ plaintiffs would contend that the very description of the property in the schedule to the sale deed is that the lands are punja lands. That apart in the Annexure "A" to the sale deed under which the B schedule properties were purchased, it has been clearly that RCC construction has been put up on agricultural land. He would also rely on two judgments reported in **2000 AIR (Madras) 50 (Suseela and others versus A.S.L. Rajan) and 2007 (5) CTC 203 (Sridharan versus Lakshmikantham Ammal (died) in and others** in support of his case.

10. Heard the learned counsel and perused the records.

11. It is seen that the parties have not let in any oral evidence, whereby, the issue could be tested. Considering the fact that the parties have been making various representations with reference to the nature of the property, the learned Judge ought to have exercised the right conferred upon him under Section 19 of the Tamil Nadu Court Fees and

Suit valuation Act, by appointing an Advocate Commissioner to conduct a local inspection of the property in question and to ascertain the use of the said land; whether there has been a re-classification along with its value.

This would go a long way in the process of coming to a conclusion as to whether the suit has been properly valued. The valuation of the suit gains significance as it decides the jurisdiction of the Court and if the Court lacks inherent jurisdiction, any judgment rendered by it is a nullity.

12. In order to avoid any future issues cropping up on account of lack of jurisdiction, it would be in the interest of parties to remit I.A. No.1669 of 2018 in O.S. No.40 of 2017 to the file of the District Munsif, Pollachi. Both the parties shall let in oral and documentary evidence to show the value of the property concerned. It is also open to the parties to file necessary application for appointment of an Advocate Commissioner and upon such application being filed, the learned District Munsif, Pollachi shall pass orders on the same.

13. With these observations, the Civil Revision Petition stands disposed of by remitting the matter to the learned District Munsif, Pollachi.

No costs. Consequently, connected miscellaneous petition is closed.

29.04.2019

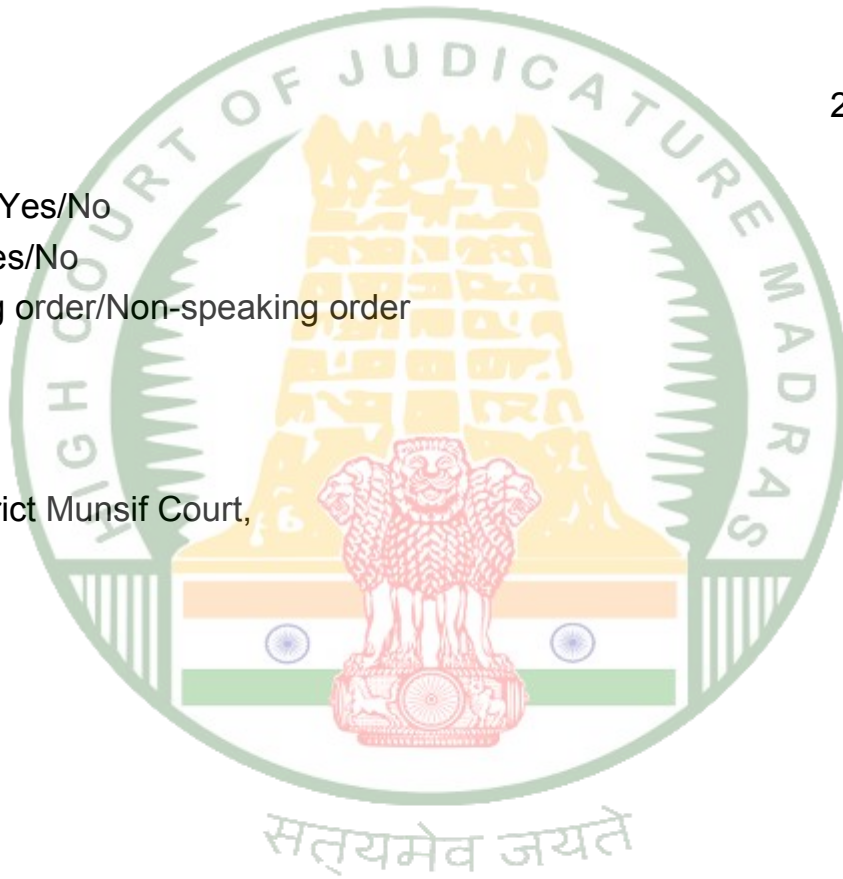
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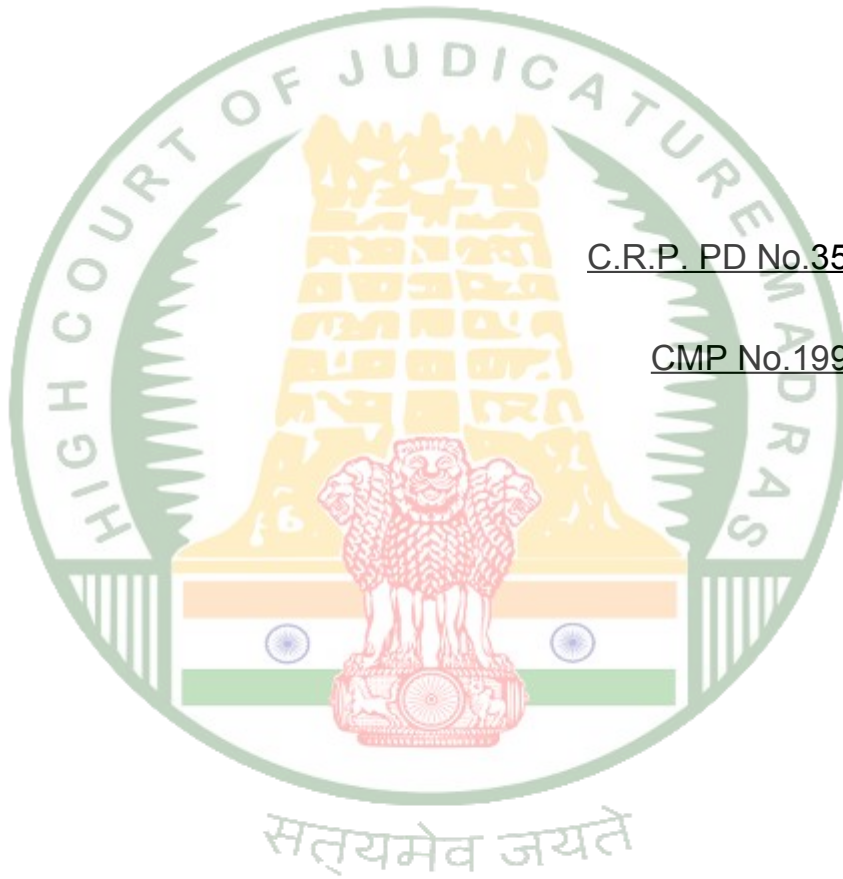
The District Munsif Court,
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P.T. Asha, J.

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