

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1188 of 2017
and C.M.P.No.5672 of 2017

Ashok Kumar

.. Petitioner

Vs.

1.Ammu @ Ammaiymmal

2.C.Ramamurthy

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 17.11.2016 made in I.A.No.354 of 2015 in O.S.No.45 of 2015 on the file of the District Munsif of Ambur, Vellore District.

For Petitioner : Mr.S.Subbiah (Senior Counsel)
for M/s.Elizabeth Ravi

For Respondents : Mr.T.M.Hariharan

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 17.11.2016 made in I.A.No.354 of 2015 in O.S.No.45 of 2015 on the file of the District Munsif Court, Ambur, Vellore District.

2.The petitioner, who is plaintiff in O.S.No.45 of 2015 on the file of the District Munsif of Ambur, Vellore District, filed the said suit for a declaration to declare that the suit property belongs to him and for a permanent injunction, restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property. The respondents filed written statement on 01.06.2015 and also filed I.A.No.354 of 2015 under Section 12 (2) (5) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 to pass an order to pay additional court fees. According to the respondents, the petitioner has not valued the suit property properly. The petitioner has purchased the suit property by a

sale deed dated 09.07.2002, mentioning the value of the property as Rs.60,000/-. The Sub Registrar, Ambur, after inspection, fixed the value of the suit property as Rs.2,24,288/- and the petitioner paid additional stamp duty for the said value on 28.01.2005. The respondents further stated that they have purchased adjacent property measuring 715 Sq.ft. in the year 2014, for total sale consideration of Rs.21,45,375/-. If the suit property is properly valued, the Court will not have pecuniary jurisdiction to try the suit and prayed for a direction to the petitioner to pay additional Court fee.

3.The petitioner filed counter affidavit and resisted the I.A. According to the petitioner, the market value of the property as on 09.07.2002 was only Rs.60,000/-, but the Sub Registrar, Ambur, fixed the value at Rs.2,24,288/-, as per the guideline value, for the purpose of stamp duty. The guideline value is different from market value. The market value of the suit property as on the date of filing of the suit was only Rs.1,00,000/- and the petitioner paid correct court fee and prayed for dismissal of I.A.

4.The learned Judge considering the averments in the affidavit, counter affidavit and value of the property as per the endorsement in the sale deed dated 09.07.2002 and value of the adjacent property purchased by the respondents in the year 2014, raised a doubt with regard to market value of the property and directed the petitioner to pay test batta.

5.Against the said order dated 17.11.2016 made in I.A.No.354 of 2015 in O.S.No.45 of 2015, the petitioner has come out with the present Civil Revision Petition.

6.Mr.S.Subbiah, learned Senior Counsel appearing on behalf of the petitioner submitted that the learned Judge erred in allowing the application and the procedure adopted by the learned Judge is without any power or jurisdiction. The learned Judge erred in delegating the power to a Senior Bailiff, who is an administrative officer of the Court, instead of determining the market value of the suit property as on the date of presentation of the plaint. The learned Judge failed to see that the

Bailiff cannot determine the market value of the suit property by examining the persons as witnesses, as if he was discharging the functions of the Civil Court to record the evidence and decide it even without conducting enquiry in the manner known to law. The learned Judge erred in deputing the Senior Bailiff, to determine value of the suit property, as if it is an Execution Petition, for the purpose of fixing the upset price, when a suit property is being brought for the sale through Court, as provided under Order XXI Rule 64 of C.P.C. The learned Senior Counsel further submitted that to determine the market value of the suit property, the learned Judge ought to have framed preliminary issue as per Order XIV Rule 2 C.P.C., by directing both the parties to let in evidence on the market value of the property.

7.The learned Senior Counsel, in support of his contentions, relied on the following judgments:

(i) ***(2005) 12 SCC 362 [N.R.Govindarajan Vs. V.K.Rajagopalan and others]***:

“3.The learned counsel for the appellant (the defendant

in the trial court) submits that the issue as to court fee can be heard and decided as a preliminary legal issue, inasmuch as the appellant does not propose to adduce any evidence in support of the plea taken in the written statement in this regard. That being the stand taken, we are satisfied that in terms of Rule 2 Order 14 of the Code of Civil Procedure, 1908, as amended by Act 104 of 1976, the issue could have been heard and decided as a preliminary issue.

4.The appeal is allowed. The impugned order of the High Court is set aside. The trial court is directed to frame an issue on the question of court fee in terms of the plea raised in the written statement and hear and decide the same as a preliminary issue before proceeding ahead.”

(ii) 2012 (5) CTC 705 [S.N.S.Sukumaran Vs. C.Thangamuthu]:

“31. 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 XIV, 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.

