

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).No. 3744 of 2018

and

C.M.P.No. 20865 of 2018

1.Ponnammal

2.Stalin

3.Pushpa

4.Vijayanand

5.Priya (Minor)

6.Gobikrishna (Minor)

7.Muthu

8.Satish @ ShanmugamPetitioners/Defendants 1 to 8
(Petitioners 5 & 6 are rep.by their mother Natural
Guardian Pushpa 3rd Petitioner herein)

Vs.

Selvaraj @ SelvamRespondent / Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.01.2017 made in I.A.No.1454 of 2014 in O.S.No. 815 of 2011 on the file of the Principal District Munsif, Pondicherry.

For Petitioners: Mr.M.V.Venkataseshan

For Respondents : Mr.D.Ravichander

O R D E R

The defendants in O.S.No. 815 of 2011 have come up with this revision challenging the order made by the Trial Court in I.A.No. 1454 of 2014 seeking to take up the issue relating to Court fees as a preliminary issue.

2. The suit was laid for declaration of title and permanent injunction. The plaintiff valued the suit under Section 25 (a) r/w 7(1) (a) of the Pondicherry Court Fees and Suits Valuation

Act, 1972 and paid Court fee on thirty times the value of the revenue assessment of the property. The defendants filed a written statement raising a plea relating to the valuation of the suit and contended that the suit property being a residential house site cannot be valued under Section 7(1) (a) of the Pondicherry Court fees and Suits Valuation Act, 1972. Since the Trial Court did not venture to take up the issue as a preliminary issue as mandated under Section 11(2) of the Pondicherry Court Fees and Suits Valuation Act, 1972, the defendants came up with the instant application in I.A.No. 1454 of 2014 seeking the issue relating to Court fee to be decided as preliminary issue.

3. This was resisted by the plaintiff contending that the application is belated and it has been filed after the evidence had been let in on the merits of the claim. The learned Trial Judge accepted the defence and dismissed the application.

4. I have heard Mr.M.V.Venkataseshan, learned counsel for the petitioners and Mr.D.Ravichandren, learned counsel for the respondents.

5. The Trial Court had dismissed the application mainly on the ground that it is belated and it has been filed after the filing of the proof affidavit by the plaintiff. I am unable to sustain the view of the Trial Court. Section 11 of the Pondicherry Court Fees and Suits Valuation Act reads as follows:-

11. Decision as to proper fee in other Courts.- (1) In every suit instituted in any Court other than the High Court, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under section 10, the proper fee payable thereon, the decision being however subject to review, further review and correction in the manner hereinafter specified in this section.

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim, but, subject to sub-section (3) not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the

deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

(3) A defendant added after issues have been framed on the merits of claim may, in the written statement filed by him plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim, and if the Court finds that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall follow the procedure laid down in sub-section (2).

Explanation.- Nothing in this sub-section shall apply to a defendant added as a successor or a representative in interest of a defendant who was on record before issues were framed on the merits of the claim and who had an opportunity to file a written statement pleading that the subject-matter of the suit was not properly valued or that the fee paid was not sufficient.

(4) (a) Whenever a case comes up before a Court of appeal, it shall be lawful for the Court, either of its own motion or on the application of any of the parties, to consider the correctness of any order passed by the lower Court affecting the fee payable on the plaint or in any other proceedings in the lower Court and determine the proper fee payable thereon.

Explanation.- A case shall be deemed to come before a Court of appeal even if the appeal relates only to a part of the subject-matter of the suit.

(b) If the Court of appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower Court is in excess, the Court shall direct the refund of the excess to the party who is entitled to it.

(5) All questions as to value for the purpose of determining the jurisdiction of Courts arising on the written statement of a defendant shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim.

Explanation.- In this section, the expression "merits of the claim" refers to matters which arise for determination in the suit, not being matters relating to the frame of the suit, mis-joinder of parties and causes of action, the jurisdiction of the Court to entertain or try the suit or the fee payable but inclusive of matters arising on pleas of res judicata limitation and the like."

6. A reading of the Section 11(2) would show that the duty is cast upon the Court to hear the issue relating to valuation and Court fee before proceeding with the case on merits. The pre-condition is that the defendant should have raised it in written statement before the first hearing of the suit or defendant should raise it before evidence is recorded on merits of the claim.

