



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)Nos.970 and 995 of 2017

and

C.M.P. (MD)No.4296 of 2017

C.R.P. (MD)No.970 of 2017

Tamilarasan @ Muthuramalingam : Petitioner/3rd Respondent/
3rd Defendant

.. Vs ..

1.Latha : 1st Respondent/Petitioner/Plaintiff
2.Muthuramalingam : 2nd Respondent/1st Respondent/1st Defendant
3.Vadivel Murugan : 3rd Respondent/2nd Respondent/2nd Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and decretal order of the Sub Court, Paramakudi in I.A.No.205 of 2017 in O.S.No.109 of 2016, dated 18.04.2017.

C.R.P. (MD)No.995 of 2017

Tamilarasan @ Muthuramalingam : Petitioner/2nd Petitioner/
3rd Defendant

.. Vs ..

1.Latha : 1st Respondent/1st Respondent/Plaintiff
2.Muthuramalingam : 2nd Respondent/1st Respondent/1st Defendant
3.Vadivel Murugan : 3rd Respondent/1st Petitioner/2nd Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and decretal order of the Sub Court, Paramakudi in I.A.No.49 of 2017 in O.S.No.109 of 2016, dated 18.04.2017.

For Petitioner : Mr.V.Raghavachari
both cases

For Respondents : Mr.T.Lajapathi Roy
in both cases

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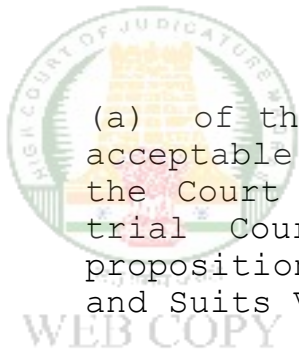


COMMON ORDER

The Civil Revision Petition in C.R.P.(MD)No.970 of 2017 is directed against the order allowing the petition filed for amendment of plaint under Order 6, Rules 17 & 18 of C.P.C. by the plaintiff in I.A.No.205 of 2017 in O.S.No.109 of 2016 on the file of the Sub Court, Paramakudi. C.R.P.(MD)No.995 of 2017 is directed against the order dismissing the petition filed by the revision petitioner/third defendant to frame the question relating to Court fee as a preliminary issue in I.A.No.49 of 2017 in O.S.No.109 of 2016 on the file of the Sub Court, Paramakudi.

2.The revision petitioner is the third defendant in the suit in O.S.No.109 of 2016 on the file of the Sub Court, Paramakudi. The first respondent herein, as plaintiff, filed the suit in O.S.No.109 of 2016 for declaration of her title and permanent injunction restraining the revision petitioner and respondents 2 and 3/defendants from interfering with her peaceful possession and enjoyment of the suit property. It is stated in the plaint that the suit property is an extent of 1 Acre 69 cents in Survey No.115/1 in Kottaimedu Village within Narayanapuram Panchayat in Kamuthi group in Kamuthi Taluk in Ramanathapuram District. In the description of plaint schedule, the property is described as a land measuring an extent of 1 Acre 49 Cents excluding an extent of 20 Cents which was purchased by the first defendant in the suit. In the plaint, the plaintiff has specifically stated that the defendants 2 and 3 are making an attempt to put up construction. In the written statement filed by the defendants 2 and 3, specific averments were made disputing the title of the plaintiff. It is further stated in the written statement that the third defendant has put up a residential building in the suit property based on the sale deed dated 26.05.2016. The third defendant specifically raised an issue regarding maintainability of the suit by showing the suit property as a vacant site. It is to be noted that the suit was laid in November, 2016 and the written statement of defendants 2 and 3 was filed in January, 2017.

3.After the written statement was filed, the plaintiff filed a petition in I.A.No.205 of 2017 to amend the plaint. The amendment was to value the property as a ryotwari punja land by taking 30 times the kist (land revenue) payable for the land. In short, in the affidavit filed in support of the amendment petition, it is admitted that the suit has been valued under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Since the land has been classified as a punja land, it is stated that the suit property has been wrongly valued by giving market value for the land. This petition for amendment though was opposed by the revision petitioner, the trial Court allowed the petition by holding that the Court fee payable for the suit property under Section 7(2)



(a) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, is acceptable and that the question regarding pecuniary jurisdiction of the Court should be decided at the time of trial. The order of trial Court does not appear to be one following the settled proposition of law nor specific provisions of Tamil Nadu Court Fees and Suits Valuation Act, 1955.