32. 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 vs. C. Shanmughasundaram, 2003 (1) C.T.C. 87 and A. Chinnaraj vs. Saroja Ammal, 2008 (1) M.L.J. 75 stand overruled. Further, the decision rendered in Solaiammal vs. Rajarathinam, 2003 (4) C.T.C. 268 stands partly overruled. The decisions rendered in Laljivora vs. Srividya, 2001 (2) C.T.C. 411 and V.R. Gopalakrishnan vs. Andiammal, 2002 (2) C.T.C. 513 are affirmed.”

The learned Senior Counsel further submitted that the judgment of the Single Judge reported in **2002 (2) CTC 513** (cited supra), was affirmed by the Division Bench of this Court in the judgment reported in **2012 (5) CTC 705** (cited supra) and prayed for allowing the Civil Revision Petition.

8.Per contra, Mr.T.M.Hariharan, learned counsel appearing for the respondents contended that the petitioner undervalued the suit property and paid lesser court fee. The respondents have produced document to show that the petitioner undervalued the suit property. Considering the

documents filed by the respondents and petitioner, the learned Judge held that the value of the property must be decided and directed the petitioner to pay the test batta. The procedure adopted by the learned Judge is correct and valid and there is no error in the procedure adopted by the learned Judge and prayed for dismissal of the Civil Revision Petition.

9. Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the materials available on record.

10. From the materials on record, it is seen that the petitioner filed suit for declaration of his title to the suit property and valued the suit property as Rs.1,00,000/- and paid court fee for 50% of the said value. The respondents raised an issue in the written statement that suit is undervalued and that the petitioner has not paid correct court fee. In addition to that, the respondents also filed I.A.No.354 of 2015, praying for determination of market value of the suit property and for a direction to the petitioner to pay additional court fee.

11.From the materials on record, it is seen that the petitioner purchased the suit property by the sale deed dated 09.07.2002 and valued the same at Rs.60,000/-. The Sub Registrar, Ambur, after inspection of the suit property, fixed the value of the property at Rs.2,24,288/- and the petitioner also paid deficit stamp duty on 28.01.2005 and Sub Registrar, Ambur, also made an endorsement in the said sale deed to that effect. Further, the respondents have produced a sale deed bearing No.6855 of 2014, executed before the Sub Registrar Office, Ambur, to an extent of 715 Sq.ft., out of 1890 Sq.ft., for sale consideration of Rs.21,45,357/-. Considering both the documents, the learned Judge raised a doubt with regard to value of the property and to determine the value of the property, directed the petitioner to pay the test batta. The decision of the learned Judge to verify the market value of the suit property as on the date of presentation of the plaint is correct. But the procedure adopted by the learned Judge is not correct. The learned Judge ought to have framed preliminary issue as to the value of the property, permitted the petitioner and respondents to let in evidence and ought to have decided the market

value of the property.

12.The Hon'ble Apex Court, in the judgment reported in **(2005) 12 SCC 362** cited supra and relied on by the learned Senior Counsel appearing for the petitioner, held that the preliminary issue has to be framed to determine the market value of the property and decide the same, instead of deciding the market value of the property along with other issues. The ratio in the judgments relied on by the learned Senior Counsel appearing for the petitioner are squarely applicable to the facts of the present case. Applying the said ratio, the impugned order of the learned Judge made in I.A.No.354 of 2015 is liable to be set aside and is hereby set aside. The learned District Munsif, Ambur, Vellore District, is directed to frame a preliminary issue with regard to market value of the suit property. It is open to the petitioner and respondents to let in both oral and documentary evidence, if they so desire. The learned Judge is directed to fix the market value of the suit property after considering the materials placed before him by the petitioner as well as the respondents, including the oral evidence and proceed further.

With the above directions, the Civil Revision Petition is allowed.

