

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2019

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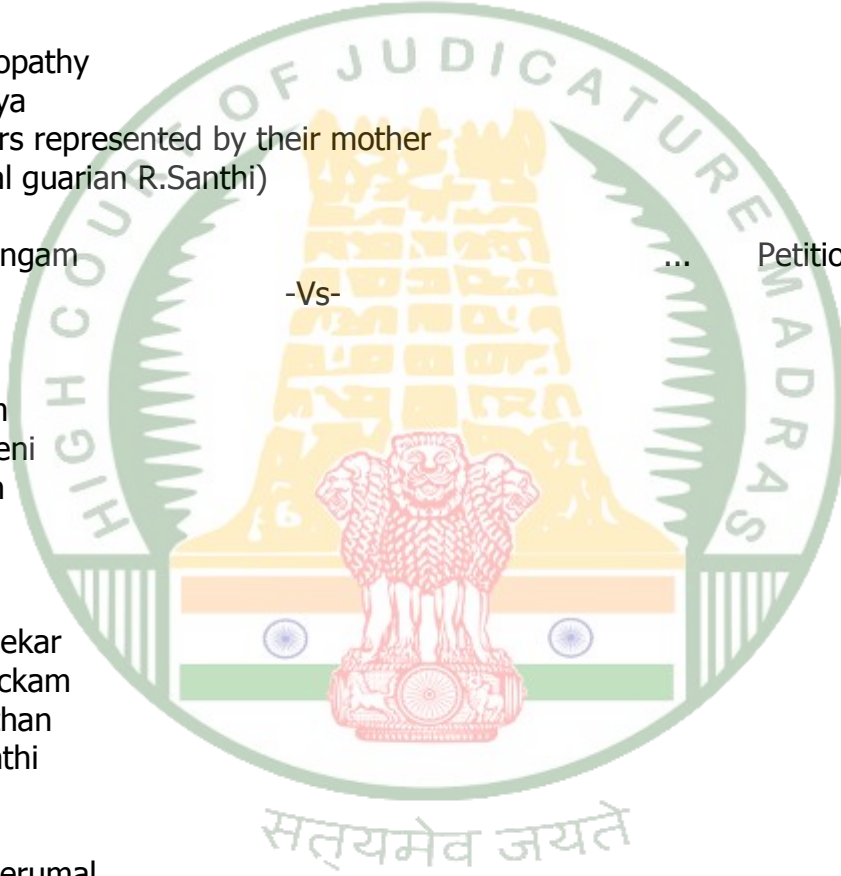
THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition (PD) No.4336 of 2018
and C.M.P.No.23714 of 2018

1.Minor R.Boopathy
2.Minor R.Priya
(Both minors represented by their mother
and natural guarian R.Santhi)
3.R.Santhi
4.M.Dharmalingam ... Petitioners

