

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06.07.2021

PRONOUNCED ON: 28.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 134 of 2020

And

C.M.P.No. 777 of 2020

A.L.Anusuya ... Petitioner/3rd Defendant

-Vs-

1. Rathinavel ... 1st Respondent/Plaintiff

2. The Executive Officer
Arulmighu Veerabhadra Swamy Temple
Kanchipuram ... 2nd Respondent/1st Defendant

3. The Joint Commissioner
Tamilnadu HR &CE Board,
1254, Sona Plaza, 1st Floor
Regional Transport Officer Salai,
Sathuvachari
Vellore – 9 ... 3rd Respondent/2nd Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, 1908 against the fair and decreetal order dated 04.12.2019 in I.A.No. 795 of 2017 in O.S.No. 306 of 2016 passed by the learned Additional Sub Judge, Kanchipuram in dismissing the petition.

For Petitioner : Mr. K.G. Krishna Raj
for Ms. S.Shanthakumari

For 1st Respondent : Mr. M.Siram

For 2nd Respondent: Mr. R.Bharanidharan

For 3rd Respondent: Dr.S.Suriya
Government Advocate

ORDER

The Civil Revision Petition has been filed by the 3rd defendant in O.S. No. 306 of 2016, questioning the order dated 04.12.2019 dismissing I.A. No.795 of 2017, which Interlocutory Application had been filed the revision petitioner herein under Order 14 Rule 2(a) r/w Section 151 CPC to try as a preliminary issue the pecuniary jurisdiction in the first instance and decide the maintainability of the suit.

2. The suit in O.S. No. 306 of 2016 had been filed by the 1st respondent herein before the Sub Court at Kanchipuram, seeking a

judgment and decree in the nature of a declaration that the 1st respondent herein/plaintiff is entitled to remain in possession and enjoyment of the suit 'A' Schedule property as a tenant and consequently permit him to deposit the rent into Court till the disputes among the defendants are settled and for a permanent injunction restraining the defendants from interfering with peaceful possession and for costs of the suit. The suit 'A' Schedule property was vacant land in Nellukara Street, Kanchipuram.

3. It must also be mentioned that the revision petitioner herein also had filed a suit in O.S. No. 220 of 2016 before the District Munsif Court at Kanchipuram with respect to the same property, in which the 1st respondent herein was shown as the 2nd defendant, seeking a permanent injunction restraining the defendants from interfering with peaceful possession and for costs of the suit.

4. In O.S. No. 306 of 2016, the revision petitioner/3rd defendant filed I.A. No. 795 of 2017, seeking, as stated to try as a preliminary issue the question of jurisdiction, primarily on the valuation of the suit and the Court fees paid.

5. The application was resisted by the 1st respondent herein/plaintiff who contended that as plaintiff, he was entitled to overvalue the suit and that such an issue is a mixed question of law and fact and could be decided at the time of trial.

6. Since the issues raised for trial have not yet been addressed, it may not be appropriate for me to enter into a discussion regarding the facts of the case.

7. The learned Sub Judge, Kanchipuram, was also of the opinion that several issues arise for trial, and they are all mixed questions of law and fact and postponing those issues would not be reasonable. Learned Sub Judge, therefore dismissed the application, leading to the filing of this Revision.

8. Though I.A. No. 795 of 2017 had been filed under Order 14 Rule 2(a) r/w Section 151 CPC to try as a preliminary issue the pecuniary jurisdiction in the first instance and decide the maintainability of the suit, it actually is an application surrounding Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

9. The two provisions are extracted below :

“Rule 2 Order XIV of Code of Civil Procedure 1908 "Court to pronounce judgment on all issues" :

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

Section 12 (2) of Tamil Nadu Court Fees and Suits Valuation Act, 1955 : “ Decision as to proper fee in other Courts.”

(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 the next succeeding subsection, 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.”

10. In *S.N.S. Sukumaran vs C. Thangamuthu* and batch of Civil Revision Petitions reported in *2012 (5) CTC 705 (DB) : (2012) 5 LW 197 (DB)*, a reference was made, in view of conflicting decisions by various Single Bench judgments, before a Division Bench for deciding the issue “*whether payment of Court-fees on Plaint, being a jurisdictional issue, has to be decided as a preliminary issue ?*”

11. Before proceeding to answer the reference, the Division Bench also examined the conflict between Order 14 Rule 2 CPC and Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, and held as follows :

“25. As noticed above, Section 12(2) of the State Act is a complete departure from the procedure provided under Order 14, Rule 2 of the Code of Civil Procedure. Notwithstanding the inconsistency contained in the Act of the Parliament viz., the Code of Civil Procedure and the provisions contained in Section 12(2) of the State Act, having regard to the fact that the assent of the President was received, the provisions of the said Section has to be

complied with and can be held to be a valid legislation”.

12. The Division Bench finally answered the reference as follows :

“32. After giving our anxious consideration to the matter and having regard to the law discussed hereinabove, the reference is answered as under:

(1) The Tamil Nadu Court-fees and Suits Valuation Act, 1955 (Section 12) enacted by the State Legislature on a subject covered by the Concurrent List, albeit inconsistent with the provisions of the Code of Civil Procedure (Order 14, Rule 2) and being in compliance with the requirement of Article 254 of the Constitution of India, having been given assent by the President of India, shall prevail over the provisions of the Code of Civil Procedure.