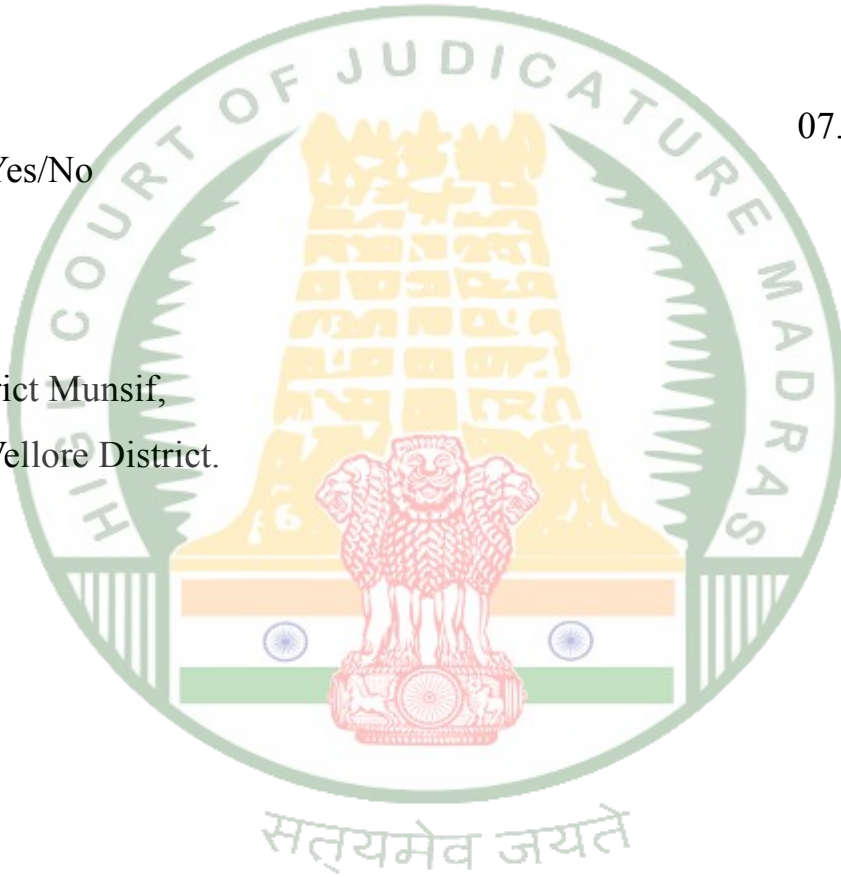
No costs. Consequently, connected Miscellaneous Petition is closed.

07.09.2021

Index :: Yes/No
gsa

To

The District Munsif,
Ambur, Vellore District.

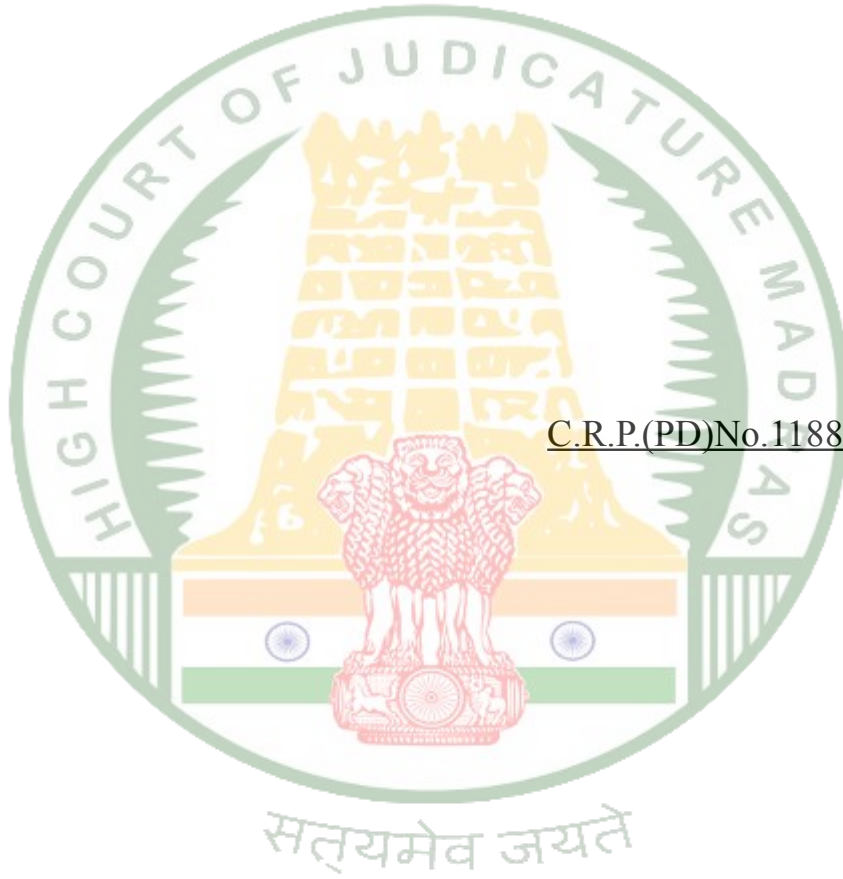


WEB COPY

C.R.P.(PD).No.1188 of 2017

V.M.VELUMANI, J.

gsa



C.R.P.(PD)No.1188 of 2017

WEB COPY

07.09.2021