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C.R.P.No.860 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

CORAM:

THE HONOURABLE **MRS.JUSTICE R. HEMALATHA**

C.R.P.No.860 of 2021

Dr.N.Mallikarjuna Rao (Died)

1.Padmathi Devi

2.Sarath Chandra Babu

3.N.Sivakumar

... Petitioners

..Vs..

N.Mallakonda Prasad

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal orders dated 16.03.2020 passed in I.A.No.39 of 2020 in A.S.No.34 of 2010 on the file of the Sub Court, Ponneri.

For Petitioners : Mr.G.RM.Palaniappan

For Respondent : Mr.R.Krishna Swamy

ORDER

The present petition has been filed challenging the orders passed in I.A.No.39 of 2020 in A.S.No.34 of 2010 on the file of the Sub



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Court, Ponneri.

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2.The revision petitioners are the legal heirs of the deceased plaintiff in O.S.No.362 of 2007 on the file of District Munsif Court, Ponneri. Their father Dr.N.Mallikarjuna Rao filed the suit for recovery of vacant possession of the suit property and for costs and valued the suit property at Rs.6,000/- and paid Court fee of Rs.450.75/- under Section 30 of Tamilnadu Court Fees and Suits Valuation Act, 1965

3.The suit was decreed by the learned District Munsif, Ponneri, vide his decree and judgment dated 13.07.2010. The defendant in the suit filed an appeal in A.S.No.34 of 2010 before the Sub Court, Ponneri in which the present revision petitioners filed an application for amendment of the plaint. The application in I.A.No.106 of 2013 was originally filed by the plaintiff, Dr.N.Mallikarjuna Rao, to permit him to amend the valuation column by showing the market value of the annual rent of the shops for one year. The said amendment petition was allowed by the learned Subordinate Judge, Ponneri, vide his orders dated 05.12.2013. This order was challenged by the respondent in CRP.No.2268 of 2014 before this Court and a learned single Judge of this Court set aside the orders passed



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by the lower appellate Court and directed the respondent/plaintiff to file appropriate application for amending the plaint by giving correct market value of the property. It was also observed that it is open to the petitioner/defendant to file a counter and contest the said application. Thereafter, the plaintiff died and his legal heirs were impleaded as parties in the appeal suit. They filed an application in I.A.No.39 of 2020 in A.S.No.34 of 2010 for amending the valuation column of the plaint. According to them, the market value of the property is Rs.168 per sq.ft. and valued the suit for the purpose of Court fee payable under Section 30 of the Tamilnadu Court Fee Act as Rs.6,270/-.

4.The respondent filed a detailed counter and after full contest the learned Subordinate Judge, Ponneri, vide his orders dated 16.03.2020 fixed the market value of the suit property at Rs.300 per sq.ft. and valued the entire property as Rs.1,10,000/-, aggrieved over which, the present Civil Revision Petition is filed.

5.Heard Mr.G.RM.Palaniappan, learned counsel for the revision petitioners and Mr.R.Krishna Swamy, learned counsel for the respondent.



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6.Mr.G.RM.Palaniappan, learned counsel for the revision petitioners would contend that the suit was decreed by the trial Court and by enhancing the suit value of Rs.1,10,000/-, the decree passed by the trial Court might be questioned by the appellant in A.S.No.34 of 2010. According to him the value given by him at Rs.168 per sq.ft. is absolutely right.

7.Per contra Mr.R.Krishna Swamy, learned counsel for the respondent would contend that the revision petitioners did not adduce any documentary evidence to substantiate their contention that the market value of the suit property is Rs.168 per sq.ft. and in fact no documentary evidence was adduced by them. On the other hand, the respondent filed guideline value for the year 2007 for Manali New Town.

8.A perusal of the orders passed by the lower appellate Court shows that it was left with no other option except to adopt guideline value given by the respondent and fix value of the suit property at Rs.1,10,000/. It is appropriate to extract the orders passed by the lower appellate Court:



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"7.Now solely with a view to bring the suit within the pecuniary jurisdiction of the District Munsif Court at Ponneri that is to bring it below Rs.1,00,000/- the petitioners have chosen to give very very under value of the suit property by the proposed amendment.

8.Further, the value of one sqft' of RCC Construction even in the year 2007 was at Rs.1,000/- for one square feet. Hence, if the real market value of the suit property is arrived at it will be not less than Rs.6,00,000/- and in which even the very trial court which has passed the judgment and decree will have no pecuniary jurisdiction to deal with the suit.

9.They have enclosed photo copy of the extract of the guideline value of Manali New Town and other areas of Tamil Nadu Government website tnreginet.govt. On the above grounds dismissal of the petition has been sought for.

In terms of the provisions of Section 149 of CPC, the Court may, in its discretion, at any stage, allow the person to pay the deficit Court fee.

10.Even as per the above extract so filed by the respondent/appellant herein it is seen that the guideline



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value of the Manali New Town area as on the day of suit was Rs.300/- per sqft'. Hence, the guide line value of 200 sqft' can be Rs.60,000/-. The maximum size of the single floor of pucca building in 100 sqft each can be 100 sqft only. Thus for the 200 sqft' of land the same can be 200 sqft'. The photograph furnished by the appellant/defendant and other connected records produced before the trial Court the total building value can be Rs.50,000/- for 200 sqft' considering nature and type of building as described above. Thus the total suit value according to the guideline value even as per the guideline value details produced by the respondent/appellant side is Rs.1,10,000/- as on the day of suit. There is no definite details available as to the exact market value prevalent at the time of filing suit. Both the parties also not produced any other details or proof as to the exact market value which was prevalent at that time of filing suit. Hence, this Court has no other source to work out exactly the market value which was prevalent at the time of filing suit. In view of the above, the suit value thus is fixed as Rs.1,10,000/-. The plaintiff is directed to pay the court fee according to the revised value which is stipulated in the guideline value."

9.It is pertinent to point out that for payment of Court fee under Section 30 of Tamilnadu Court Fees and Suit Valuation Act, 1965 market



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value has to be taken into account. The first appellate Court merely based on the guideline value had fixed the value of the suit property as Rs.1,10,000/- but it has also expressed its view that no other documentary evidence was adduced by both sides and therefore, it was left with no option to adopt the guideline value of the year 2007 with regard to the suit property. It is settled that the guideline value and market value are distant neighbours. However the trial Court was justified in taking up the guideline value. As regards the contention of the learned counsel for the revision petitioner that the respondent might argue that the decree passed by the trial Court is without any pecuniary jurisdiction and therefore, the same has to be treated as nullity. The jurisdiction of a Court may be classified into several categories. The important categories are

- i. territorial jurisdiction
- ii. pecuniary jurisdiction and
- iii. jurisdiction over the subject matter

In the cases falling under categories i & ii, decree and judgment passed by a Court would not be a nullity unless it is shown that there was gross failure of justice. In any event this has to be argued before the first appellate Court and therefore, this aspect is left open.



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10.I do not find any infirmity in the orders passed by the first appellate Court by valuing the suit property as Rs.1,10,000/-. Since the appeal suit is of the year 2010, the first appellate Court is directed to dispose of the same as expeditiously as possible.

11.With the above observations, the Civil Revision Petition is dismissed. No costs.

24.11.2022

mtl

Index : Yes/No

Speaking / Non-speaking order



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R. HEMALATHA, J.

mtl

To

- 1.The Subordinate Judge, Ponneri.
- 2.The Section Officer, VR Section, High Court, Madras.

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