



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD) No. 531 of 2012
and M.P. (MD) .No.1 of 2012

1.Indirani
2.Amutha

.. Petitioners/Respondents/Plaintiffs

-Vs-

Raja @ Annadurai

.. Respondent/Petitioner/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No180 of 2010 in O.S.No.22 of 2008, dated 04.11.2011 by the Sub Court, Sivagangai.

For Petitioners : Mr.A.Sivaji

For Respondent : Mr.N.Murugesan

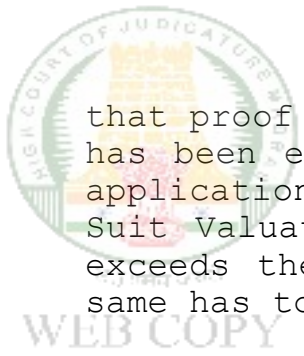
ORDER

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below allowing the application filed by the respondent under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act.

2.The petitioners are the plaintiffs in the suit. The suit was filed against the respondent for the relief of declaration and recovery of possession. While determining the value of the properties and paying the Court fee, the properties were taken to be ryotwari lands and therefore, the Court fee was paid by calculating 30 times of the kist value.

3.The respondent filed written statement. Even in the written statement, at para 11, a preliminary issue has been raised by the respondent with regard to the manner in which the properties have been valued and the respondent has taken a specific plea that if the properties are properly valued, the suit will go beyond the pecuniary jurisdiction of the Court.

4. Pursuant to the completion of the pleadings, the Court below has framed issues. One of the issues that has been framed by the Court below was with regard to the valuation of the properties and the Court fee payable by the plaintiffs. The case was at the stage of examination of PW1. It is brought to the notice of this Court



that proof affidavit has also been filed by the first plaintiff, who has been examined as PW1. At this stage, the respondent filed an application under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act on the ground that the value of the properties exceeds the pecuniary jurisdiction of the Court and therefore, the same has to be tried as a preliminary issue.

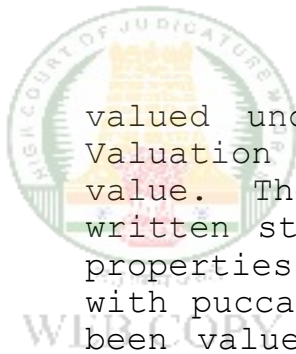
5. The Court below, after considering the materials placed on record and after considering the pleadings that were found in the plaint filed by the petitioners, came to a conclusion that the properties have not been properly valued and if the suit properties are valued as per the market value, the suit will go beyond the pecuniary jurisdiction of the Court. Therefore, the Court below proceeded to pass an order directing the return of the plaint to the petitioners to enable them to present it before the competent Court by paying necessary Court fees.

6. The learned counsel for the petitioners submitted that the Court below ought not to have entertained the application filed by the respondent, since such a preliminary issue with regard to the payment of Court fees have to be decided before the case reaches the stage of evidence. The learned counsel further submitted that the Court below, even without giving a finding with regard to the actual value of the properties and the Court fee payable, has proceeded to return the plaint and therefore, the Court below had exceeded its jurisdiction and on this ground alone, the order of the Court below is liable to be set aside. In order to substantiate his arguments, the learned counsel relied upon the judgment of this Court in **S.Saibullahkhan Vs. Hairunisha Beevi and others** reported in **2016 (5) CTC 500**.

7. Per contra, the learned counsel appearing on behalf of the respondent submitted that the defendant took a very specific plea in the written statement that item Nos.1 and 2 of the suit properties cannot be considered to be ryotwari lands and they are house sites and therefore, the suit ought to have been valued by taking the market value of the properties and not by treating the properties as ryotwari lands and paying the court fees by calculating 30 times of the kist value. The learned counsel further submitted that the objection has been raised at the earliest point of time and therefore, the Court below was right in taking this issue as a preliminary issue, since it touches upon the very jurisdiction of the Court.

8. This Court has carefully considered the submissions made on either side and perused the materials available on record.

