

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.10.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRP (PD) No.2558 of 2015

and

MP.No.1 of 2015

A. Vairavelu

.. Petitioner /Defendant

vs.

1.S.Thangamani

2.Suseela

3.A.Nirmala

.. Respondents/Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India to against the fair and decreetal order dated 17.12.2014 on the file of the III Additional District Munsif Court, Coimbatore passed in I.A.No.593 of 2014 in O.S.No.780 of 2009.

For Petitioner

... Mr.K.P.Gopalakrishnan

For Respondents

... Mr.A.E.Ravichandran (for R1)

No appearance (for R2 and R3)

ORDER

This Civil Revision Petition has been filed by the petitioner/first defendant against the dismissal of his petition filed under Order 7 Rule 11 CPC in I.A.No.593 of 2014 in O.S.No.780 of 2009 on the file of the III Additional District Munsif, Coimbatore, dated 17.12.2014.

2. The first respondent herein had filed a suit in O.S.No.780 of 2009 on the file of the III Additional District Munsif, Coimbatore, to declare the Will dated 22.02.2002 vide document No.108/Bk3/2002 executed by late K.Arunachala Thevar in favour of her, in respect of the suit property, is true, genuine and binding on the defendants and consequently, direct the first respondent to hand over the possession of the suit property to her and to grant permanent injunction restraining the defendants from encumbering the suit property. During pendency of the said suit, the first defendant has filed an application in I.A.No.593 of 2014 under Order 7 Rule 11 of CPC to reject the plaint on the following grounds:-

- (i) The Suit is barred by limitation;
- (ii) The Suit has not been properly valued;
- (iii) The Court has no pecuniary jurisdiction.

3. The learned District Munsif by the order dated 17.12.2014 has dismissed the said petition. However, he directed the first respondent/plaintiff to value the suit property properly and pay court fees accordingly. Feeling aggrieved, the petitioner/first defendant has filed the present Civil Revision Petition.

4. Heard Mr.K.P.Gopalakrishnan, learned counsel for the petitioner and Mr.A.E.Ravichandran, learned counsel for the first respondent.

5. The learned counsel for the petitioner has submitted that the learned District Munsif in his order, has come to the conclusion that the plaint has not been properly valued for the purpose of court fees and jurisdiction of the court, but instead of rejecting the plaint, he has dismissed the petitioner's petition. He further submitted that once the learned District Munsif has come to the conclusion that the plaint has not been properly valued for the purpose of court fees and jurisdiction, he should have given a categorical finding with regard to the value of the property and should direct the plaintiff to pay the court fees accordingly. But he has directed the plaintiff once again to value the

suit property and pay court fees and the said direction is against the settled position of law. He further submitted that once the learned District Munsif has come to the conclusion that the suit has not been properly valued it has no jurisdiction to retain the said suit. He further submitted that in the plaint, it is stated that the alleged Will was executed on 22.02.2002, but the suit was filed only in the year 2009 and as such the suit for declaration is clearly barred by limitation and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned District Munsif and reject the plaint.

6. Per contra, the learned counsel for the first respondent/plaintiff has submitted that the plaintiff has valued the plaint with regard to the declaration of Will and consequential relief of delivery of possession under Section 25 (a) of the Tamil Nadu Court Fees & Suit Valuation Act, 1955 (TNCF Act) at Rs.40,000/- However, the learned District Munsif has not accepted the said value and directed the plaintiff to value the suit property correctly and pay the court fees accordingly within three months and in pursuance of the said order, the plaintiff has filed a petition seeking to amend the plaint by giving proper value and therefore, this court need not interfere in the order passed by the learned District Munsif. He further submitted

that in respect of limitation is concerned, it is a mixed question of law and fact and the said question cannot be decided at this stage and the same can be decided after taking evidence and therefore, he prayed to dismiss this Civil Revision Petition.

7. A perusal of the order passed by the learned District Munsif in I.A.No.593 of 2014 in O.S.No.780 of 2009 shows that the learned District Munsif has not accepted the value given by the plaintiff in her plaint in respect of the relief of declaration and possession of the property. In such a case, the learned District Munsif should have given a finding as to what is the correct value of the said relief and thereafter, he should direct the plaintiff to correct the valuation in the plaint and also pay the court fees accordingly. Instead of that, he once again gave liberty to the plaintiff to value the said relief with reference to the market value of the suit property and pay the court fees. This will pave a way to further litigation. Therefore, this court is of the view that the said findings are liable to be set aside.