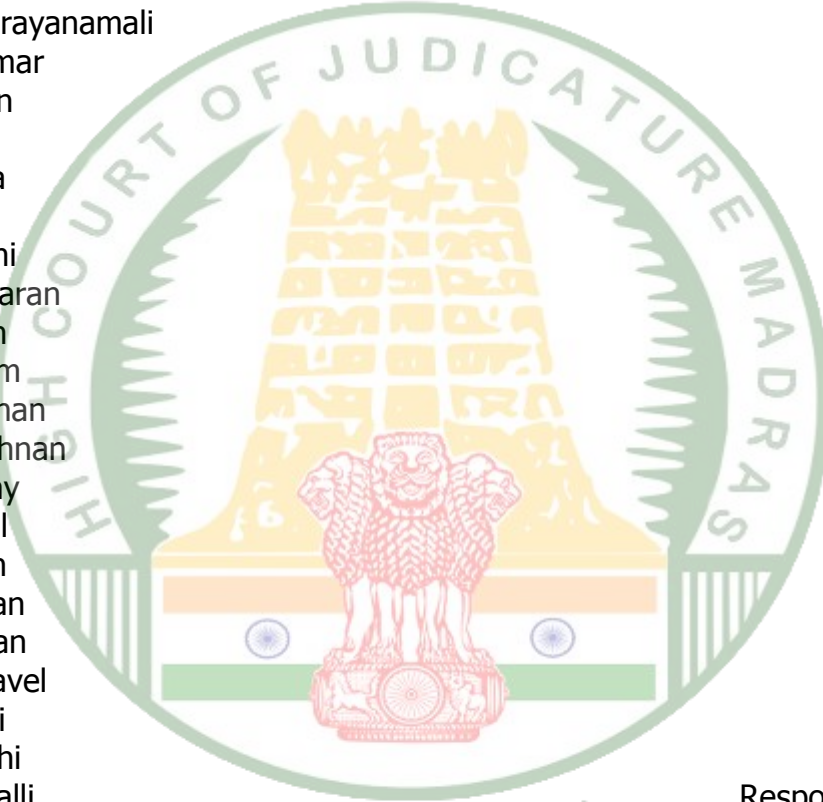
-Vs-

1.Ranjeetham
2.M.Krishnaveni
3.K.Rasappan
4.K.Ganesan
5.G.Kalaiselvi
6.Radhamani
7.R.Chandrasekar
8.Muthumanickam
9.L.Raghunathan
10.C.Saraswathi
11.S.Santhi
12.A.Jayaraj
13.R.Senthilperumal
14.K.Mathuravalli
15.P.Ramaswamy
16.R.Rajammal
17.P.Sumathi
18.S.Ganeshkumar
19.S.J.Rani
20.P.Subbulakshmi
21.S.R.Jayanthi
22.K.Devi
23.M.Bharathi
24.A.Amsavarthini
25.R.Chandrasekaran



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26.V.Kumar
27.S.Sambaji
28.S.Deepak Kumar
29.R.Venkatesh
30.R.Muthu
31.K.Dhanam
32.R.Balamurugan
33.J.Prathap
34.A.Vijayakumar
35.N.Nithin Narayanamali
36.N.Sanjaikumar
37.G.Srinivasan
38.B.Prakash
39.G.Shyamala
40.V.R.Mani
41.P.Banumathi
42.S.Madheswaran
43.V.Sengodan
44.S.Arumugam
45.K.Balakrishnan
46.K.Ramakrishnan
47.P.Ramasamy
48.R.Rajammal
49.D.Natarajan
50.D.Murugesan
51.S.Pachiappan
52.A.M.Thangavel
53.G.Rajeswari
54.R.Saraswathi
55.R.Kalpanavalli



... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the docket order dated 28.08.2018 in Memos/1100042/2011 in O.S.No.42 of 2011 on the file of the Principal Subordinate Court, Salem.

For Petitioners : Mr.K.Selvaraj

For Respondents : Mrs.Hema Sampath
Senior Counsel

ORDER

This revision petition has been filed against the docket order made in O.S.No.42 of 2011 on the file of the Principal Subordinate Judge, Salem dated 28.08.2018.

2. Before the trial Court, the suit was filed for partition, where the defendants 1 to 3 and 5 filed a memo on 21.08.2018 raising objection to try the suit for want of pecuniary jurisdiction. To appreciate the same and for easy understanding, the contents of the memo filed by the defendants dated 21.08.2018 is extracted hereunder.

“

Memo filed by the Defendants 1 to 3 and 5

The defendants 1 to 3 & 5 begs to submit that the above suit filed by the plaintiff for the relief of partition and separate possession of 1/5th share. The plaintiff has entered as registered agreement of sale of their 1/5th share with Venkatachalam in the above suit property on 25.04.2011. In that agreement of sale, it is clearly mentioned that the value of the plaintiff 1/5th share is Rs.25,00,000/- (Twenty Five Lakhs). The said agreement of sale is admitted by the plaintiff during the cross examination of the defendants 1 to 3 & 5 on 16.08.2018 the same also marked as Ex.B1. The suit is more than pecuniary jurisdiction of this Hon'ble Court.

In order to avoid future question of validity of decree and jurisdiction of Court, it has to be decided at the earliest point whether this Hon'ble Court has got pecuniary jurisdiction to decide the suit."

3. The said memo having not been disposed of on merits, has been deferred for decision along with the other issues to be decided at the time of pronouncement of judgment in the suit. The impugned docket order of the learned Judge reads as follows:

"The objections raised as to the jurisdiction will be decided along with other issues at the time of pronouncement of judgment in view of Section 21 of C.P.C., and Section 12(2) of the CF Act."

