

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.No.367 of 2018 &
C.M.P.No.1984 of 2018

- 1.Rahamathunnisa
- 2.Kamal Mohammed
- 3.Mohammada Begum
- 4.Sabura Begum
- 5.Sowdha Begum

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Petitioners

Vs.

- Abdul Saraq (died)
- 1.Mohammed Yahoob
 - 2.Abdullah
 - 3.Asan Ali
 - 4.Ravichandran
 - 5.Abu Backer
 - 6.Mayakkannan
 - 7.Kamaraj
 - 8.Raabhiya
 - 9.Kadar Hussain
 - 10.Noorjahan
 - 11.Dowlath
 - 12.Ansar
 - 13.Rahamath
 - 14.Ayubkhan

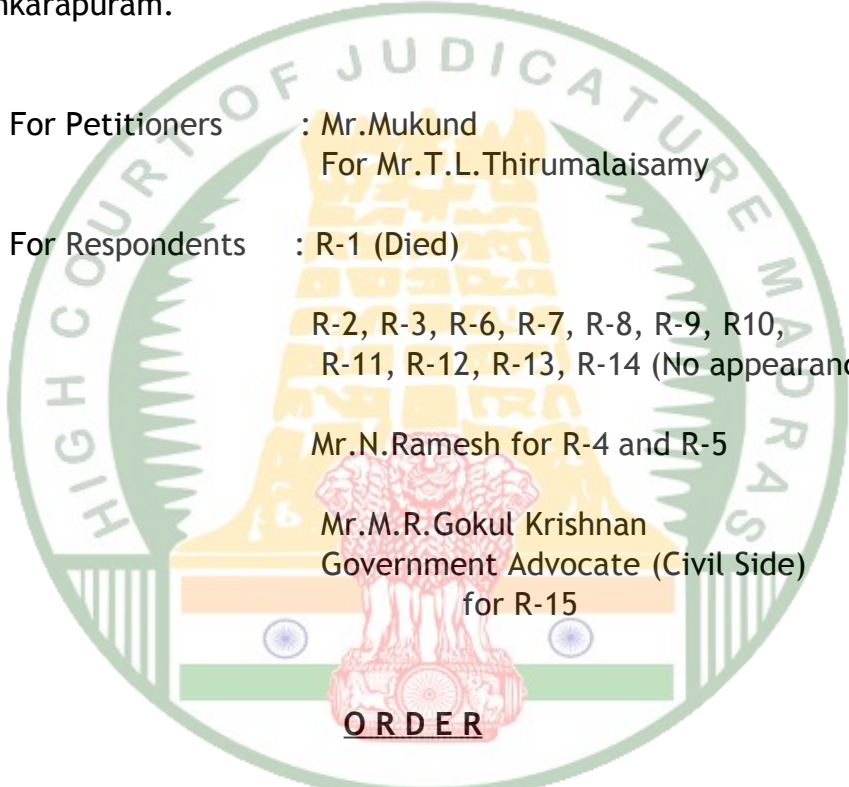
15.Sub Registrar,
Sub Registrar Office,
Sankarapuram.

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Respondents

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PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal Order dated 05.11.2016 made in Check Slip No.59/27/N in O.S.No.141 of 2010, on the file of District Munsif Court, Sankarapuram.



For Petitioners : Mr.Mukund
For Mr.T.L.Thirumalaisamy

For Respondents : R-1 (Died)

R-2, R-3, R-6, R-7, R-8, R-9, R10,
R-11, R-12, R-13, R-14 (No appearance)

Mr.N.Ramesh for R-4 and R-5

Mr.M.R.Gokul Krishnan
Government Advocate (Civil Side)
for R-15

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 05.11.2016 in Check Slip No.59/27/N in O.S.No.141 of 2010, on the file of District Munsif Court, Sankarapuram.