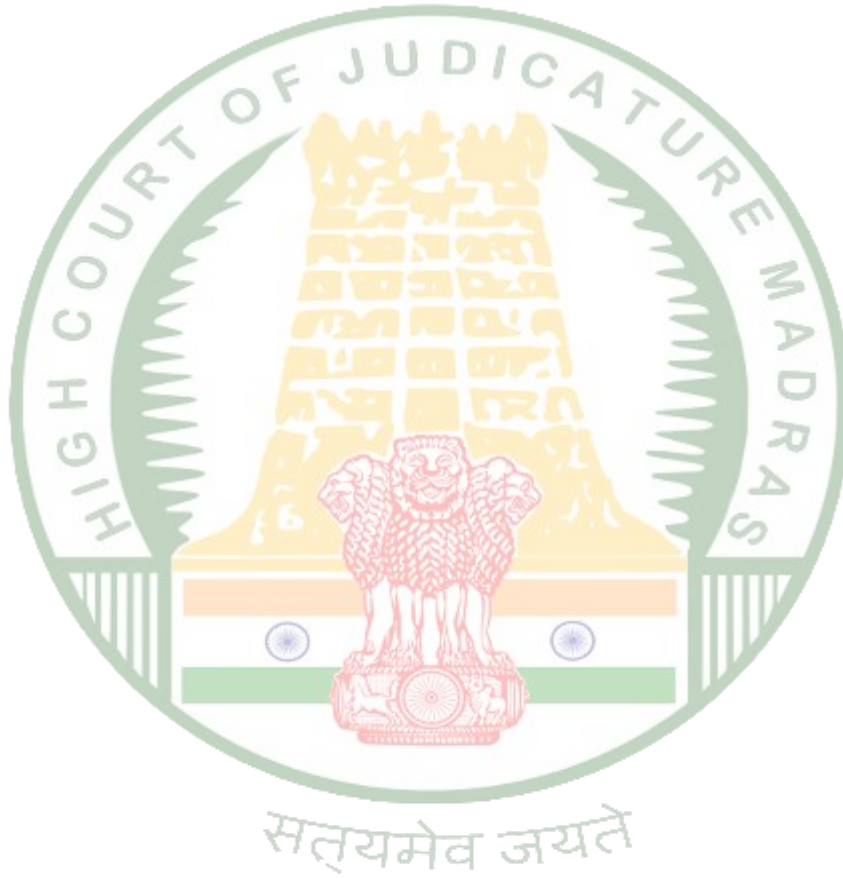
8. In so far as the findings with regard to the limitation is concerned, admittedly, the question of limitation is a mixed question of law and fact and the same can be decided only after taking

evidence. In the said findings, this court does not want to interfere. Only in respect of the direction of the trial court that the plaintiff has to value the said relief with reference to the market value of the suit property and pay court fee requires modification.

9. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed. The Order passed by the learned District Musnif in I.A.No.593 of 2014 with regard to giving direction to the plaintiff to value the relief and pay court fee, is set aside. The matter is remitted back to the trial court. The learned District Munsif is directed to fix the value for the purpose of relief of declaration of title and delivery of possession of property and thereafter direct the plaintiff to pay the court fees accordingly within a stipulated time. If the plaintiff failed to pay the court fees as directed by the court, within the stipulated time, then the plaint has to be rejected.

Index: Yes/No
Speaking/Non-speaking Order
gv

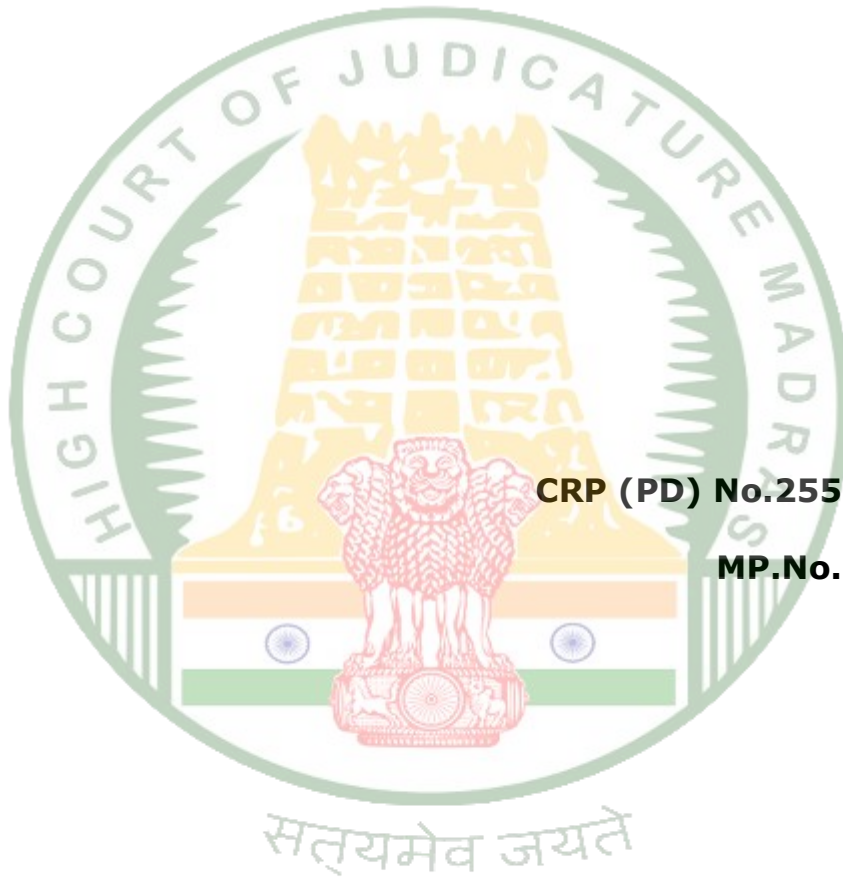
To
The III Additional District Munsif Court,
Coimbatore.



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P.RAJAMANICKAM., J.

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