4. Aggrieved over the said order passed by the Court below on 28.08.2018, deferring the memo, raising objection over the hearing of the suit, for want of pecuniary jurisdiction, along with the main suit, the defendants have filed this revision petition.

5. Heard Mr.K.Selvaraj, learned counsel for the petitioners, who would submit that, the plaintiff claimed partition and separate possession of the 1/5th share of the suit property. In this regard, it is the case of the plaintiff that the plaintiff claimed to have executed an agreement of sale, wherein he has stated that his share ie., 1/5th share of the suit property is worth about Rs.25,00,000/- and in

order to substantiate the said stand taken by the plaintiff, he deposed before the Court at the time of examination, and therefore it has been confirmed that his share itself is worth about Rs.25,00,000/-, for which he filed the suit for partition and therefore, the suit should have been valued for Rs.25,00,000/- or more, whereas, as per the present pecuniary jurisdiction, the present trial Court ie., the Sub Court is having a pecuniary jurisdiction of only upto Rs.10,00,000/- and beyond which, it should be decided by the District Court and therefore, the suit should have been laid, if at all, before the District Court having pecuniary jurisdiction and therefore, the said issue of objection to try the case before the Court concerned being the Sub Court for want of pecuniary jurisdiction, has to be decided as preliminary issue.

6. Per contra, Ms.Hema Sampath, learned Senior Counsel appearing for the respondents would submit that, as per Section 21 of the C.P.C., if at all any objection is to be raised on jurisdiction, that shall not be raised before the appellate or revisional Court, unless such objection was taken in the Court of the first instance at the earliest possible opportunity, at least before framing of issues.

7. In support of this contention, learned Senior Counsel also relied upon a decision of the Honourable Supreme Court in **(2005) 7 S.C.C 791** in the matter of **"Harshad Chiman Lal Modi -Vs- DLF Universal Ltd., and another"**, wherein the learned Senior Counsel has relied upon the following paragraphs.

"27. The High Court considered the submission of the plaintiff that the Delhi Court had jurisdiction to entertain the suit but negated it. The Court, after referring to various decisions cited at the Bar, concluded:

"From the aforesaid principles laid down by the Supreme Court it is abundantly clear that where the parties to a contract agreed to vest jurisdiction to a particular court although cause of action has arisen within the jurisdiction of different courts, including that particular Court, the same cannot be said to be void or to be against the public policy. It was also made clear that in the said decision that if however a particular court does not have any jurisdiction to deal with the matter and no part of the cause of action has arisen within the jurisdiction in that Court, the parties by their consent and mutual agreement cannot vest jurisdiction in the said Court. Therefore, a clause vesting jurisdiction on a court which otherwise does not have jurisdiction to decide the matter, would be void as being against the public policy."

28. We are in agreement with the above observations and hold that they lay down correct proposition of law.

29. Ms Malhotra, then contended that Section 21 of the Code requires that the objection to the jurisdiction must be taken by the

party at the earliest possible opportunity and in any case where the issues are settled at or before settlement of such issues. In the instant case, the suit was filed by the plaintiff in 1988 and the written statement was filed by the defendants in 1989 wherein jurisdiction of the court was "admitted". On the basis of the pleadings of the parties, issues were framed by the Court in February 1997. In view of the admission of jurisdiction of the Court, no issue as to jurisdiction of the Court was framed. It was only in 1998 that an application for amendment of the written statement was filed raising a plea as to the absence of jurisdiction of the Court. Both the Courts were wholly wrong in allowing the amendment and in ignoring Section 21 of the Code. Our attention in this connection was invited by the learned counsel to Hiralal Patni V. Kali Nath and Bahrein Petroleum Co., Ltd., -Vs. P.J.Pappu. 30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the

earliest, it cannot be allowed to be taken at a subsequent stage.

Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a Court having no jurisdiction is a nullity."