7. In the case on hand, the defendant has raised the issue relating to valuation in the written statement itself thereby, creating an obligation on the Court to decide issue ahead of the other issues as mandated under Section 11(2) of the Act. The Trial Court had dismissed the application on the ground that it has been filed after the proof affidavit of P.W.1 was filed into Court. The filing of the proof affidavit is immaterial since the defendant has raised the issue even in the written statement. Actually, it is the failure on the part of the Court to comply with the provisions of Subsection 2 Section 11 of the Pondicherry Court Fees and Suits Valuation Act, which necessitated the instant application by the defendants.

8. Mr.D.Ravichandran, learned counsel for the respondent would vehemently contend that the application has been filed after evidence was recorded on the merits of the claim. I am unable to agree with the said contention of the learned counsel. The Trial Court itself has recorded that though the plaintiff filed his proof affidavit, the same was returned as defective, therefore, no evidence was recorded on the merits of the claim. Hence, looking at from any angle, this application has been filed within the time contemplated under Section 11(2) of the Pondicherry Court Fees and Suits Valuation Act. The Trial Court was not right in rejecting the application.

9. Hence, the order of the Trial Court is set aside, the application in I.A.No. 1454 of 2014 will stand allowed. The

Trial Court is directed to consider the issue relating to the Court fee as a preliminary issue and proceed with the suit thereafter. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

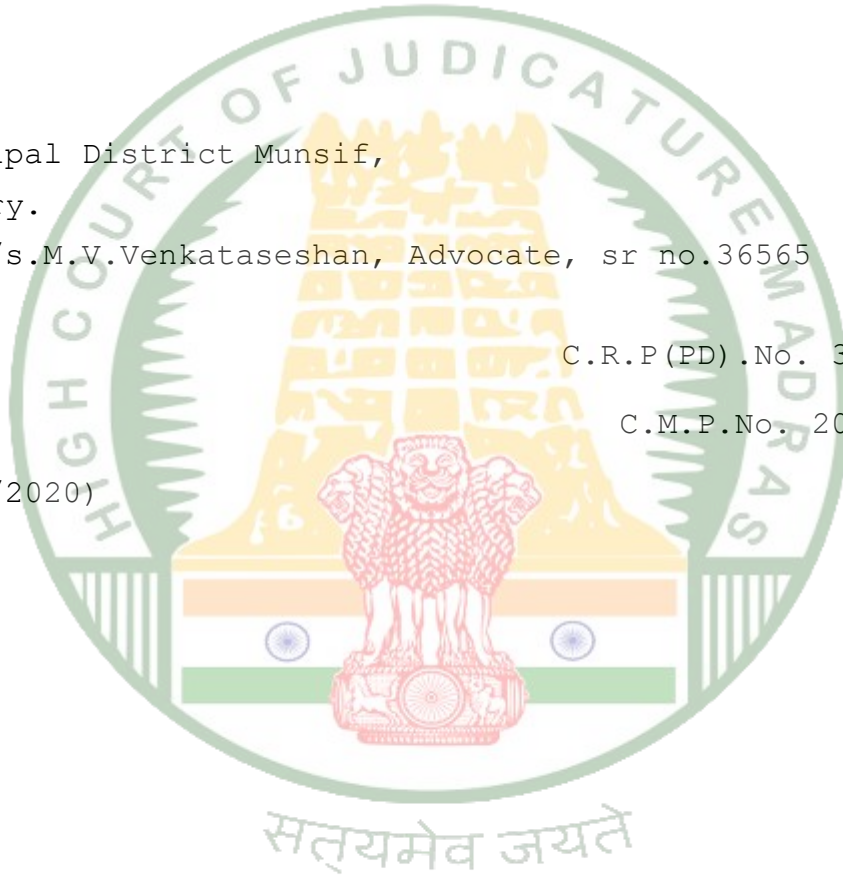
To:-

The Principal District Munsif,
Pondicherry.

+1cc to M/s.M.V.Venkataseshan, Advocate, sr no.36565

C.R.P(PD).No. 3744 of 2018
and
C.M.P.No. 20865 of 2018

SAI (CO)
RMP (14/12/2020)



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