

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.Nos.561 to 564 of 2020

and

C.M.P.No.2919 of 2020

R.Jayavelu

..Petitioner in all CRPs/
1st Defendant

Vs.

1. R.Ashok
2. R.Krishnaveni
3. R.Ramkumar
4. Kamakshi Gnanapriya @ R.Kamakshi
5. V.Saraswathi

..Respondents in all CRPs/
Plaintiff & Defendant 2 to 5

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the common fair and decreetal order dated 10.01.2020, made in I.A.Nos.3,4,2&1 of 2019 respectively in O.S.No.8236 of 2006, on the file of the learned III Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.K.P.Gopalakrishnan

For Respondents : Mr.K.V.Babu

C O M M O N O R D E R

Present revisions have been filed against the common order of dismissal of the petitioner's applications filed (i) under Order XVIII Rule 17 of C.P.C. to recall DW1 and permit the petitioner to mark the documents and let in further evidence; (ii) under Order VII Rule 11(b) of C.P.C. to reject the Plaint; (iii) under Section 151 of C.P.C. to reopen the evidence of DW1 and permit the petitioner to mark the documents described in the said petition and (iv) under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act, r/w Section 151 of C.P.C, r/w

Order XIV Rule 2 of C.P.C. to take up the suit and decide the question of valuation in payment of Court fee and pecuniary jurisdiction of the Court as a preliminary issue.

2. The petitioner is the first defendant in the suit. The first respondent/plaintiff filed the suit for recovery of possession and also for damages both past and future.

3. Pending suit petitioner filed four applications viz., application in I.A.No.1 of 2019 to recall DW1 and permit the petitioner to mark the documents and let in further evidence, application in I.A.No.2 of 2019 to reject the Plaint, application in I.A.No.3 of 2019 to reopen the evidence of DW1 and permit the petitioner to mark the documents described in the said petition and application in I.A.No.4 of 2019 to take up the suit and decide the question of valuation in payment of Court fee and pecuniary jurisdiction of the Court as a preliminary issue. The trial Court dismissed all the above applications. Now challenging the same present revisions have been filed.

4. Mr.K.P.Gopalakrishnan, learned counsel appearing for the petitioner submitted that the market value of the suit property is Rs.1,94,62,260/-, whereas, the plaintiff has valued the suit for only 5,80,000/-. The suit is totally undervalued. In the above circumstances, the issue of valuation of the suit property and consequential pecuniary jurisdiction of the Court has to be decided as a preliminary issue in the suit.

5. Further, according to the learned counsel appearing for the petitioner, even though now the evidence was closed, the issue of pecuniary jurisdiction of the Court to try the suit has to be taken up as a preliminary issue and the same has to be tried. The learned counsel further submitted that without deciding the pecuniary jurisdiction of the Court, the other issues cannot be tried and in support of his contention, he relied upon the following judgements:

"(i) Deepak Dhansing Vs. Girish Damodar reported in 2005 (3) Mh.L.J. 1009

(ii) N.R.Govindarajan Vs. V.K.Rajagopalan reported in (2005) 12 SCC 362

(iii) S.N.S.Sukumaran Vs. C.Thangamuthu reported in 2012-5-L.W.197

(iv) Rajan Dhansukhlal Vora Vs. Dinesh Bacchubhai Parekh reported in 2012 (1) Mh.L.J. 696

(v) Jayanthilal G.Bafna Vs. V.Dharai (died) & Others

reported in CDJ 2015 MHC 6602

(vi) Minor R.Boopathy Vs. Ranjeetham reported in 2019-4-L.W. 863"

6. Per contra, Mr.K.V.Babu, learned counsel appearing for the respondents submitted that the suit was filed in the year 2006 and the petitioner has also already filed his written statement as well as his additional written statement. Issues were also framed by the Court below in the year 2018 and the valuation of the suit property is also framed as one of the issue in the suit.