8. Learned Senior Counsel also relied upon Section 12(2) of the Tamil Nadu Court Fee and Suit Valuation Act in support of her contention and would submit that, in the suit, the defendants filed written statement on 01.12.2014, where they have not specifically raised the objection with regard to pecuniary jurisdiction of the Court concerned, though general averment has been made as usual in the written statement and thereafter, the present memo was filed only on 21.08.2018 and in this regard, no separate application had been filed raising objection regarding the pecuniary jurisdiction and therefore, it cannot be construed that the defendants raised objection on pecuniary jurisdiction at the earliest possible opportunity and therefore, if the principle enunciated in Section 21 of C.P.C., as has been held in the aforesaid judgment and a catena of decisions in this regard, is applied, certainly the objection raised by way of a memo filed by the defendants dated 21.08.2018 cannot be sustained and should have been dismissed by the trial Court and therefore, on that context the revision petitioners cannot seek the indulgence of this Court, as the suit has already been in the trial stage.

9. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. Insofar as the time of raising the objection on jurisdiction is concerned, that issue is no more *res integra*, as it is a settled proposition in view of Section 21 of CPC, that, if at all objection has to be raised on jurisdiction including pecuniary jurisdiction, that should have been raised at the Court of first instance and that too at the earliest possible opportunity and at any rate before the framing of the issues.

11. Insofar as the present case is concerned, whether the objection raised by the defendants ie., revision petitioners herein on 21.08.2018 by way of filing a memo to that effect, is a valid objection within the meaning of Section 21 of C.P.C., shall be decided by the Court below as a preliminary issue before dwell into the main issues for trial.

12. However, the learned Judge in the impugned order ie., the docket order dated 28.08.2018, has deferred the decision with regard to the objection raised on jurisdiction, along with the other issues at the time of pronouncement of judgment.

13. Assuming that, at the time of pronouncement of judgment, if ultimately the trial Court comes to a conclusion that the objection on pecuniary jurisdiction

raised by the defendants are sustainable and acceptable, then the whole process of trying the case would become otiose, as no decree could be passed by the trial Court, without having pecuniary jurisdiction. That is the reason why, whenever the issue is raised on jurisdiction aspect, the same shall be decided at the threshold ie., immediately after raising the same, on merits and in accordance with law and the same cannot be deferred for decision along with other issues at the time of final judgment and decree in the suit.

14. Here, in the case on hand, whether the objection raised by the defendants through the memo dated 21.08.2018 is sustainable or not, is a matter of decision to be made by the trial Court, of course in accordance with law. However, the trial Court shall not defer the decision till the disposal of the suit, as that has not been intended by the legislation and that is the reason why even under Section 21 of C.P.C., it has been specifically mentioned that, the issue, with regard to the jurisdiction, should be raised at the Court of first instance and that too at the earliest possible opportunity.

15. In that view of the matter, I am of the considered opinion that, the issue raised by the defendants / revision petitioners, of course through the memo dated 21.08.2018, shall be decided first, as a preliminary issue, before proceeding further in the suit, in accordance with law.

16. Therefore, this Court feels that, this revision petition deserves to be disposed of with the following order.

17. The impugned order is hereby set aside and the matter is remanded back to the trial Court with a direction to decide the objection raised by the defendants / revision petitioners, on the basis of want of pecuniary jurisdiction of the Court below, through the memo filed by them dated 21.08.2018, on merits and in accordance with law, as preliminary issue, of course after hearing both sides, by giving them an opportunity, within a period of 30 days from the date of receipt of a copy of this order. Only after making a decision as indicated above, the trial Court shall proceed to try the suit.

18. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

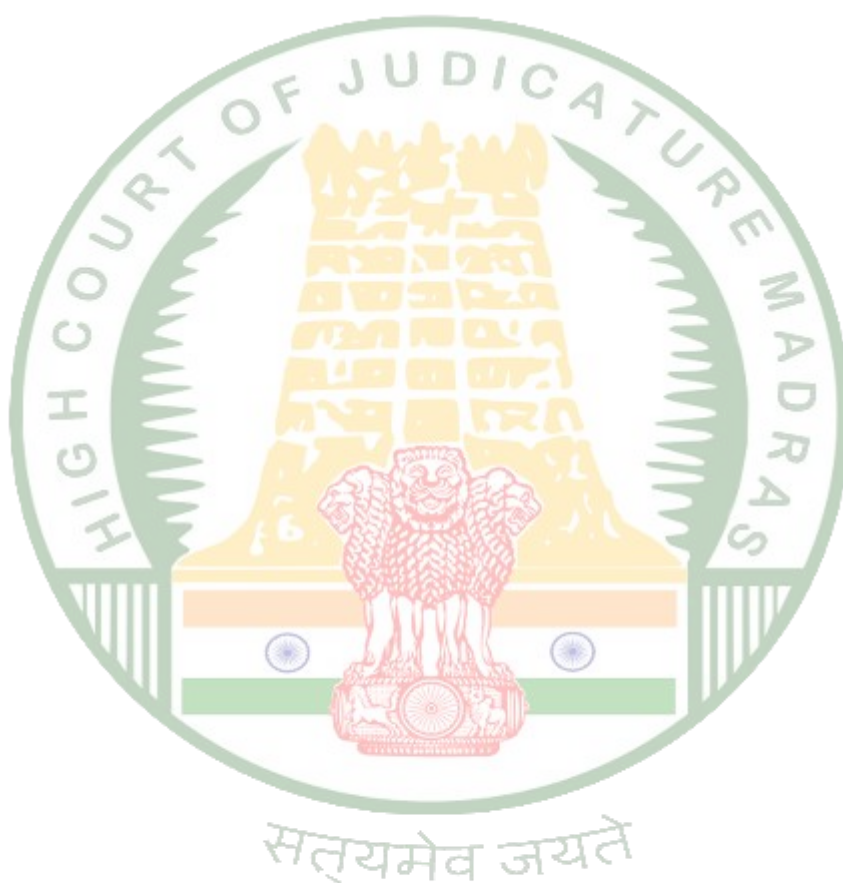
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To

The Principal Subordinate Judge, Salem.

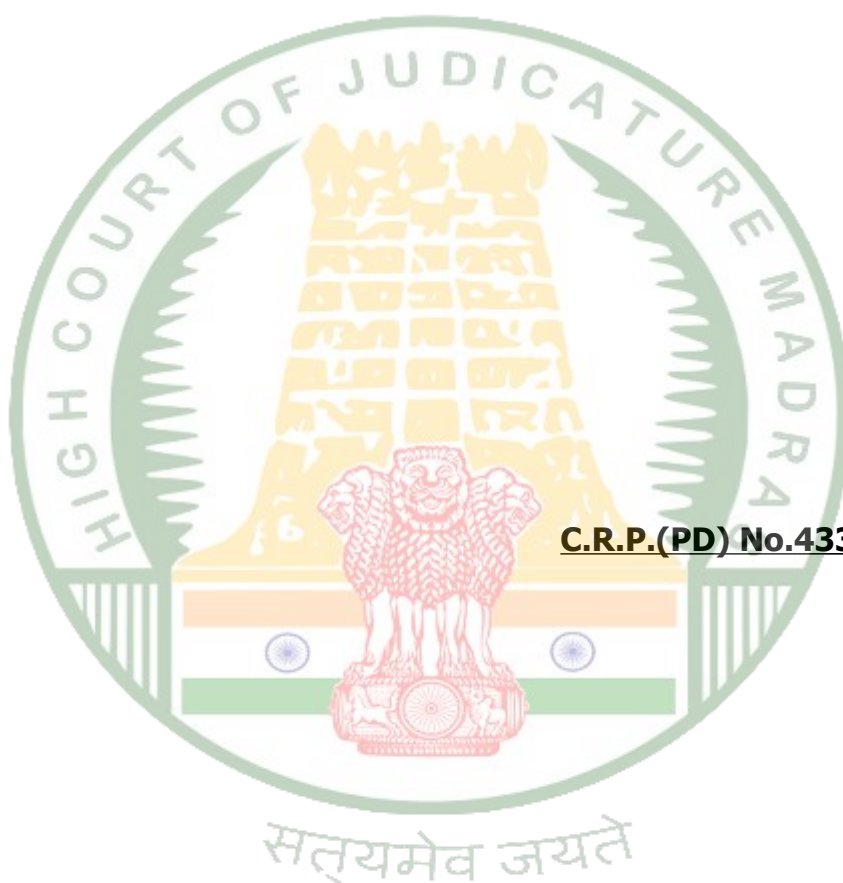


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