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**C.R.P(MD)No.563 of 2014**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATE ON WHICH RESERVED : 26.08.2020**

**DATE ON WHICH PRONOUNCED : 04.09.2020**

**CORAM**

**THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM**

**C.R.P. (PD) (MD)No.563 of 2014**

**and**

**M.P. (MD) .No.1 of 2014**

K.Rathakrishnan

... Petitioner /Petitioner/  
3<sup>rd</sup> Defendant

**Vs.**

1.Rajalakshmi

2.Revathi

...Respondents 1 & 2 /Respondents 1 & 2/  
Plaintiffs

(Through their power agent  
Navaneethakrishnan)

3.The District Collector,  
Virudhunagar District,  
Virudhunagar.

4.The Tahsildar,  
Office of the Tahsildar,  
Rajapalayam.

....Respondents 3 & 4/ Respondents 3 & 4/  
Defendants 1 & 2

5.Karuppaiah

6.Athimoolam

7.Anbalagan

8.Subbaiah

.... Respondents 5 to 8/ Respondents 5 to 8/  
Defendants 4 to 7

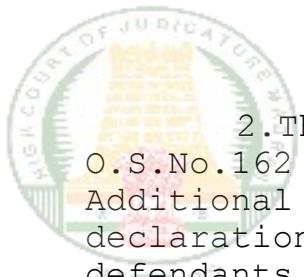
**PRAYER:-** Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decretal order dated 22.08.2013 passed in I.A.No.460 of 2013 in O.S.No.162 of 2011 on the file of the Additional District Munsif Court, Srivilliputhur.

For Petitioner : Mr.M.P.Senthil

For Respondents : No appearance

**ORDER**

This Civil Revision Petition has been filed by the petitioner/3<sup>rd</sup> defendant against the dismissal of the application in I.A.No.460 of 2013 in O.S.No.162 of 2011 on the file of the Additional District Munsif, Srivilliputhur, dated 22.08.2013.



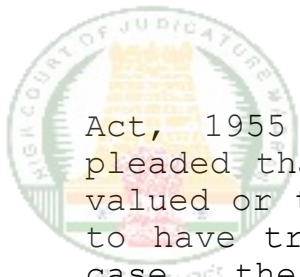
2.The respondents 1 & 2 herein have filed a suit in O.S.No.162 of 2011, through their power agent, on the file of the Additional District Munsif, Srivilliputhur, for the relief of declaration of title and for permanent injunction to restrain the defendants therein from interfering with the peaceful possession and enjoyment of the suit properties. The third defendant, after receipt of the summons, entered appearance through a counsel and filed a written statement. Thereafter, he filed an application in I.A.No.459/2013 under Order 14 Rule 2 r/w 151 of Civil Procedure Code, requesting the Court to frame additional issues with regard to the Court fees and jurisdiction of the Court. He also filed another application in I.A.No.460/2013 under Order 14 Rule 2 r/w 151 of Civil Procedure Code to try the issue "Whether this Court has got pecuniary jurisdiction to try the suit?" as preliminary issue and hold that the said Court has no pecuniary jurisdiction to try the said suit. The learned Additional District Munsif, by the common order, dated 22.08.2013, has allowed the application in I.A.No.459 of 2013 and framed three additional issues with regard to valuation of the suit and payment of court fees and also with regard to pecuniary jurisdiction, however, he dismissed the application in I.A.No.460/2013.

3.Aggrieved by the dismissal of the application in I.A.No.460/2013, the third defendant has filed the present civil revision petition.

4.Since the respondents 1 & 2/plaintiffs 1 & 2 have filed the suit through Power Agent Mr.S.Navaneethakrishnan, this Court had sent notice by RPAD to the said Power Agent for the address given in the plaint. But the said postal cover was returned as 'insufficient address'. Since no other address is available, this Court has held that the Power Agent of the respondents 1 & 2/plaintiffs 1 & 2 is purposely evading to receive the notice. Accordingly, the Registry was directed to print his name in the cause list. Further, the respondents 5 to 8 are co-defendants and hence, notice to them is dispensed with.

5.Even though the name of the Power Agent of the respondents 1 & 2/plaintiffs 1 & 2 has been printed in the cause list, there is no appearance either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the materials filed along with this civil revision petition, order is being passed in this civil revision petition.

6.The learned counsel for the petitioner has submitted that in the suit properties, there are 500 neem trees and their value, even at the time of filing of the suit, was more than Rs.3 lakhs, but the respondents 1 & 2/plaintiffs have valued the plaint by suppressing the existence of neem trees. He further submitted that as per Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation

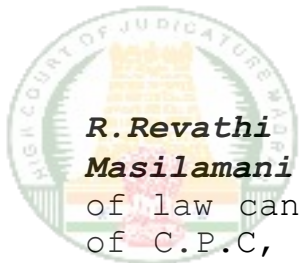


Act, 1955 (hereinafter referred as TNCF Act), if the defendant pleaded that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient, the Trial Court ought to have tried the said issue as a preliminary issue, but, in this case, the Trial Court erroneously dismissed the petitioner's petition. He further submitted that Order 14 Rule 2 r/w 151 of C.P.C clearly says that where there are issues both out of law and of fact, the Court has to try the issue of law as a preliminary issue. He further submitted that if the suit is properly valued, the District Munsif Court would not have pecuniary jurisdiction to try the suit, but the learned Additional District Munsif has erroneously dismissed the petitioner's petition and therefore, he prayed to allow the civil revision petition and set aside the order passed by the learned District Munsif in I.A.No.460 of 2013 in O.S.No.162/2011 and direct the learned District Munsif to try the court fees issue and also jurisdiction issue as preliminary issues.

