



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.07.2019
(Reserved on 01.04.2019)

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.1969 of 2012

and

M.P(MD)No.1 of 2012 and CMP(MD)No.8971 of 2017

Karuppaiah Thevar (died)

- 1)Mahamani
- 2)Kr.Pugazhenth
- 3)M.Susila
- 4)Chandra
- 5)John Pritto
- 6)Sundari
- 7)Nagasundaram
- 8)Valli
- 9)Karuppaiah Thevar
- 10)Rasu Mudaliyar
- 11)Viyagula meri
- 12)Rajarethinam
- 13)Duraipandiyan
- 14)Chandran
- 15)Daineshmeri
- 16)Ambayee
- 17)R.Chandran
- 18)Subramanian
- 19)Polipass
- 20)Ulagammal
- 21)Jeyaseeli
- 22)Arumugam
- 23)Rajendran
- 24)Veerapathiran

... Petitioners

vs.

Ananthammal

... Respondent

Petition filed under Article 227 of the Constitution of India, against the judgment and decree in CMA.No.2/2009 on the file of Subordinate Court, Ramanathapuram, in I.A.No.540/2007 in O.S.No.252/1995 on the file of the District Munsif Court, Tiruvadanai.

For Petitioner
For Respondents

: Mr.S.Muthukrishnan
: Mr.M.S.Jeyakarthick

**ORDER**

This revision petition is filed against the judgment and decree in CMA.No.2/2009 on the file of Subordinate Court, Ramanathapuram, against the order in I.A.No.540/2007 in O.S.No.252/1995 on the file of the District Munsif Court, Tiruvadanai.

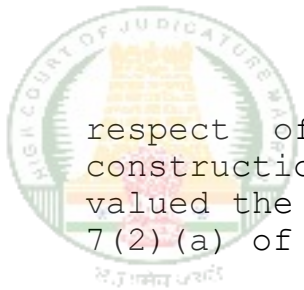
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2.The facts of the case are that the respondent/plaintiff filed O.S.No.252/1995 for the relief of declaration, permanent injunction, mandatory injunction and for recovery of possession of the suit property, before the District Munsif Court, Tiruvadanai. In the suit, the revision petitioners/defendants filed I.A.No.540/07 under Order 14 Rule 2 CPC, for framing of a preliminary issue as to its pecuniary jurisdiction contending that the value of the suit property is more than one crore. The respondent/plaintiff opposed the said petition stating that the suit property being Ryotwari lands, its market value has been determined only on the basis of 30 times of kist and valuing the same as per the above valuation, the court fee has been rightly paid and prayed for trying the suit. However, the trial Court allowed the said petition on 11.02.2009, stating that the suit property if valued properly, the suit would be triable only by the District Court, Ramanathapuram, and accordingly, returned the plaint and such a return was made only after the commencement of trial and after partly cross examining PW1, against which, the respondent/plaintiff filed CMA.No.2/2009 stating that the Court can return the plaint only under Order 7 Rule 10 CPC and in a petition under Order 14 Rule 2 CPC, the Court cannot return the plaint. In the above appeal, the petitioners/defendants filed I.A.No.151/10 to decide the maintainability of CMA.No.2/2009, since the order returning the plaint was passed under Order 14 Rule 2 CPC, it can be challenged only by way of revision. The respondent/plaintiff also filed I.A.No.151/11 in CMA.No.2/2009 praying to receive additional documents to prove that the suit property is classified as Ryotwari lands stating that the additional documents were omitted to be marked before the trial Court. The appellate court heard I.A.No.151/2010 and I.A.No.151/2011 along with CMA.No.2/2009 and after considering the oral and documentary evidence on either side, has allowed I.A.No.151/2011 and CMA.No.2/2009 by dismissing I.A.No.151/2010, against which, the present revision has been filed.

3.Heard the learned counsel for the petitioners as well as the respondent.

