



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.12.2021**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1155 of 2017

and

C.M.P. (MD) No.5277 of 2017

WEB COPY

1.M.Perumal
2.R.Gandhimathi
3.M.Ambikavathi
4.Dharmaraj
5.Chandrakanthan
6.Rathnavathi
7.Rajesh
8.Leelavathi
9.Vignesh Thangaiya ... Petitioners/Petitioners/Defendants

vs.

1.Soundararajan
2.Selvaraj
3.Valliammal
4.Prem Anandhan
5.Nithiyanandhan ... Respondents/Respondents/Plaintiffs

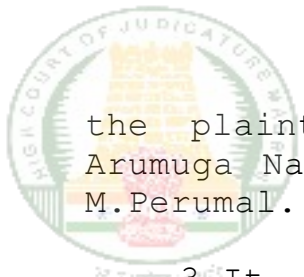
PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.1092/2016 in O.S.No.376/2012 dated 17.04.2017 on the file of the Principal District Munsif Court, Tuticorin.

For Petitioners : Mr.H.Arumugam
For R1 & R3 to R5 : No appearance
For R2 : Mr.Ka.Ramakrishnan

ORDER

The above Civil Revision Petition is filed by the defendants challenging the dismissal of their application in I.A.No.1092 of 2016 in O.S.No.376 of 2012 by the learned Principal District Munsif, Tuticorin. The impugned petition had been filed by the defendants/petitioners to take up the issue of pecuniary jurisdiction as a preliminary issue.

2.The respondents herein had filed a suit in O.S.No.376 of 2012 on the file of the learned Principal District Munsif, Tuticorin for partition of their 3/4th share in the suit property. The defendants had filed a written statement denying the claim of



the plaintiffs and contending that the property belonged to Arumuga Nadar, Thangavel Nattar, Kattiraja and the 1st defendant, M.Perumal.

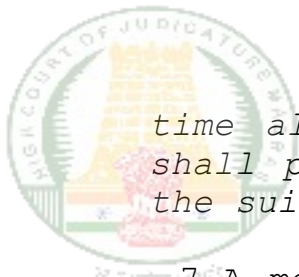
3.It is the case of the defendants that there are other sharers to the suit property and the suit filed without impleading them is bad for non-joinder of necessary parties. The 1st defendant, M.Perumal would submit that he is not standing in the way of the division and that steps for effective division could be taken only if all the legal heirs are brought on record. The defendants had also pleaded that the plaintiffs had no cause of action to file the suit and that apart had taken out a plea that the value of the suit has been grossly under valued since the property is worth over a sum of Rs.50,000/- per cent and the total value would exceed a sum of Rs.50,000/-. The defendants as a sequel to their written statement had taken out the impugned application to consider the pecuniary jurisdiction as a preliminary issue. The plaintiffs have not contested this application very seriously and contended that the suit is one for partition and not for a declaration and exclusive possession.

4.The learned Principal District Munsif, Tuticorin dismissed the said application stating that the guidelines value produced on the side of the revision petitioners herein and marked as Ex.B1 has not been produced through proper channel and therefore, only if it is produced so, it can be considered. That apart, the document is to be tested for its proof and relevancy. In these circumstances, there was no necessity to take up the issue of Court fee as a preliminary issue.

5.Heard the learned counsels on either side and perused the records.

6.Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, reads as follows:-

"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 sub-section, 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 is 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."

7.A mere perusal of the above Section would clearly indicate that once the issue of Court fee has been raised then, the Court has to at the first instance give a finding with reference to the same and only thereafter, proceed with the merits of the claim. Such a caution has been placed in Section 12 (2) of the Act only to ensure that if all the issues are tried together and at the end of the trial and arguments, it comes to light that the Court had no pecuniary jurisdiction, the entire exercise of evidence taking and arguments would be futile. On the contrary, if the application for fixing the Court fee is taken up as a preliminary issue, the Court can either proceed with the case once the issue is answered in favour of the plaintiffs or permit the plaintiffs to pay the Court fee and present the plaint before the proper forum. The learned Judge has totally failed to consider the provisions of Section 12 (2) of the Act. Therefore, the impugned order has to necessarily be set aside and is accordingly, set aside.

8.In the result, the Civil Revision Petition stands allowed. The learned Principal District Munsif, Tuticorin shall proceed to consider the issue of Court fees and pass orders afresh on I.A.No.1092/2016 in O.S.No.376/2012 within a period of one month from the date of receipt of a copy of this order. The parties shall be given an opportunity to lead evidence in this regard. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (WRITS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Principal District Munsif,
Tuticorin.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-38975[F] dated 15/12/2021)

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