

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26 / 08 / 2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.950 OF 2020

AND

CMP NO.5153 OF 2020

1.Parimala

2.M.A.Ramamoorthy

... Petitioners

Vs.

1.P.Boopathy

2.S.Periyathambi

3.Suguna

4.N.Raja

(R2 to R4 given up as unnecessary parties
vide separate memo)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and final order dated 22.02.2019 made in I.A.No.592 of 2018 in O.S.No.515 of 2012 on the file of the II Additional Sub Court, Salem.

For Petitioners : Mr.T.Murugamanickam
Senior Counsel
for Ms.Zeenath Begum

For Respondent-1 : Mr.J.Prithvi

ORDER

This Civil Revision Petition is directed against the order permitting the first respondent / plaintiff to amend the plaint.

2. The petitioners herein are the defendants 4 and 5 in the suit in O.S.No.515 of 2012. The first respondent is the plaintiff. The respondents 2, 3 and 4 are the defendants 1 to 3.

3. The first respondent / plaintiff filed the suit in O.S.No.515 of 2012 for declaration of title and to declare the sale deed executed by the first defendant in favour of the second defendant; and the sale deed executed by the third defendant in favour of the fourth defendant as null and void and not binding on them and for the consequential relief of permanent injunction.

4. Originally, the plaintiff valued the prayer of the suit for

declaration of title at Rs.1,21,770/- being one half of the market value of the suit property. The petitioners herein filed a written statement denying possession of the property with the plaintiff and therefore, the petitioners filed two interlocutory applications, one for amendment for including the relief of recovery of possession and another for calling for the value of the property. In so far as the interlocutory application filed for amendment is concerned, the Trial Court has dismissed the application. However, the Trial Court has allowed the application filed to call for market value of the property and the consequential payment of Court fee.

5. Aggrieved over the same, the Civil Revision Petition in CRP (PD) No.4855 of 2014 came to be filed. This Court, by its order dated 09.02.2015, disposed of the Civil Revision Petition and permitted the petitioner to pay the Court fee on the market value of the suit property.

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6. Thereafter, additional written statement was filed by the

petitioners wherein the value made by the plaintiff was once again objected. They further made an objection that the prayer of injunction is not the consequential injunction and therefore, valuing the suit under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act 1955 (shortly “the Act”) is not sustainable.

7. While the matter stood thus, the petitioners / defendants 4 and 5 filed an application under Order VII Rule 11 of the Civil Procedure Code for rejection of plaint. However, the same was dismissed. Thereafter, an interlocutory application in I.A.No.592 of 2018 in O.S.No.515 of 2012 was filed by the first respondent / plaintiff to amend the plaint by incorporating the market value of the property as Rs.16,00,000/- and to pay appropriate Court fee. The Trial Court allowed the said interlocutory application on 22.02.2019, which is under challenge in the present Civil Revision Petition.

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8. According to the revision petitioners, when a suit is filed for

declaration of title and recovery of possession, it should be valued under Section 25(a) of the Act, for which, the Court fee shall be computed on the market value of the property and not on one half of the market value. Secondly, without any basis, the market value of the property was fixed at Rs.16,00,000/-, whereas the property possesses highest market value. Thirdly, for the relief of possession, the plaintiff has paid the Court fee under Section 30 of the Act, whereas, it should be valued under Section 25(a) of the Act. On these grounds, the revision petitioners seek to set aside the order of the Trial Court.

9. The learned Senior Counsel appearing for the petitioners would contend that the Trial Court has erred in observing that the value of the property and the relief whether the plaintiff is in possession or not could be decided during trial. When recovery of possession is specifically prayed, the finding of the Trial Court, that the possession will be decided during trial is erroneous.

