

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD) No.3306 of 2018
and C.M.P.No.18670 of 2018

1.Balaraman
2.Mariammal

... Petitioners

Vs

1.Lakshmi
2.Tamilarasi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.09.2018 made in I.A.No.307 of 2018 in O.S.No.63 of 2008 on the file of the Principal Subordinate Judge, Puducherry.

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For Petitioners : Mr.R.Ganesan for Mr.R.Bakayaraj

For Respondents : Mr.T.S.Baskaran

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 06.09.2018 made in I.A.No.307 of 2018 in O.S.No.63 of 2008 on the file of the Principal Subordinate Judge, Puducherry, thereby dismissing the application seeking for direction to decide the additional issue as preliminary issue.

2. The petitioners herein are the defendants and the respondents herein are the plaintiffs in the said suit. The respondents herein filed the said suit for declaration and permanent injunction in respect of the suit property.

3. Pending the said Suit, the petitioners herein filed an application for rejection of plaint and the same was dismissed on 11.08.2017 on the file of the Principal Subordinate Judge, Puducherry. Aggrieved by the same, the petitioners herein filed Civil Revision Petition before this Court in C.R.P.(PD) No.4077 of 2017 and this Court, considering the submissions passed orders on 12.04.2018 as below:

"7. It is not in dispute that the respondents have filed the suit against the revision petitioners seeking declaration that the sale deed dated 23.07.2007 is vitiated by fraud and null and void and permanent injunction in O.S.No.211 of 2014 and it is also not in dispute that the Court fee was paid for the value mentioned in the sale deed, that there is no dispute that suit claim was valued under Section 40 of the Pondicherry Court Fee and Suit Valuation Act but not under Section 25(d) of the Act. At the same time in para V of the plaint mistakenly the Section is mentioned a 25(d) instead of Section 40 and mere wrong quoting of Section will not vitiate the case."

4. The petitioners herein filed the application for rejection of plaint on the ground that the proper Court Fee was not paid for the value of plaint and that the suit ought to have been filed under Section 40(1) of the Puducherry

Court Fees and Suits Valuation Act and not under Section 25(d) of the Puducherry Court Fees and Suits Valuation Act.

5. However, this Court found that in para V of the plaint mistakenly the Section had been mentioned as Section 25(d) instead of Section 40 and directed the Court below to frame additional issue as follows:

"Whether the Trial Court has got pecuniary jurisdiction to try the case?"

Accordingly, the Court below framed the additional issue.

6. At that juncture, the petitioners herein filed the application seeking that the additional issue framed by the Court below is to be tried as preliminary issue. However, the Court below dismissed the said application for the reason that there was no direction to try the additional issue as preliminary issue.

7. The learned counsel for the respondents herein would submit that this Court categorically recorded that the para V of the plaint mistakenly mentioned the Section as 25(d) instead of Section 40 of the Puducherry Court Fees and Suits Valuation Act.

8. He further submitted that the suit is of the year 2008 and the petitioners herein repeatedly filed an application one way or other to drag the proceedings for the past 13 years. Now, P.W.1 was examined and the suit is posted for cross examination of P.W.1.

9. Though this Court in the said Civil Revision Petition directed the Court below to frame additional issue.

"Whether the Trial Court has got pecuniary jurisdiction to try the case?", the issue has to be tried as preliminary issue with regard to pecuniary jurisdiction.

10. Therefore, the Order dated 06.09.2018 made in I.A.No.307 of 2018 in O.S.No.63 of 2008 on the file of the Principal Subordinate Judge, Puducherry is set aside. The Court below is directed to try the additional issue as preliminary issue and thereafter dispose the suit on merits within a period of **three months** from the date of receipt of a copy of this order.

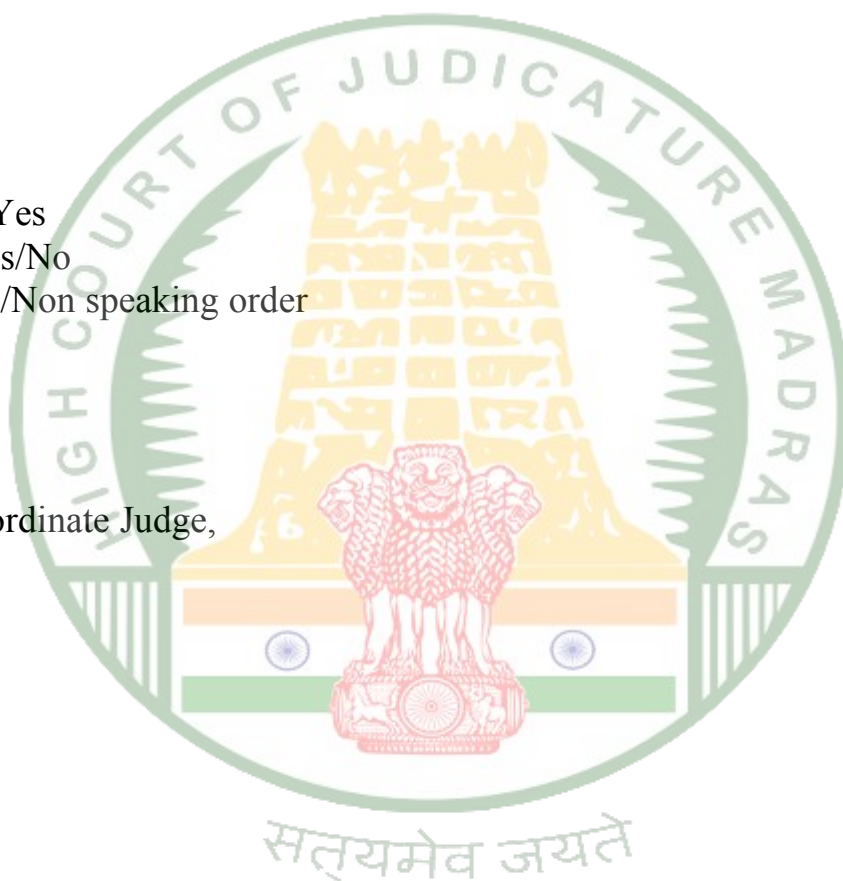
11. Accordingly, this Civil Revision Petition is allowed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

19.07.2021

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
rna

To

The Subordinate Judge,
Gingee.



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G.K.ILANTHIRAIYAN. J,

rna



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