

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.PD.No.3860 of 2019

and C.M.P.No.25475 of 2019

M.N.Kumutha

... Petitioner

Vs.

1. R. Latha

2. Iyappan

... Respondents

Prayer : Civil Revision Petition has been filed under Section 227 of the Constitution of India to set-aside the order dated 25.07.2019 made in I.A.No.1359 of 2018 in O.S.No.395 of 2018 on the file of the Principal District Munsif, Erode, by allowing the Civil Revision Petition.

For Petitioner : Mrs.S. Vljaya Ganesh

For respondents : Mr.C. Kulanthaivel

ORDER

This Civil Revision has been filed against the order dismissing the application filed under Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act to try the Court fee issue as a preliminary issue.

2. The first respondent herein has filed a suit in O.S.No.395 of 2018 on the file of the Principal District Munsif Court, Erode for possession of the suit property. The suit property belonged to the first respondent/plaintiff based on a compromise decree between the parties in O.S.No.77 of 2012, in which, the petitioner's husband is one of the party. According to the first respondent/plaintiff, as per the earlier compromise, the first respondent/plaintiff is entitled for the suit schedule property. Now, the defendants are in possession and enjoyment of the same. Hence, she filed the present suit for possession. In the above suit, the petitioner herein/the second defendant filed an application in I.A.No.1359 of 2018 under Section 12(2) of the Act on the ground that the value of the suit property is more than one crore, whereas, the plaintiff has shown the market value of the property only for a sum of Rs.50,000/- and the suit is undervalued. Hence, the issue of court

fee should be decided as a preliminary issue. The trial Court, by an order dated 25.07.2019, has dismissed the application on the ground that the issue of market value of the suit property is mixed question of law and that can be decided only during the trial. Now, challenging the same, the present revision has been filed.

3. The learned counsel for the petitioner would vehemently contend that since the market value of the property is more than one crore, the petitioner has undervalued the suit and paid the court fee only for Rs.50,000/-. Now, according to the petitioner, it is settled law that the issue relating to the payment of court fee is a legal issue and it should be decided as a preliminary issue, whereas the the trial Court, without considering the same, has dismissed the application.

4. Per contra, the learned counsel appearing for the first respondent would contend that the suit schedule property is the subject matter of the earlier partition suit, in which, the petitioner's husband is one of the defendants. In the above suit, the property has been valued at Rs.50,000/- and the Court fees also paid for the same. In the above circumstances, it is

not open to the petitioner to raise the plea that the value of the property is more than one Crore. Even though the defendants had filed a written statement and the issues has also been framed, the petitioner did not raise the issue of Court fee at the time of framing of issue. Now, the trial has been commenced. At this stage, the present application has been filed only to drag on the proceedings.

5. I have considered the rival submissions and perused the materials available on records carefully.

6. It is true that the issue of Court fee should be tried as a preliminary issue. However, from the facts of this case, it could be seen that the suit schedule property is the subject matter of the earlier partition suit, in which, the petitioner's husband was a party, wherein the suit has been valued at Rs.50,000/- and court fees has been paid on it. Now, the present suit has been filed seeking possession based on the earlier compromise decree entered into between the parties in O.S.No.77 of 2012, which is also binding on the petitioner. The issue of court fee has not been raised as a issue while the issues were framed. In the circumstances, after commencement of trial, at this

stage, the Court fee issue cannot be tried as a preliminary issue. Considering those circumstances, the trial Court rightly dismissed the application and I find no illegality or irregularity in the order passed by the Court below. However, the trial Court is directed to frame a issue regarding the court fees and decide the issue along with other issues and dispose the suit within a period of three months from the date of receipt of a copy of this order.