4.The contention of the petitioners/defendants is that the appellate Court failed to consider the evidence of PW1 and PW2 and Ex.P1-Guideline Value Register which would show that the suit property was classified as house-site and therefore, the appellate Court ought not to have accepted the contention of the respondent stating that the suit property was classified as Ryotwari lands.

5.Perusal of record shows that the respondent/plaintiff sought for declaration, injunction and recovery of possession only in



respect of the land and not in respect of the unauthorised construction made by the petitioners/defendants and have properly valued the suit property as per the revenue assessment under Section 7(2) (a) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

6. As per Order 43, Rule 1(a) CPC, an order passed under Order 7 Rule 10 CPC, returning the plaint to be presented to the proper court has been made appealable, except where the procedure specified in Rule 10 A of Order 7 has been followed. In the present case, the order in I.A.No.540/07 has been passed on a petition under Order 14 Rule 2 CPC and in that petition, the plaint has been returned and the return can be construed only as an order passed under Order 7 Rule 10 CPC and while returning, since the procedure specified under Rule 10 A of Order 7 was not followed, the respondent has rightly appealed and for the said proposition, the respondent/plaintiff relied on a judgment in G.Krishnamurthy vs. Sarangapani 1996 (I) CTC 280, wherein, it has been held as follows:-

'The learned counsel to fortify his stand that the court has to follow the classification of lands envisaged in the Act and cannot interpret in the way it viewed had invited the attention of the court to the cases decided in T.K.M.Alagappa Chetti vs. Saminathan Chetty and others, AIR 1933 Madras 367 and Soura Beevi Ammal vs. Aameena Ammal, 1981 Law Weekly 502. He also cited a decision in Rathnavarma Raja vs. Smt.Vimala AIR 1961 SC 1299.

It is useful to extract some portions of the above decision occurring at paragraphs 2 and 3:-

'The Court-Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court-fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High



Court under Section 115 of the Code of Civil Procedure is strictly conditioned by Class (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the Court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction.

The Act, it is true by S.19 provides that for the purpose of deciding whether the subject matter of the suit or other proceeding has been properly valued or whether the fee paid is sufficient, the Court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislatur to collect court-fee due from the litigant is manifest from the detailed provisions made in Ch.III of the Act, but those provisions do not arm the defendant with a weapon of technically to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court-fee payable. In our view, the High Court grievously erred in entertaining revision applications on questions of court-fee at the instance of the defendant, when no question of jurisdiction was involved.

The above judgment in my opinion directly applies to the facts of this case. As pointed out by the Supreme Court the civil revision at the instance of the petitioners is not at all maintainable. The preliminary issue regarding court-fee is essential and the matter is between the Court and the suitor and the finding rendered by the Court cannot be said to have caused any prejudice to the defendants. As pointed out by learned counsel for the plaintiff, the revision under Section 115, CPC is also not maintainable. The suit property is admittedly classified in the revenue records as agricultural land and it is assessed to revenue kist. The plaintiff has also adduced oral and documentary evidence to support his contentions. The market value of the property of any land which is assessed to the revenue records will be reckoned under Section 7 of the Court-Fees and Suits Valuation Act. The valuation, therefore, as made in the plaint, is perfectly tenable in law and calls for no interference in this revision. Therefore, the civil revision petition is dismissed.'

7.The said judgment is squarely applicable to the present case. Relying on the judgments and the additional documents produced before the Court and on detailed discussion, the appellate Court had allowed CMA.No.2/2009 which does not warrant any interference from this Court.



8. Accordingly, this Civil Revision Petition is dismissed. No costs. The interim order already granted is vacated. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1) The Subordinate Judge,
Ramanathapuram.

2) The District Munsif,
Tiruvadanai.

+1 cc Mr. S. Muthukrishnan, Advocate, SR.No.78794

+1 cc Mr. S. JeyaKarthik, Advocate, SR.No.78743

C.R.P (PD) (MD) No.1969 of 2012
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AM/SAR/06.08.2019/5P-5C