4.It is to be noted that the suit property is a house site capable of being developed for putting up constructions. In the written statement that was filed immediately after the suit was laid, the revision petitioner indicated that the property is developed as a residential layout and that several alienations have been made by the promoter as house site. The construction put up by the third defendant pursuant to the sale deed was also indicated in the written statement that was signed on 09.01.2017. The sale deed, under which the third defendant claims title, indicate that the suit property was sold as house site and the piece of land purchased by the third defendant is referred to as Plot Nos.30 and 31 in the residential layout. Having regard to the nature and character of the land that was dealt with immediately before the suit, this Court is unable to accept the contention of the learned Counsel appearing for the first respondent that the property is a ryotwari punja land so as to fix the market value for the purpose of Court fees payable. Sections 7(2)(a) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is relevant and extracted hereunder:

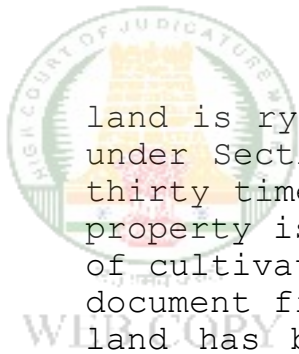
"7. Determination of market Value:- (1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

2.The market value of land in suits falling under Sections 25(a), 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45 or 48 shall be deemed to be -

(a) where the land is ryotwari land - thirty times the survey assessment on the land:

5.It is brought to the notice of this Court that by virtue of an amendment introduced to Section 7, Section 7(2)(a) as it existed prior to the amendment by Act 6 of 2017 viz., the Tamil Nadu Court Fees and Suits Valuation (Amendment) Act, 6 of 2017, has been deleted. It is admitted that the new amendment by Act 6 of 2017 came into effect from 01.03.2017. In the present case, the suit was filed long prior to the amendment and hence, the amendment that was introduced after filing of the suit may not be applicable to this case.

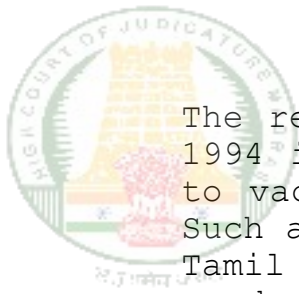
6.The term "ryotwari" is not defined under the Tamil Nadu Court Fees and Suits Valuation Act, 1955. The term ryotwari is defined only under the Tamil Nadu Estates Land Act, 1908. The ryotwari land is defined as a land capable of cultivation. Hence, only when the



land is ryotwari land, the market value of the land in suits filing under Sections 25(a) and 25(b) of the Act can be assessed by taking thirty times the revenue assessment of the land. In this case, the property is not pleaded or stated to be an agricultural land capable of cultivation. The land has been converted as a house site and the document filed by the defendants namely the sale deed shows that the land has been sold as a house site. In such circumstances, the amendment of plaint contrary to the original plaint by treating the land as a land capable of assessing the market value cannot be accepted. Hence, this Court finds the order of the trial Court allowing the amendment is contrary to the pleadings and the documents relied upon by the defendants. The learned Counsel appearing for the first respondent relied upon a judgment of a Division Bench of this Court in the case of **George Thomas v. Srividya** reported in **(2003) 1 M.L.J. 823** wherein at paragraph 26 it has been held as under:

"26. However, the disentitlement of the defendant to raise the plea of under valuation will not absolve the liability of the plaintiff to pay proper Court fee. In the event, on facts, this Court comes to the conclusion that the suit is undervalued, even in the absence of any plea, it can direct the plaintiff to pay the deficit court fee. Such exercise of power is on the basis of the settled principle of law that the Court fee is a matter between the Court and the State. On the materials available, if the Court is satisfied that the suit is undervalued and consequently the plaint is liable to be rejected, nevertheless, the plaintiff may be called upon to pay the deficit court fee, as it is the obligation of the plaintiff to take care that the valuation of the suit is as per the provisions of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. In this case, from the materials we find that in a suit for recovery of possession, the proper court fee ought to have been paid is only under Section 30 of the Tamil Nadu Court Fees and Suits Valuation Act and such court fee shall be only on the basis of the market value of the property. The direction for payment of the court fee is made by the Courts only to prevent a plaintiff to deliberately undervalue the suit. In fact, the Apex Court in the judgment in SMT.TARA DEVI v. THAKUR RADHAKRISHNA MAHARAJ , while considering the conduct of the plaintiff in valuing the relief and paying deficit court fee has held as follows:-

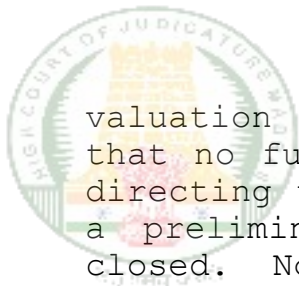
"The plaintiff however, has not been given the absolute right or option to place any valuation whatever on such relief and where the plaintiff manifestly and deliberately underestimates the relief, the court is entitled to examine the correctness of the valuation given by the plaintiff and to revise the same, if it is patently arbitrary and unreasonable."



The relief sought for by the plaintiff in O.S. No. 866 of 1994 is for a judgment and decree directing the defendant to vacate and handover vacant possession of the premises. Such a relief should be valued only under Section 30 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. Hence, we hold that the suit is undervalued and for the said purpose, neither the plaint can be rejected at this stage nor the suit can be dismissed and to meet the ends of justice, it would be only proper that the plaintiff should be directed to pay the deficit court fee in the event the judgment and decree made in O.S. No. 866 of 1994 is confirmed on merits by this Court."

7.Hence, this Court is of the view that the lower Court ought to have considered the plea with reference to the factual background in the light of the provisions particularly Section 7 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. The plaintiff cautiously suppressed the fact that the suit property had been developed as a house site and several alienations have come after development of the suit property as a layout. In such circumstances, this Court is unable to sustain the order of the lower Court. Hence, this Civil Revision Petition in C.R.P.(MD) No.970 of 2017 is allowed and the order of the learned Sub Judge, Paramakudi, in I.A.No.205 of 2017 in O.S.No.109 of 2016 is set aside. However, it is open to the first respondent/plaintiff to get permission from the Court to pay the deficit Court fee if necessary and proceed further. The trial Court is directed to expedite the trial and dispose of the suit in O.S.No.109 of 2016 within a period of six months from the date of payment of deficit Court fee as required in law. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

8.C.R.P.(MD)No.995 of 2017 is preferred as against the order passed by the trial Court in I.A.No.49 of 2017 in O.S.No.109 of 2016 dismissing the petition filed by the revision petitioner/third defendant to frame the question relating to Court fee as a preliminary issue. Following the order of trial Court in accepting the prayer for amendment to pay Court fee as per Section 7(2)(a) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, the lower Court dismissed the petition filed by the revision petitioner mainly on the ground that the plaintiff has right to value the property as a cultivable land and to pay Court fee under Section 7 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and that the case is not a case of undervaluation. Consequently, the trial Court further observed that the defendants cannot raise the question as to the valuation and payment of Court fee and insist that the issue should be decided as a preliminary issue. This Court has already held that the attempt made by the first respondent/plaintiff to fix the market value on the basis of the revenue assessment is not acceptable. This Court in C.R.P.(MD)No.970 of 2017 has already directed the first respondent/plaintiff to pay Court fee as per



valuation shown in the plaint. Hence, this Court is of the view that no further order is necessary in this Civil Revision Petition directing the lower Court to frame the issue regarding Court fee as a preliminary issue. Accordingly, C.R.P.(MD)No.995 of 2017 is closed. No costs.

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Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SRM

To

The Sub Court,
Paramakudi.

+1 CC to Mr.T. LAJAPATHI ROY, Advocate (SR-14024[F] dated
13/08/2020)

C.R.P. (MD)Nos.970 and 995 of 2017

12.08.2020

VB (31.08.2020) 6P 3C