9. The bone of contention in this case is the valuation of item Nos.1 and 2 of the suit properties. These properties were taken to be ryotwari lands by the plaintiffs and the properties have been



valued under Section 7 of the Tamil Nadu Court Fees and Suit Valuation Act by calculating the Court fee at 30 times of the kist value. The defendant has raised a preliminary objection even in the written statement to the effect that item Nos.1 and 2 of the suit properties are house sites to a total extent of 4800 square feet with pucca RCC building and therefore, the Court fees ought to have been valued under Section 25(a) of the Tamil Nadu Court Fees and Suit Valuation Act and appropriate Court fee should have been paid.

10. The Court below, while framing the issues, has framed one of the issues with regard to the valuation of the properties and the Court fee paid. The respondent has filed an application under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act by raising a plea that the valuation of the property and Court fee paid should be taken as a preliminary issue.

11. The learned counsel for the petitioners has raised a preliminary objection with regard to the jurisdiction of the Court below in entertaining the application after examination of PW1 and filing of proof affidavit. According to the learned counsel for the petitioners, the objection with regard to the improper valuation of the suit and insufficiency of Court fees can be entertained by the Court only before hearing of the suit on merits and examination of the witnesses. In order to substantiate his submissions, the learned counsel for the petitioners relied upon the judgment of this Court in **S.Saibullahkhan Vs. Hairunisha Beevi and others, referred supra**. The relevant portion of the judgment is extracted hereunder.

"9. In **S.N.S. Sukumaran V. C. Thangamuthu, 2012 (5) CTC 705 (DB)**, the Division Bench of this Court has observed as follows:

"31. After giving our anxious consideration to the matter and having regard to the law discussed hereinabove, the reference is answered as under:

(1) The Tamil Nadu Court fees and Suits Valuation Act, 1955 (Section 12) enacted by the State Legislature on a subject covered by the Concurrent List, albeit inconsistent with the provisions of the Code of Civil Procedure (Order 14, Rule 2) and being in compliance with the requirement of Article 254 of the Constitution of India, having been given assent by the President of India, shall prevail over the provisions of the Code of Civil Procedure.

(2) When a Defendant comes forward with a case pleaded in the Written Statement questioning the correctness of the valuation of the suit property and payment of Court-fee and asks the Court, by an Application, to decide it first before deciding the Suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before deciding the Suit on merits.



(3) However, before proceeding to decide the objection with regard to valuation and Court-fee as provided under Section 12(2) of the State Act, the Court shall prima facie satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the Defendant has substance.

(4) Such objection with regard to improper valuation of the Suit and insufficiency of Court-fee shall be entertained by the court only before the hearing of the Suit on merits commences and Witnesses are examined. Section 12(2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merits of the case.

(5) Exercise of right by the Defendant as contained in Section 12(2) of the Act must be bonafide and not with an ulterior motive of dragging the Suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such Application, and in the event the Court finds that the Defendant is not diligent or co-operating with the Court in the disposal of such objection expeditiously, then the Court shall proceed with the hearing of the Suit on merits and decide all issues, including the one relating to the valuation of the Suit and the adequacy or otherwise of Court-fee, together."

10. It is seen from the records that the First Respondent filed the Suit in the year 2008 valuing the Suit property at Rs.2,70,000/-. Though the Suit is filed for declaration and for consequential Permanent Injunction, the prayer was amended in the year 2016 seeking recovery of possession. It is not in dispute that the trial in the Suit was already commenced and when the Suit was posted for arguments after the entire evidence of the parties were over, the present Application came to be filed before the Trial Court. The Petitioner purchased the property on 29.09.2014 for a Sale consideration of Rs.14,80,400/- and based on his sale, he has filed the present Application."

12. It is seen from the above judgment that the issue with regard to the improper valuation of the suit and insufficiency of the Court fees paid was raised after the entire evidence was over and the case was at the stage of final arguments. Taking into consideration the facts of that case, this Court by relying upon the Division Bench Judgment in **S.N.S. Sukumaran V. C. Thangamuthu**, reported in **2012 (5) CTC 705 (DB)**, came to a conclusion that the application filed under Section 12(2) of the Tamil Nadu Court Fees



and Suit Valuation Act ought not to have been entertained.