7. With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

24.01.2020

mrp

To

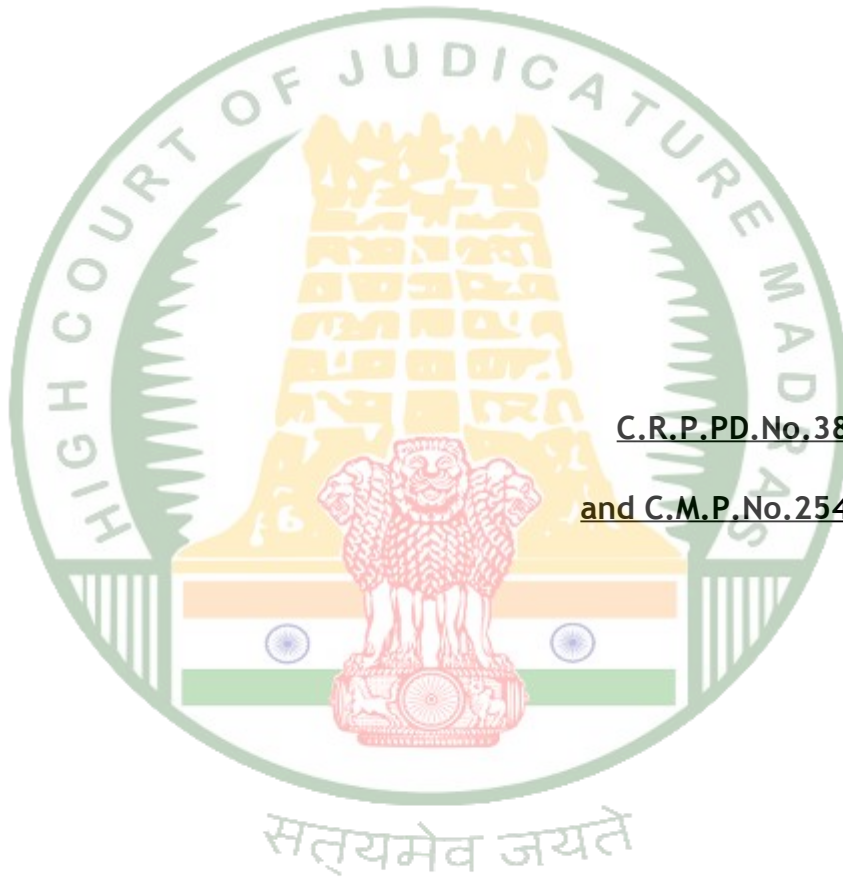
The Principal District Munsif,
Erode.

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C.R.P.No.3860 of 2019

V.BHARATHIDASAN,J

mrp

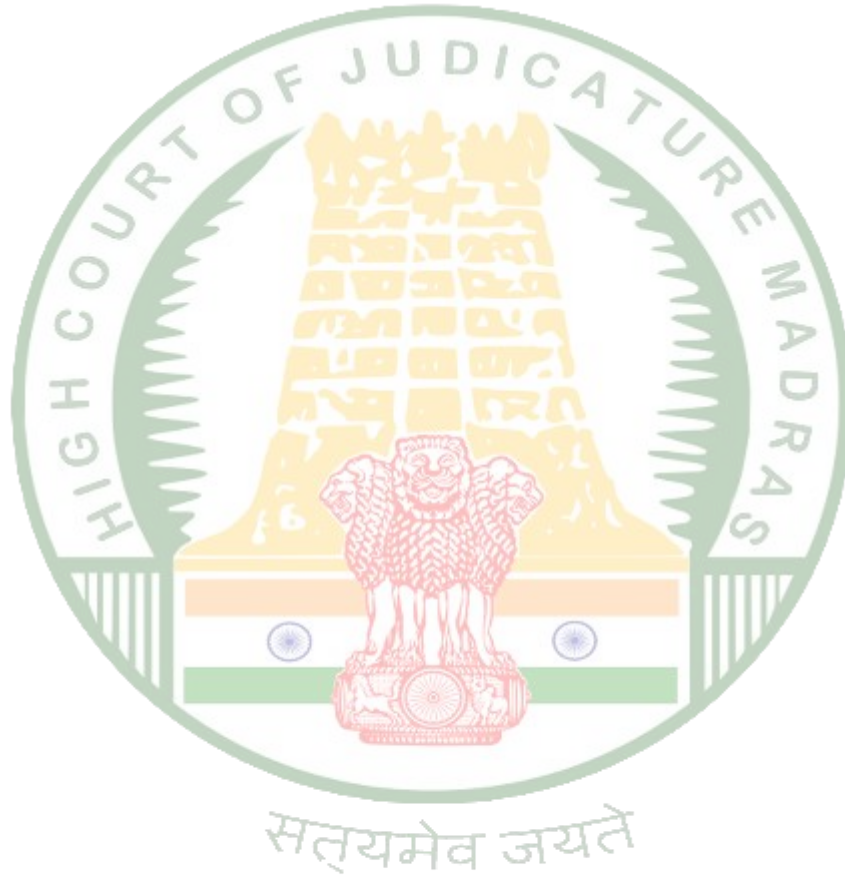


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