



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 28.02.2019
DELIVERED ON : 05.04.2019

CORAM

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD) (MD)No.403 of 2015
and
M.P.(MD)No.1 of 2015

1.Febe Renjitha Suman
2.Abisha Sahaya Mercylin
3.Yughi Deva Malar

.. Petitioners

Vs.

1.Moni
2.Kumaradhas

.. Respondents

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.111 of 2014 in O.S.No.412 of 2011 dated 13.08.2014 on the file of the learned Principal District Munsif, Padmanabapuram, Kanyakumari District.

For Petitioners	: Mr.D.Christenson Jugunu
For 1 st Respondent	: Mr.C.Kishore
For 2 nd Respondent	: Mr.F.Deepak

ORDER

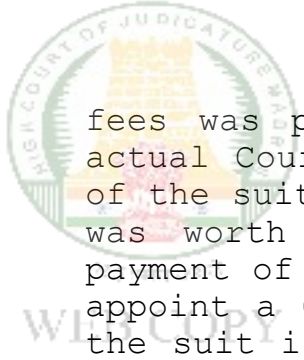
Heard Mr.D.Christenson Jugunu, learned counsel appearing for the petitioners, Mr.C.Kishore , learned counsel appearing for the first respondent and Mr.F.Deepak, learned counsel appearing for the second respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.111 of 2014 in O.S.No.412 of 2011 dated 13.08.2014 on the file of the learned Principal District Munsif, Padmanabapuram, Kanyakumari District.

3.The petitioners herein are the defendants 2 to 5, the first respondent herein is the plaintiff and the respondent herein is the first defendant in the suit. The first respondent herein has filed a suit in O.S.No.412 of 2011 for declaring title and possessionary right of the petitioner and for injunction. The petitioners have filed a petition in I.A.No.111 of 2014 seeking for a prayer of rejection of the suit under Order 7 Rule 11 of C.P.C., on the ground of deficit of Court fee. The trial Court dismissed the petition. Against the dismissal order, the petitioners have filed the present revision petition.

<https://hcservices.ecourts.gov.in/hcservices/>

4.On the side of the petitioners, it is stated that the Court



fees was paid under Section 24(b) of the Court fees Act but the actual Court fee is to be paid in accordance with the market value of the suit property and the sale deed itself show that the property was worth more than Rs.4,00,000/- (Rupees Four Lakhs only) and payment of Court fee on the basis of kist is wrong and the Court can appoint a Court Commissioner and fix the value of the property and the suit is to be rejected on the ground of insufficiency of Court fee.

5. On the side of the respondents, it is stated that the petitioners herein has filed written statement on 29.01.2013 but the value of the property is not questioned in the written statement. Only after 8 months from the date of filing of the written statement, the petitioners have come forward with this petition on the ground that there is no cause of action and that the property is under valued for payment of Court fee. It is further stated that whether the suit is having a cause of action or not can be decided only after the trial is over. With regard to second point raised by the petitioners, there is no Court order to pay the deficit Court fee. As per Order 7 Rule 11 (b) C.P.C., only when the petitioners failed to pay the deficit Court fee fixed by the Court a suit can be rejected and that the Court has not called for payment of deficit Court fee from the plaintiff and hence, the petition filed under Order 7 Rule 11 of C.P.C., is not maintainable.

6. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of **S.N.Balapattabi v. Balanagalakshmi in C.R.P.PD No.3686 of 2016**, which reads as follows:

"The respondent has to value the properties at the market value and pay the Court fee on the saie value as per Sectin 37 (1) of the Tamil Nadu Court Fees & Suits Valuation Act and not as per Section 37 (2) of the Act. The respondent is not in joint possession of all the properties and therefore she has to pay the court fee at Ad valorem on the market value of the suit properties."

7. The learned counsel appearing for the petitioners relied on the Judgment passed by this Court in the case of **N.Saravanan v. Manujothi Ashramam in C.R.P.PD No.2959 of 2014**, which reads as follows:

"It is admitted fact that the averments in the plaint are sufficient to prove that where the cause of action is mentioned and averred in the plaint, there is no need to decide as to whether the cause of action averred in the plaint is true and correct..... the Honourable Supreme Court has observed that whether a plaint discloses a cause of action or not, is a question of fact depending upon the facts and circumstances of each case and the same must be found out from a reading of the plaint itself."

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8. The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of **P.Thillai Selvan v.**



Shyna Paul and Another in (2014) 7 MLJ 732, which reads as follows:

"In the decision of this Court reported in *G.Krishnamurthy v. Sarangapani (supra)*, this Court observed that the issue regarding the Court fee is between the Court and the plaintiff and such issue or findings rendered thereon, will not cause any prejudice to the defendant."

9.The learned counsel appearing for the respondents relied on the Judgment passed by this Court in the case of **Suseela and 4 others v. A.S.L.Rajan** reported in **1999 2 L.W.772**, which reads as follows:

"The trial Court having found from the kist receipts produced by the plaintiffs that the lands continued to be the ryotwari lands cannot hold that the suit has not been properly valued merely on the ground that the neighbouring lands have been converted into house sites.

As already indicated, this question has to be necessarily decided only on the basis of the revenue records."

10.It is seen that the petitioners have filed a petition to reject the plaint on two grounds. One is that there is no cause of action for the case and the cause of action is a question of fact which can be decided only after completion of the trial. This point raised by the petitioners is not maintainable. The second point raised by the petitioners is that sufficient Court fee is not paid and the suit property is under valued. Under Order 7 Rule 11 (b) of C.P.C., the suit can be dismissed for non payment of deficit Court fee called for by the concerned Court. In this Case, there is no such Court order which was disobeyed by the plaintiff. The petitioners can raise the question regarding the market value of the suit and the court fee paid by filing an additional written statement and the trial Court can frame a preliminary issue on this point and can decide the issue.

11.With the above observation, this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.111 of 2014 in O.S.No.412 of 2011 dated 13.08.2014 on the file of the learned Principal District Munsif, Padmanabapuram, Kanyakumari District. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS I)

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To

The Principal District Munsif,
Padmanabapuram, Kanyakumari District.

+1 CC to M/s.C.KISHORE, Advocate (SR-59212[F] dated 05/04/2019)

+1 CC to M/s.D.CHISTENSON JUGUNU, Advocate (SR-59838[F] dated
09/04/2019)

C.R.P. (PD) (MD) No.403 of 2015

05.04.2019

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