13. It has to be seen whether the judgment of the Division Bench and the judgment cited by the learned counsel for the petitioners will apply to the facts of the present case. The provisions of Section 12(2) of the Act gives a clue that the power should be exercised before the evidence is recorded. The object of the Section is that after recording the entire evidence in the case, if the Court holds an enquiry as regards the valuation of the suit properties and if the plaintiff, on the basis of enhanced valuation, does not carry out the plaint amendment or pay the deficit Court fees, the entire exercise done by the Court in recording the evidence would become futile and stultification of the evidence already recorded. It is only with this object in mind, Section 12 (2) of the Act insists the power to be exercised by the Court before the evidence is recorded.

14. It will be relevant to make a reference to the judgment of this Court in **Selvaraj and two others Vs. Kannan** reported in **1997 (1) CTC 499**. The relevant portion of the judgment is extracted hereunder.

"4. A reading of the Court Fees Act indicates that there are three stages at which the Court can determine the proper Court fee payable on a plaint, the first stage is before ordering the plaint to be registered ; the second stage is where a defendant in his written statement filed before the first hearing of the suit or before any evidence is recorded on the merits of the case, pleads that the subject matter of the suit was not properly valued and the Court can, as a preliminary issue decide the question whether the suit property has been properly valued or not before the evidence is recorded ; and the third stage is on the basis of an objection raised by the Court-fee Examiner under Section 18 of the Court Fees Act. On the facts of the case, it is clear, it is neither a case falling under the first stage, i.e. Section 12(1) of the Court Fees Act, nor a case falling under Section 18 of the Court Fees Act, where an objection is raised by a Court-fee Examiner. The trial Court, presumably exercised its power under Section 12(2) of the Act and directed that items 5 to 7 of the suit properties should be valued through the process of the Court. The trial Judge has however overlooked that the powers under Section 12(2) of the Court Fees Act can be exercised only before the evidence is recorded affecting the merits of the case. It is seen, on the facts of the case, the evidence has already been recorded and the case itself is posted for judgment. Hence, the power under Section 12(2) of the Court Fees Act is not available to the trial Judge,



because on the clear terms of Section 12(2) of the Court Fees Act, the power can be exercised only before the evidence is recorded. There is also another reason for the non-availability of power under Section 12(2) of the Court Fees Act, because if after such a direction, the Court comes to a conclusion that the subject matter of the suit was not properly valued, the Court should give an opportunity to the plaintiff for the amendment of the plaint in accordance with the decision of the Court and for the payment of deficit Court fees also. If the plaintiff does not carry out the amendment or does not pay the deficit court fee, the Court shall reject the plaint and it shall also order for the payment of costs of the suit, if it deems necessary.

5. Section 12(2) of the Court Fees Act provides that the defendant should raise the objections questioning the valuation of the suit properties made by the plaintiff before the evidence is taken, so that it may be possible for the trial Court to consider the question whether the suit property has been properly valued or not and whether the court fees paid thereon is correct or not. The Court, under the provisions of Section 12(2) of the Court Fees Act undertakes the exercise of ascertaining the value of the suit property to find out whether there was any deficit in the court fees paid by the plaintiff and that process could also be completed before the commencement of the trial of the suit. In other words, Section 12(2) of the Court Fees Act imposes a bar on the defendant to raise the question of valuation of the suit properties after the commencement of the trial of the suit. From the nature of the provision, it is clear that Section 12(2) of the Court Fees Act is intended to operate against the defendant from questioning the valuation of the suit property at a later stage after the commencement of the trial. The provisions of Section 12(2) of the Court Fees Act also gives a clue that the power should be exercised before the evidence is recorded, as a failure of the plaintiff either to carry out the amendment or to pay the deficit court fee would result in the rejection of the plaint. The object of the section is that after recording the entire evidence in the case, if the Court holds an enquiry as regards the valuation of the suit property and if the plaintiff, on the basis of enhanced valuation, does not carry out the plaint amendment or pay the deficit court fees, the entire exercise done by the Court in recording the evidence would become futile and stultification of the evidence already recorded. It is only with these objects in view, Section 12(2) of the Court Fees Act insists



that the statutory power should be exercised by the Court before the evidence is recorded. Therefore, I hold that in the instant case, the trial Judge has not exercised the powers under Section 12(2) of the Court Fees Act as she has exercised the power, in the instant case, after the evidence is recorded."