2. The petitioners instituted the suit O.S.No.141 of 2010, for declaration and consequential permanent injunction, restraining the defendants 1 to 14/ respondents 1 to 14 from in any manner interfering

with their peaceful possession and enjoyment of the suit property. It is seen that during annual inspection, the Assistant Court Fee Examiner of this Court found that proper Court fee was not paid in the suit and issued Check Slip No.59/27/N. According to the Court Fee Examiner, the payment of Rs.75.50/- under Section 25 (b) of the Tamil Nadu Court Fees and Suits Valuation Act (In short "the Act") is not correct and the petitioners/plaintiffs have to pay a sum of Rs.14,450/-. Overruling the objections of the petitioners, the learned Judge, passed the impugned order directing the petitioners/plaintiffs to pay a sum of Rs.14,450/- as Deficit Court fee. Aggrieved over the order, the petitioners have come up with this Revision.

3. It is the submission of Mr.Mukund, learned counsel for the petitioners that the suit property is an agricultural land measuring an extent of 2 acres and 23 cents, in which, a house was constructed for agricultural purpose long back. But it was misconstrued as 2 1/4 cents = 972.28 sq.ft and the check slip was issued. Even though this position was explained in the reply, the learned Judge held that the suit property is not a Ryotwari land, just because there is a building in a portion of the land. In order to prove the case, the suit property is a Ryotwari land, the petitioners/plaintiffs have annexed documents viz., patta, chitta,

adangal, extracts, kist receipts, in the plaint, however, the same was not properly appreciated by the learned Judge, which warrants interference of this Court.

4. *Per contra* learned counsel appearing for the respondents 4 and 5 and the learned Government Advocate (Civil Side) appearing for the respondent No.15 would submit that as the property is house site and plot of vacant land, the same is required to be valued as per Section 7(2)(g) of the Act, and therefore, the valuation adopted by the plaintiffs as Ryotwari agricultural land was rightly found by the Assistant Court Fee Examiner of this Court, which was also confirmed by the learned Judge.

5. I have given my anxious consideration to the submission made by both the counsels.

6. Perusal of the records show that the petitioners instituted the suit for declaration and other consequential reliefs. The suit property is situated in Vadasettyandal Village in S.No.95/1 (New Survey No.95/1 B2). The description of the property shows that the extent is 1.66.0 H.A., out of which, 2 acres 23 cents is the suit schedule property. A well attached with

5 HP motor is also available. The Court Fee Examiner issued check slip on the basis that the suit property is 2.23 cents or 9.72/28 sq.ft vacant house site. The petitioners paid Court fee 30 times of the kist treating the property as an agricultural loan.

7. The only question arises for consideration in this Revision is whether the suit property classified by the petitioners/plaintiffs as Ryotwari agricultural land is valid.

8. In **2010 (3) MWN (Civil) 577 [P.Sekar Vs. V.K.Vaiyapuri]** this Court has held that Raiyat means a person holding land for purpose of agriculture and division of all available land whether cultivated or waste, into blocks, even waste land can be classified as Ryotwari. The relevant paragraphs are extracted hereunder:-

"8. It is seen from the Tamil Nadu Court Fees and Suit Valuation Act, as per section 7, the court fee payable depends on the market value of the property and such value shall be determined as on the date of presentation of the plaint. Further, as per section 7(2), the market value of the land in suits falling under sections 25(a), 25(b), 27(a), 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 and as per section 7(2)(g) where the land is a house-site whether assessed to full revenue or not, poramboke land, or is land not falling within the foregoing description its market value. Therefore, it is seen from section 7 of the Tamil Nadu Court Fees and Suits Valuation Act, if it is 'ryotwari land', the market value is 30 times of the survey assessment and if it is a house or poramboke or land not falling within the other description, the court fee shall be paid on the market value. "

...

13. In this case, it is stated by the First Respondent that the property is a 'Ryotwari Punja land', it may be that the property is surrounded by house sites and that would not make the suit property as house sites and it is not the case of the Revision Petitioners that the First Respondent has pleaded that the property is a house site and considering the extent of the property, it cannot be stated that the property is a house site and it can be agricultural property and it may become house sites. Hence, the market value of the property as stated in the Plaint is correct and lower Court after considering all these aspects and relying upon the various judgments held that the issue cannot be decided as preliminary issue.