(2) When a Defendant comes forward with a case pleaded in the Written Statement questioning the correctness of the valuation of the

suit property and payment of Court-fee and asks the Court, by an Application, to decide it first before deciding the Suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before deciding the Suit on merits.

(3) However, before proceeding to decide the objection with regard to valuation and Court-fee as provided under Section 12(2) of the State Act, the Court shall prima facie satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the Defendant has substance.

(4) Such objection with regard to improper valuation of the Suit and insufficiency of Court-fee shall be entertained by the Court only before the hearing of the Suit on merits commences and witnesses are examined. Section 12(2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merits of the case.

(5) Exercise of right by the Defendant as contained in Section 12(2) of the Act must be bona fide and not with an ulterior motive of dragging the Suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such Application, and in the event the Court finds that the Defendant is not diligent or co-operating with the Court in the disposal of such objection expeditiously, then the Court shall proceed with the hearing of the suit on merits and decide all issues, including the one relating to the valuation of the Suit and the adequacy or otherwise of Court-fee, together.

*In the light of the law discussed hereinabove, we are answering the reference as above. Consequently, the contrary view taken by the learned Single Judges cannot stand as good law. Hence, the decisions rendered in **E. Pushpalatha v. C. Shanmughasundaram, 2003 (1) CTC 87**; and **A. Chinnaraj v. Saroja Ammal, 2007 (5) CTC 432 : 2008 (1) MLJ 75** stand overruled. Further, the decision rendered in **Solaiammal v. Rajarathinam, 2003 (4) CTC 268**, stands partly overruled. The decisions rendered in **Laljivora v. Srividya, 2001 (2) CTC**.*

411; and V.R. Gopalakrishnan v. Andiammal,
2002 (2) CTC 513, are affirmed.”

13. In view of the pronouncement of the Division Bench, a duty is cast on the Sub Judge, Kanchipuram to re-examine the order dated 04.12.2019 in I.A. No. 795 of 2017. The learned Sub Judge should ensure that the order is in conformity with the dictum laid down in **S.N.S. Sukumaran vs C. Thangamuthu** and batch of Civil Revision Petitions reported in **2012 (5) CTC 705 (DB) : (2012) 5 LW 197 (DB)**.

14. In the result, the Civil Revision Petition is allowed. The Order dated 04.12.2019 in I.A. No. 795 of 2017 passed by the Sub Court, Kanchipuram is set aside. The said Interlocutory Application is remitted back to the Sub Court, Kanchipuram for fresh disposal in accordance with the dictum laid down in **S.N.S. Sukumaran vs C. Thangamuthu** and batch of Civil Revision Petitions reported in **2012 (5) CTC 705 (DB) : (2012) 5 LW 197 (DB)**. Connected Miscellaneous Petition is closed. No order as to costs.

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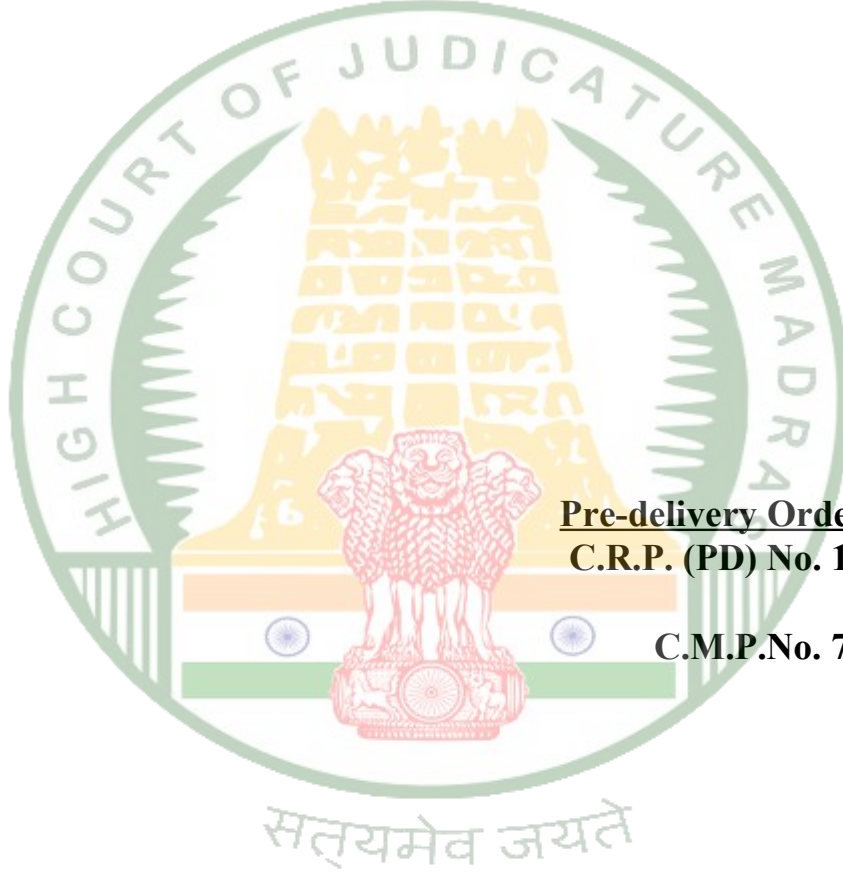
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C.V.KARTHIKEYAN, J.

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