10. Per contra, the learned counsel appearing for the first

respondent would contend that prayer (a) in the plaint is made for declaration of title and injunction. For the relief of declaration and injunction, it should be valued under Section 25(a) of the Act on the one half of the market value, which has been rightly done. In so far as the fixation of market value at Rs.16,00,000/- is concerned, it is pursuant to the order passed by this Court in calling for the market value from the District Collector / Sub Registrar concerned. Therefore, it is not fixed at random and thirdly, the relief of possession is the consequential relief. As per Section 6 of the Act, in any multifarious suit, where separate and distinct reliefs are sought based on the same cause of action, the plaint shall be chargeable with a fee on the main relief or the relief which has the highest market value and not for the consequential relief. Therefore, the main relief, being declaration of title and injunction, the consequential relief of possession need not be valued at market value of the property. In support of his contention, he would rely on the following judgments:-

(a) Judgment of this Court in ***THANGACHI***

AMMAL VS. MOHAMED MOIDEEN MARICAIR
[ILR 56 MAD 401];

(b) Judgment of the Rajasthan High Court in
SHYAMLAL VS. KESHA DEVI [ILR 1970
RAJASTHAN 379];

(c) Judgment of the Hon'ble Supreme Court in
SRI RATHNAVARMARAJA VS. VIMALA [AIR 1961
SC 1299]; and

(d) Judgment of the Hon'ble Supreme Court in
LAKSHMI AMMAL VS.
K.M.MADHAVAKRISHNAN AND OTHERS [1974
(4) SCC 15].

She would further contend that the suit was filed in the year 2012. The defendants by repeated applications and vexatious objections have delayed it for the past eight years. Therefore, a direction should be given for disposal of the suit within the stipulated time.

11. I have heard the submissions made on either side and

perused the materials available on record.

12. A perusal of the plaint clearly shows that the main relief sought for in the plaint is for declaration of title and permanent injunction. For the relief of declaration and injunction, Court fee shall be paid under Section 25(b) of the Act. As per Section 25(b) of the Act, the suit property shall be valued at one half of the market value and corresponding Court fee shall be paid. Admittedly, the petitioner filed an interlocutory application in I.A.No.57 of 2014 before the Trial Court calling for the market value of the suit property, which was allowed and the market value was fixed at Rs.16,00,000/-. The plaintiff also sought for amendment, to value the suit property at Rs.16,00,000/- and paid the corresponding Court fee. Therefore, I do not find any infirmity in the computation of the Court fee under Section 25(a) of the Act. Only because the petitioner has made objection to the possession of the property, the alternative relief of recovery of possession has also been incorporated in the plaint.

13. Section 6 of the Tamil Nadu Court Fees and Suits Valuation

Act, 1955, reads as under:

“6. Multifarious suits. - (1) In any suit in which separate and distinct reliefs are sought based on the same cause of action, the plaint shall be chargeable with a fee on the aggregate value of the reliefs:

Provided that, if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees leviable on the reliefs.

(3) Where a suit embraces two or more distinct and different causes of action and separate reliefs are sought based on them, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate, amount of the

fees with which complaints would be chargeable under this Act if separate suits were instituted in respect of the several causes of action:

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the complaint shall be chargeable only with the highest of the fees chargeable on them.

Nothing in the sub-section shall be deemed to affect any power conferred upon a Court under rule 6 of Order II of the Code of Civil Procedure, 1908 (Central Act V of 1908).

(4) The provisions of this section shall apply mutatis mutandis to memoranda of appeals, applications, petitions and written statements. “

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As per proviso to Section 6(1) of the Act, if a relief is sought only as

ancillary to the main relief, the plaint shall be chargeable only on the main relief. As such, the Court fee payable on the main relief is on half of the market value of the property. Therefore, the claim of the petitioner is not sustainable.

14. As held by the Hon'ble Supreme Court, in ***THANGACHI AMMAL VS. MOHAMED MOIDEEN MARICAIR*** [1933 (64) MLJ 127] relief of possession is the consequential relief of declaration. Therefore, Court fee for the ancillary relief of possession, is not chargeable.

15. The Hon'ble Supreme Court in ***LAKSHMI AMMAL VS. K.M.MADHAVAKRISHNAN AND OTHERS*** [1978 (4) SCC 15] has observed as under:

“It is unfortunate that long years have been spent by the courts below on a combat between two parties on the question of court fee leaving the real issues to be fought between them to come up leisurely. Two things have to be

made clear. Courts should be anxious to grapple with the real issues and not spend their energies on peripheral A ones. Secondly, court fee, if it seriously restricts the rights of a person to seek his remedies in courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable of course, the benefit must go to him who says that the lesser court fee alone be paid.