7. Earlier, the petitioner has filed an application in I.A.No.12267 of 2017 in O.S.No.8236 of 2006 for appointment of Advocate Commissioner along with a Chief Engineer to inspect the property and to file a report regarding the value of the property. The above application has been dismissed by the trial Court and challenging the same a revision in C.R.P.No.1471 of 2018, has been filed before this Court and by an order dated 27.06.2018, this Court dismissed the revision stating that the petitioner feels that the trial Court has no pecuniary jurisdiction, which can be very well established by oral and documentary evidence, that being the factual position, the Advocate Commissioner need not be appointed. This Court has further held that even assuming that, after establishing through evidence, if the trial Court comes to the conclusion that the trial Court has no pecuniary jurisdiction to proceed further and refers the case to the Court which has pecuniary jurisdiction. In view of the above, the present applications are not maintainable.

8. Further, according to the learned counsel for the respondents, the trial was over and the argument of the plaintiff is also over and at that stage, to protract the suit proceedings, present applications have been filed. The learned counsel also relied on a Division Bench judgement of this Court in S.N.S.Sukumaran Vs. C.Thangamuthu (cited supra) and referred to Clause 5 of Paragraph 31 to substantiate his contention.

9. I have considered the rival submissions and also perused the records carefully.

10. The suit is of the year 2006 and the petitioner/defendant has filed the written statement as early as on 2007 and thereafter, additional written statement was also filed in the year 2009. The issues were also framed in the year 2018, wherein one of the issue was with regard to the valuation of the suit property. Having kept quite for several years, when the suit was posted for arguments, in the year 2018, the

petitioner came up with an application to appoint an Advocate Commissioner to value the suit property and based on his report decide the pecuniary jurisdiction of the Court. That application came to be dismissed by the trial Court and challenging the same, the petitioner has filed a revision before this Court in C.R.P.No.1471 of 2018. This Court by order dated 27.06.2018, dismissed the revision holding as follows:

"7.....When the revision petitioner has filed the written statement as early as on 20.06.2007, before the commencement of the trial, he would have filed an application before the trial Court to decide the issue regarding pecuniary jurisdiction as preliminary issue. But the revision petitioner/first defendant has not chosen to file any such application. Further, he has stated that as per the guide line value, the value of the property was fixed at Rs.1,94,62,260/- and the trial Court has no pecuniary jurisdiction, which can be very well established by oral and documentary evidence, that being the factual position the Advocate Commissioner need not to be appointed. Even assuming that, after establishing through evidence, if the trial Court comes to the conclusion that the trial Court has no pecuniary jurisdiction to proceed further and refers the case to the Court which has pecuniary jurisdiction....."

11. Now, it is stated that the plaintiff has completed his argument and the suit is posted for the arguments of the defendants. At this stage, the present applications have been filed to re-open, re-call, reject the plaint and to value the suit to decide the pecuniary jurisdiction of the Court as a preliminary issue. The trial Court considering all the materials on record dismissed all the applications.

12. Mr.Gopalakrishnan, learned counsel appearing for the petitioner strongly relied upon a decision of a Division Bench of this Court in S.N.S.Sukumaran Vs C.Thangamuthu (cited supra) and submitted that since the Court fee issue is relating to jurisdiction, that issue should be decided first before deciding the suit on merits. That apart, the learned counsel also referred to Clauses 1 to 3 of Paragraph 31 of the judgement, which reads as follows:

"(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 XIV, 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."

13. The other judgements relied on by the learned counsel appearing for the petitioner also relates to the issue relating to pecuniary jurisdiction of the Court, wherein, the Courts have held that the said issue has to be decided as a preliminary issue. No doubt, it is a settled position of law that whenever the issue relating to the payment of Court fee is raised, it is a jurisdictional issue and it has to be decided as a preliminary issue. However, in the instant case, already the petitioner has raised such an issue of valuation of the suit property, wherein, this Court has also held that the issue can be decided during trial. That apart, in the Division Bench judgement in S.N.S.Sukumaran case (cited supra) relied upon by the learned counsel for the petitioner as well as by the learned counsel for the respondents, in Clauses 4 & 5 of Paragraph 31 the Division Bench of this Court has held that improper valuation of the suit shall be entertained by the Court only before the hearing of the suit on merits commences and witnesses are examined and if 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. Clauses 4 and 5 of Paragraph 31 reads as follows:

"(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 bona fide 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."