14. Further, as per the Judicial Dictionary, 13th Edition, K.J. Aiyar, 'Ryotwari' means the division of all arable

land, whether cultivated or waste, into blocks, the assessment of each block at a fixed rate for a term of years and the exaction of revenue from each occupant according to the area of land thus assessed. Therefore, it is seen from the above definition even a waste land can be classified as 'ryotwari' Further, as per the P. Ramanatha Aiyer's Law Lexicon Dictionary, 'Raiyat' means a person holding land for purposes of agriculture. "

9. In the case on hand, it is pertinent to mention that the documents annexed in the plaint, viz., patta, chitta, adangal, extracts, kist receipts and the description of the property would reveal that the suit property is an agricultural land, merely because a small house was constructed, it cannot be treated as house site.

10. In my considered view, the learned Judge has committed an irregularity in upholding the check slip issued by the Assistant Court fee examiner and directed the petitioners to value the relief of declaration on the market value of the property and pay the deficit Court fee of Rs.14,374/- under Section 7(2)(g) of the Act.

11. For the foregoing reasons, the order passed by the learned District Munsif, Sankarapuram is set aside and accordingly, this Civil Revision Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

17.08.2021

Index : Yes / No
Internet : Yes
Speaking order / Non Speaking Order

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To

- 1.The District Munsif Court,
Sankarapuram.
- 2.The Sub Registrar,
Sub Registrar Office,
Sankarapuram.

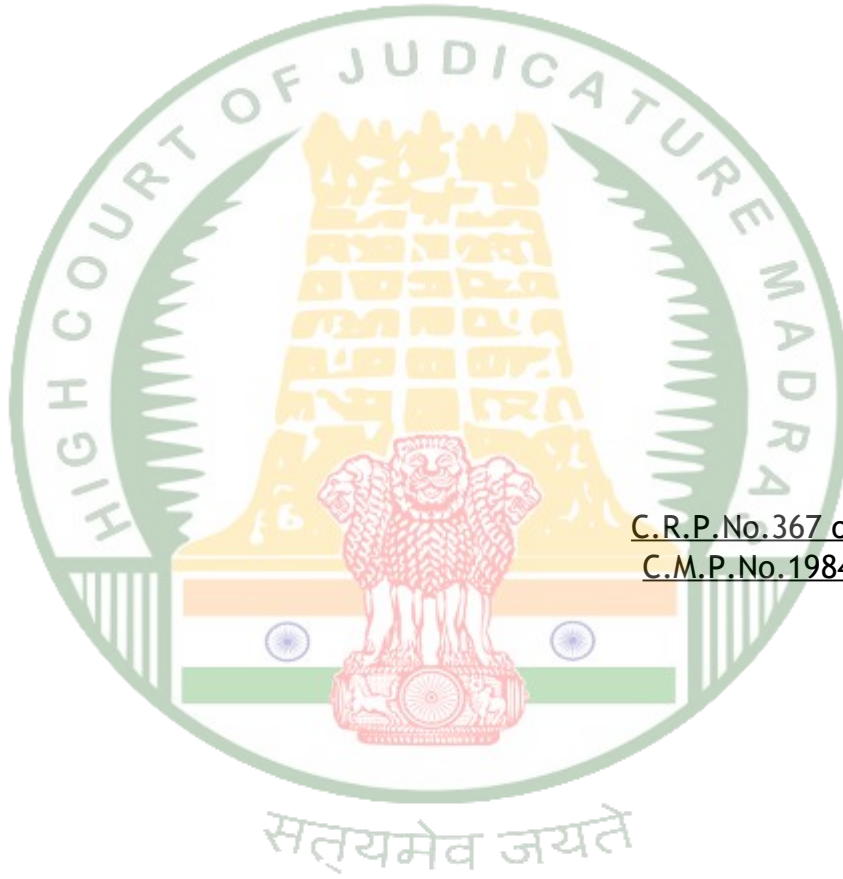


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K.KALYANASUNDARAM, J.

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