In this particular case there is hardly any difficulty in holding that the plaintiff in paragraph 14 of the plaint has clearly alleged that sh., is in joint possession and is seeking partition and separate possession of her half share in the suit properties as heir of deceased, Paramayee. Obviously, the court fee that is payable is as she has claimed, namely under sec. 37(2) which corresponds to [Art. 17\(6\)](#) of the [Central Act](#), which is the predecessor legislation on the subject. We allow the appeal and send the case back to the trial court and direct that court to proceed with the suit expeditiously. We make it clear that our decision on the

question of court fee does not have any implications on the merits including the validity or otherwise of the Will..”

In the instant case also, the parties were fighting for the past eight years on the peripheral issue of Court fee rather than fighting for the real issue.

16. The Hon'ble Supreme Court in **SRI RATHNAVARMARA VS. VIMALA [AIR 1961 SC 1299]** has categorically observed that “*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. The defendant who may believe and even honestly that proper court fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court fee payable on the plaint. ...Thus, the provisions had been harm the defendant with a weapon of technicality to obstruct the progress*

of the suit by approaching the High Court in revision against the order determining the court fee payable. “The Hon'ble Supreme Court has further held that as per Section 19 of the Act, value of the property can be fixed by conducting local inspection or upon such enquiry held by the Court.

17. In that view of the matter, as observed above, the value of the property fixed by calling for the market value from the District Collector or the Sub Registrar concerned is in conformity with Section 19 of the Act. Therefore, considering the facts and circumstances of the case, the order dated 22.02.2019 passed in I.A.No.592 of 2018 in O.S.No.515 of 2012 by the II Additional Sub Court, Salem, stands confirmed. Further, considering the fact that the parties are agitating the peripheral issue leaving behind the real issue, for over eight years, a direction is given to the Trial Court to dispose of the suit in O.S.No.515 of 2012 within a period of six months from the date of resumption of physical hearing of the Court.

18. In fine, the Civil Revision Petition is dismissed with the above observation and direction. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No

Internet : Yes/No

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To

The II Additional Sub Court
Salem.

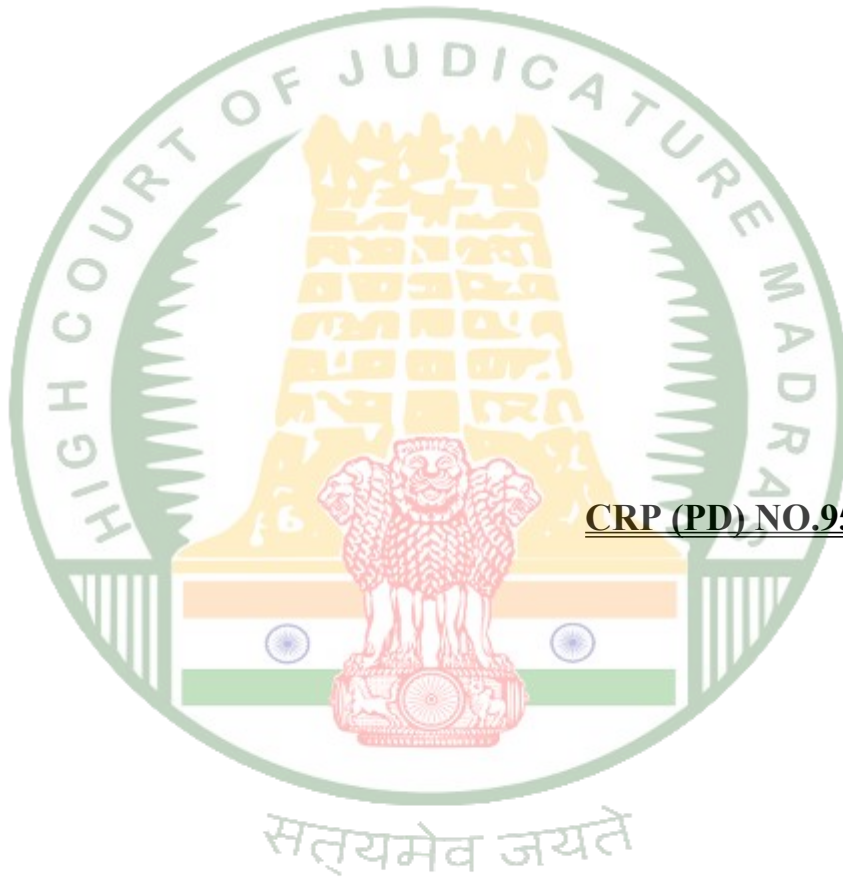


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