14. As already stated supra, the trial has commenced and the arguments of the plaintiff is over and the matter is posted for the final arguments of the respondents. In the above circumstances, I am of the view that the present applications have been filed with an ulterior motive to protract the suit proceedings. That apart, while framing the issues, the trial Court has also framed an issue with regard to the valuation of the suit property. The Court below considering all the materials has rightly dismissed the applications. I do not find any illegality or irregularity in the same as the trial Court has rightly dismissed the said applications. I do not find any merit in the revisions and the same are liable to be dismissed. Considering the relationship between the parties and that the plaintiff has completed his arguments, the defendants are directed to complete their arguments within a period of four weeks from the date of receipt of a copy of this order. The trial Court is directed to dispose of the suit within a period of eight weeks thereafter. Further, as the issue of valuation of the suit property has already been framed, the Court below is directed to consider the said issue and give a finding with regard to the same.

15. In the result, the civil revision petitions are dismissed and the common fair and decreetal order of the Court below, impugned in these revisions are hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk

To

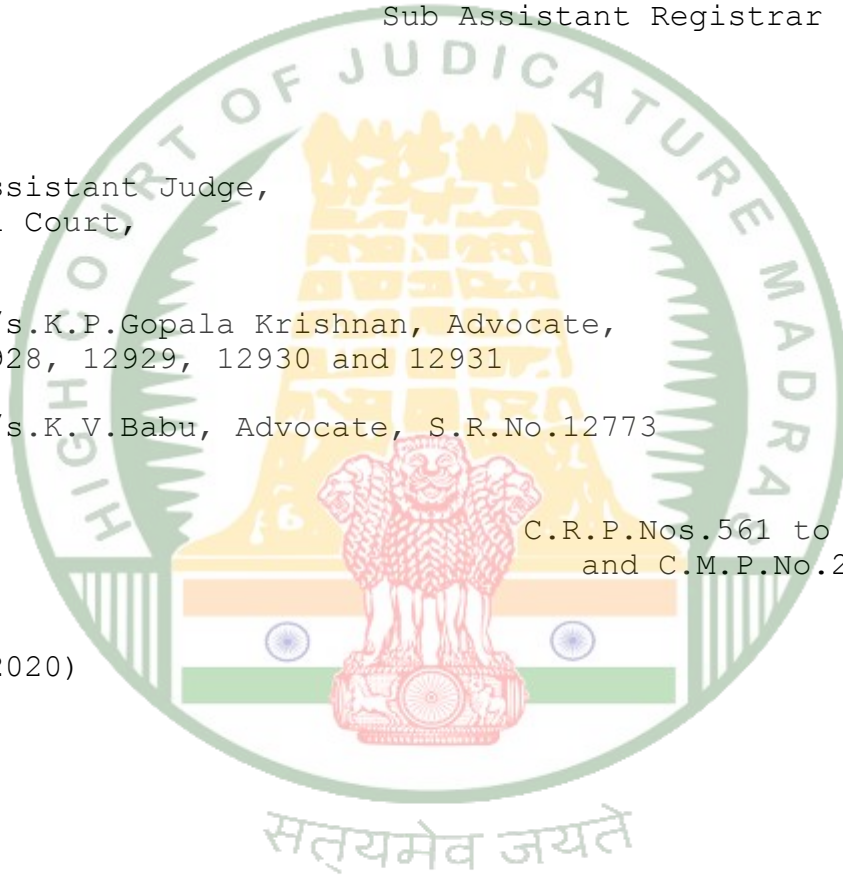
The III Assistant Judge,
City Civil Court,
Chennai.

+4cc to M/s.K.P.Gopala Krishnan, Advocate,
S.R.No.12928, 12929, 12930 and 12931

+1cc to M/s.K.V.Babu, Advocate, S.R.No.12773

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and C.M.P.No.2919 of 2020

RN(04/06/2020)



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