



WEB COPY



C.R.P.No.632 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	28.06.2022
PRONOUNCED ON :	08.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.632 of 2019
and C.M.P.No.4205 of 2019

1) Tharabai

2) Shanmugasundaram

3) Muthukrishnan

.. Petitioners/ Defendants 1,
10 & 11

Versus

Amaravathi (Died)

1) Deivanai Ammal

2) Kamala

3) Indira

4) Dhanalakshmi

5) Ganapathi

6) Velmurugan

7) Bhuvaneswari

8) Thilakarasi



C.R.P.No.632 of 2019

9) Bavani
WEB COPY

10) Anandi

11) Jaya

12) Rajeswari

13) Geetha

14) Amsavalli

15) Savithri

16) Kalaiselvi

17) T.K.Ravi

18) M.U.G.Thirumavalavan

19) R. Rajmohan

20) K.Karthikeyan

21) K. Tamizharasan

22) V.T.Raja

23) Saichandra

24) Natarajan

25) Santhi

26) Nagarajan

27) Raj

.. Respondents/ Defendants 2 to 9 &
12 to 24



C.R.P.No.632 of 2019

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed in I.A.No.208 of 2018 in O.S.No.232 of 2012 on the file of II Additional District Judge, Chidambaram, order dated 01.12.2018 and to set aside the same.

For Petitioners : Mr.S.Veeraraghavan

For RR 1 to 6 : M/s.Hemasampath, Senior Counsel
For M/s.R.Meenal

For RR 10, 11,13 to : No Appearance
19, 21 to 25

* R12- Died

ORDER

Aggrieved against the order of dismissal dated 01.12.2018 passed in I.A.No.208 of 2018 in O.S.No.232 of 2012 on the file of II Additional District Judge, Chidambaram, the petitioners have preferred the present Civil Revision Petition.

2.The brief facts, that are necessary for the disposal of the present civil revision petition are as follows:-

2.1. Suit in O.S.No.232 of 2012 was filed by the respondents 1 to 7, who are the plaintiffs, seeking for partition and declaration of the suit schedule property. Meanwhile, the defendants 1, 10 and 11 filed an application in



C.R.P.No.632 of 2019

LA.No.208 of 2018 under Order XIV Rule 2 read with Section 151 of the Civil Procedure Code against the plaintiffs to decide the court fee as a preliminary issue, whereas the Court had dismissed the said application by stating that the defendants have no locus standi to raise the same as a preliminary issue in accordance with Section 12(2) of the Tamil Nadu Suit Valuation and Court Fee Act. Aggrieved against the said order of dismissal, the defendants have preferred the present revision.

3. According to the learned counsel for the petitioners, the plaintiffs have not valued the suit schedule property of Item Nos. 1 to 5 and 6 to 9 in a proper manner and have paid only minimum court fee of Rs.15/-. It is his further contention that the plaintiffs have suppressed material facts before the Court below and evaded from paying necessary court fee. Therefore, the petitioners have filed the application to decide the court fee issue as a preliminary issue. He also relied on the order made in *V.R.Gopalakrishnan vs. Andiammal* reported in **2002 SCC Online Mad 26**, wherein it has been held that Tamil Nadu Court fees and Suits Valuation Act is a substantial law and Substantial law will prevail over procedural law and that Court has to hear the issue regarding valuation of suit property or payment of court fee as preliminary issue if the defendant filed independent application to that effect. Without taking into consideration of the



C.R.P.No.632 of 2019

above principle, the Court below has dismissed the application filed by the petitioners. Thus, the learned counsel for the petitioners prayed for allowing the present revision.

4. Per contra, Ms.Hemasampath, learned Senior Counsel appearing on behalf of Ms.R.Meenal, learned counsel for the respondents 1 to 6, would submit that the suit schedule properties have been rightly valued under Section 37(1) of the Court fees Act in respect of item Nos.1 to 4 and 6 to 10 and under Section 37(2) in respect of item No.5. The learned Senior Counsel further contended that filing of the application by the defendants before the Court below, is an abuse of process of Court. To substantiate the above contention, the learned senior counsel relied on the order passed in ***Ranipet Municipality Rep. By its Comer and Special Officer, Ranipet vs. M.Shamsheerkhan*** reported in 1998 (1) CTC 66, wherein it has been held that granting an unfair advantage by the use of a rule of procedure results in abuse of process of the Court. Also, the learned Senior Counsel also relied on ***T.Arivandandam vs. T.V.Satyapal and another*** reported in (1977) 4 SCC 467 and submitted that the Apex Court, had taken similar view that bogus litigation can be shot down at the earliest stage. The learned counsel thus submitted that the dismissal of the application filed by the defendants is a reasoned order and therefore, the same need not be interfered.



C.R.P.No.632 of 2019

WEB COPY

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. A cursory reading of the order made in *T.Arivandandam's* case (cited supra), shows that an observation has been made in the order by the learned Judge that an Advocate, who is an officer of justice, owes to the society not to colloborate in shady action. Also, it has been observed that spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation, will prevent from dragging the judicial proceedings and by ensuring speedy justice. Here in the present case on hand, filing of an application by the defendants praying for taking up court fee as a preliminary issue to decide the suit, is nothing but to prolong the proceedings in the suit.

7. It is pointed out by the learned Judge that the plaintiffs have assessed the market value of the item 6 to 9 of the property in terms of section 7(2) of the Tamil Nadu Suit Valuation and Court Fees Act and there is no pleadings in respect of the correctness of the Market value assessed by the plaintiffs with regard to item 5 of the suit schedule property and since the defendants have not raised any objections as to the correctness of value assessed by the plaintiffs in



C.R.P.No.632 of 2019

respect of item no.5 of the suit schedule property, they have no locus standi to raise the same as a preliminary issue and taking such view, dismissed the application, which this Court finds no illegality to interfere with. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.11.2022

Index : Yes / No

Internet : Yes

sts

To:

- 1) The XVIII Assistant City Civil Court, Chennai.
- 2) The Section Officer, V.R.Section, High Court, Madras.

J.NISHA BANU, J.,



WEB COPY



C.R.P.No.632 of 2019

sts

Order made in
C.R.P.No.115 of 2014

Dated:
08.11.2022