7.A perusal of the plaint shows that the suit properties are ryotwari lands. The respondents 1 & 2/plaintiffs have filed the aforesaid suit for the relief of declaration of title and for permanent injunction. They have valued the reliefs of declaration under Section 25(b) and permanent injunction under Section 27(c) of the TNCF Act. Inso far as the relief of declaration is concerned, the said relief was valued 30 times of the kist. Section 7 of the TNCF Act deals with how to determine the market value for the purpose of paying court fees. The said provision was amended in the year 2017. Before amendment, the market value of the land in respect of the suits falling under Section 25(a), 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45 or 48 shall be deemed to be where the land is ryotwari land, thirty times the survey assessment of the land. The aforesaid suit was filed in the year 2011. So, at that time Section 7 of the TNCF Act was not amended. As already pointed out, as per the provision then in existence, in respect of ryotwari land, for the relief of declaration, thirty times of the survey assessment of the land has to be taken into account for fixing the market value. In this case, the plaintiffs have valued the relief of declaration as per the then existing provision of law.

8.It is also to be pointed out that though the petitioner herein in his affidavit filed in support of I.A.No.460 of 2013 has averred that there are 500 standing neem trees in the suit properties and their value was more than Rs.3 lakhs, in the written statement, he has not specifically averred the aforesaid facts. On the contrary, he has simply stated that the plaintiffs have not properly valued the suit for the purpose of court fees and jurisdiction.

9.The learned Additional District Munsif, taking into consideration the aforesaid facts and also relying upon the decisions in **Nagarjuna Oil Corporation Limited, Cuddalore Vs**



**R.Revathi [2011 (2) CTC 763]** and **Balasubramaniam and 6 Others Vs. Masilamani and 5 others [2011 (4) CTC 307]**, held that pure question of law can be decided as a preliminary issue under Order 14 Rule 2 of C.P.C, whereas, the issue of Court Fees is a mixed question of fact and law and the same can be decided along with other issues.

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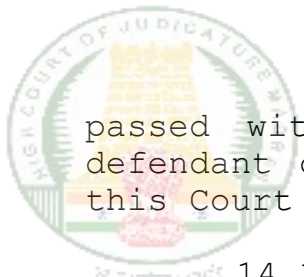
10.In **Nagarjuna Oil Corporation Limited, Cuddalore Vs R.Revathi [cited supra]**, this Court has held "that the Court fee is a mixed question of fact and law and it cannot be decided as a preliminary issue."

11.In **Balasubramaniam and 6 Others Vs. Masilamani and 5 others [2011 (4) CTC 307]**, in para.No.20, this Court has held as follows:

20.In so far as Order 14, Rule 2, C.P.C is concerned, an issue can be taken up as a preliminary issue, if it is purely a question of law. Admittedly, in the present case, the facts as stated by the Plaintiff and the facts as putforth by the Defendants are disputed facts and only on the basis of these disputed facts, the question of payment of correct Court-fee is to be determined. In such circumstances, I do not find any illegality or infirmity in the order passed by the Trial Court holding that to decide the valuation of the Court-fees as a preliminary issue does not arise at this stage. Therefore, on this score also, I do not find any infirmity in the order passed by the Trial Court."

12.In view of the aforesaid decisions, under Order 14, Rule 2, C.P.C, an issue can be taken as a preliminary issue, if it is purely a question of law. In this case, admittedly, the facts as stated by the plaintiffs and the facts as put forth by the defendants are disputed facts and as such, only after taking evidence, the issue of court fee can be decided.

13.In this case, as already pointed out that in the written statement, the petitioner has not specifically averred about the existence of 500 neem trees in the suit properties and their value was more than Rs.3 lakhs. On the contrary, he has simply pleaded that the plaintiffs have not properly valued the suit for the purpose of Court fees and jurisdiction. For proceeding to decide the objection with regard to valuation and court fees, as provided under Section 12(2) of the TNCF Act, the petitioner has not brought on record any materials to substantiate his objection with regard to court fees. In **Sri Rathna Varmaraja Vs. Srimathi.Vimala (AIR 1961 SC 1299)**, the Hon'ble Supreme Court has held that the Court Fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. Further, it was held that if any order is



passed with regard to the court fees paid on the plaint, the defendant cannot file revision against the said order. Therefore, this Court does not find any merit in this civil revision petition.

14. In the result, this Civil Revision Petition is dismissed, by confirming the order dated 22.08.2013 passed in I.A.No.460 of 2013 in O.S.No.162 of 2011 by the learned Additional District Munsif, Srivilliputhur. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vs

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Additional District Munsif Court,  
Srivilliputhur.

2. The District Collector,  
Virudhunagar District,  
Virudhunagar.

3. The Tahsildar,  
Office of the Tahsildar,  
Rajapalayam.

+1 CC to Mr.M.P. SENTHIL, Advocate ( SR-16271[F] dated 08/09/2020 )

**Order made in**  
**C.R.P. (PD) (MD) No.563 of 2014**  
**04.09.2020**

VB (16.09.2020) 5P 5C