

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 17TH DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

A.No.3124 of 2020  
in  
C.S.No.29 of 2020

L.Praveen Kumar  
Son of Shri J.Loganathan,  
No.8, Kandappa Mudali Street,  
Krishnapet, Chennai 600 005. ..Plaintiff

Vs

Mrs.K.Kalyanasundari  
Wife Shri Kalyanasundaram  
No.10, New Street, Lloyds Road,  
Triplicane, Chennai 600 005. ..Defendant

A.No.3124 of 2020:

Mrs.K.Kalyanasundari  
Wife Shri Kalyanasundaram  
No.10, New Street, Lloyds Road,  
Triplicane, Chennai 600 005. ..Applicant

Vs

L.Praveen Kumar  
Son of Shri J.Loganathan,  
No.8, Kandappa Mudali Street,  
Krishnapet, Chennai 600 005. ..Respondent

preliminary issue of overvaluation of plaint and determine the jurisdiction of the Hon'ble High Court to try the suit.

This Application coming on this day before this court for hearing, the Court made the following order:

The applicant herein is the defendant in C.S.No.29 of 2020. By way of filing this application, the applicant herein has prayed to frame a preliminary issue holding that the plaint has been over valued for the purpose of filing the plaint before this Court.

2. The averments found in the plaint filed in support of the suit, in a nutshell, is as follows:

(i) The respondent/plaintiff filed the suit for specific performance of the so called sale agreement dated 21.07.2014 with alternative relief of refund of sale consideration to the tune of Rs.60 lakhs with interest at the rate of 24% per annum, so as to value the suit for more than Rs.1 Crore, i.e. Rs.1,06,80,000/- to bring the suit under the pecuniary jurisdiction of this Court.

(ii) As per Section 7 of the Money Lenders Act, 1957 no money lender shall charge interest on any loan, at a rate exceeding such rate as the Government may, by notification, fix from time to time. Accordingly, the respondent/plaintiff is entitled to receive the interest only at the rate of 9% simple interest. In the absence of any agreement in respect to the rate of

interest, calculating the suit after applying interest at the rate of 24% per annum, is nothing but to over value the suit.

(iii) Further the superstructure claimed in the suit will only fetch a sum of Rs.23,25,218/- only and cannot be the market value of the property as claimed in the so called sale agreement. The respondent/plaintiff has also not valued the suit claim as per Section 42 (e) of the Court Fees and Suit Valuation Act, 1955. Therefore, only for the purpose of filing the suit, the respondent/plaintiff over valued the suit and hence, it is necessary to try the same after framing the preliminary issues.

3. In response to the contentions raised by the counsel appearing for the applicant/defendant, the respondent/plaintiff has filed a counter affidavit, wherein he has contended that the respondent/plaintiff is entitled to value the suit under Section 22 of the Tamil Nadu Court Fees and Suit Valuation Act, 1965. Further, it is the duty of the Registry to find out whether the suit was over valued or correctly valued. According to him, for the issue raised by the applicant/defendant, preliminary issue cannot be framed.

4. The submission made by the learned counsels on either side are considered.

5. The law is well settled that in civil proceedings, an issue ordered to be tried before the main trial of the case. An order for the trial of a preliminary issue may be made by the Court, if the preliminary issue (which may be a question of law) will be decisive or potentially decisive in the case. Under Part 3, of the Code of Civil Procedure Rules, the Court has power to dismiss or give judgment on a claim after the decision on a preliminary issue. Further in respect to the framing of preliminary issues, Order XIV Rule 2 of CPC reads as follows:

**“2. COURT TO PRONOUNCE JUDGMENT ON ALL ISSUES:**

**(1)** Notwithstanding that a case may be disposed of on 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.”

6. Therefore, in all, the said circumstances establishes the fact that only in respect to the question of law that too in respect of jurisdiction, the preliminary issue has been framed.

7. Now, it is an admitted fact that the respondent/plaintiff had filed a suit, seeking the following reliefs:

“a) Directing the defendant herein to execute and register the sale deed of the suit property in favour of the plaintiff free from encumbrances on the date to be fixed by this Hon'ble Court and in the event of default, the Assistant Registrar (OS), High Court of Judicature at Madras, to execute the sale deed in respect of the suit schedule property in favour of the plaintiff or his nominee or nominees and consequentially deliver vacant possession as per the sale agreement dated 21.07.2014 of the superstructure.

Alternatively to direct the defendant herein to refund the sale consideration of Rs.60,00,000/- paid already together Principal amount of Rs.60,00,000/- + Interest amount of Rs.46,80,000/- directing the defendant to pay the

(Rs.60,00,000/- + 46,80,000/-) total for a sum of Rs.1,06,80,000/- (One Crore Six Lakhs Eighty Thousand only) with interest at the rate of 24% per annum to the Principal Amount Rs.60,00,000/- (Rupees Sixty Lakhs only) from the date of plaint till the date of realization;

b) Granting a permanent injunction restraining the defendant, her men, agents, servants or anyone claiming any right either under or through her from in any manner alienating or encumbering the suit schedule property in any manner in favour of any third parties;”

8. Therefore, the prayer found in the plaint will clearly disclose that the suit has been filed for the relief of specific performance, alternatively, for the return of advance sale consideration alongwith interest.

9. In this regard, the respondent/plaintiff has paid the Court fee under Section Sec.42 (a) of the Tamil Nadu Court Fees & Suits Valuation Act, 1955 for the relief of specific performance and paid court fee under Section 22 of the Tamil Nadu Court Fees & Suits Valuation Act, 1965 for the alternative reliefs. Since there is no dispute in this regard that the respondent/plaintiff is having the duty to pay the Court fee for the higher value, further in accordance with the said provisions, he has paid Court fee

of Rs.1,10,475/-.

10. Now, it is the specific contention that in respect to the interest portion, without following the established law, the respondent/plaintiff calculated the suit claim after applying usurious interest. In fact, in respect to the calculation of interest in the sale agreement executed between the respondent/plaintiff and the applicant/defendant, there is no recitals found that in the situation for refund of money, the respondent/defendant has to pay such percentage of interest. Therefore, calculation of interest has to be finalised only at the time of concluding the trial. The said issue is nothing but a question of fact.

11. But Order XIV Rule 2 of CPC is very clear that preliminary issue has to be framed in respect to the issue of law only. Here it is a case the plaintiff calculated the value of the suit as Rs.1,06,80,000/-, hence due to the same only this Court is having the jurisdiction to try the present suit. Further, as rightly pointed out by the learned counsel appearing for the respondent/plaintiff, calculating the interest is not a question of law. Therefore, it cannot be said that the plaint has been presented before a wrong forum.

12. Therefore, in all, this Court is of the considered opinion that the

during the time of trial. In otherwise, the scope of framing preliminary issue is being a restricted one, this application is not at all maintainable. Hence, this application in A.No.3124 of 2020 is dismissed.

Sd/-R.P.A.J  
17.03.2021

// Certified to be true copy//  
Dated at Madras this                      day of                      2021.

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Court Officer(O.S.)



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