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15. Keeping the above discussion in mind, if the facts of the present case are seen, the evidence has only commenced by PW1 getting into box and the proof affidavit being filed. This stage of the case cannot be treated as if the entire evidence has been completed on the merits of the claim. If a restricted meaning is given to Section 12(2) of the Act, it will militate against the very object of the language used in the provision. Therefore, this Court is of the considered view that the preliminary objection raised by the learned counsel for the petitioners is not sustainable and the Court below had the jurisdiction to entertain the application filed by the defendant under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act. This is more so, since the Valuation of the properties and the Court Fees paid was taken as a preliminary objection in the written statement itself and an issue was also framed by the Court below.

16. A careful reading of the order passed by the Court below reveals a deficiency in recording a finding with regard to the valuation of the properties and the Court fee payable and as to how if the properties are valued, the suit will go beyond the pecuniary jurisdiction of the Court. The Court below has nowhere given a finding with regard to the actual value of the properties and the Court fee that is payable by the petitioners. The Court has merely stated that the item Nos.1 and 2 of the suit properties ought to have been valued under Section 25(a) of the Tamil Nadu Court Fees and Suit Valuation Act, and if it is so valued, the suit will go beyond the pecuniary jurisdiction of the Court. This finding is given without any material whatsoever and it clearly reflects non application of mind.

17. Order XIV Rule 2(2)(a) of Civil Procedure Code reads as follows:

"2. Court to pronounce judgment on all issues:-

1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--

(a) the jurisdiction of the Court or ..."



18. Order XIV Rule 2 of Civil Procedure Code specifically provides that notwithstanding the case may be disposed of on a preliminary issue, the Court shall pronounce judgment on all the issues. This is subject to Order XIV Rule 2(2) of Civil Procedure Code. If the issues relates to the jurisdiction of the Court or with regard to any bar to the suit created by any law, those issues will have to be treated as a preliminary issue before the Court ventures to decide the case on merits. The present case will fall within Order XIV Rule 2(2) (a).

19. The Court below ought to have been directed the Taxing Officer to determine the valuation of the properties and the Court fees payable and report should have been called for in this regard. The Court below did not carry out this exercise. If this exercise had been carried out by the Court below, there would have been sufficient materials for the Court to find out the value of the properties and thereafter, decide upon the issue whether the Court has the pecuniary jurisdiction to try the case. If the Court had come to a conclusion that it did not have the pecuniary jurisdiction, the preliminary issue could have been answered accordingly and the plaint could have been returned under Order VII Rule 10 of Civil Procedure Code to enable the plaintiffs to present the suit before the appropriate Court. The Court below failed to follow this procedure and it has given a finding without any basis and therefore, the order of the Court below is required to be interfered by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

20. Accordingly, the fair and final order passed by the Court below in I.A.No.180 of 2010 in O.S.No.22 of 2008, dated 04.11.2011 on the file of the Sub Court, Sivagangai, is hereby set aside and I.A.No.180 of 2010 in O.S.No.22 of 2008 is remitted to the file of the Court below. The Court below is directed to try the issue regarding the valuation of the properties and the Court fee payable as a preliminary issue by following the procedure indicated hereinabove and pass final orders within a period of six weeks from the date of receipt of a copy of this Order.

21. In the result, this Civil Revision Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

Sub Assistant Registrar(CS)



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To

1. The Subordinate Judge, Sivagangai.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.N.MURUGESAN, Advocate Sr. No. 89655

+1CC TO MR.A.SIVAJI, Advocate Sr. No. 90286

C.R.P. (PD) (MD) No. 531 of 2012

26.09.2019

GRC (CO)

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