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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM:

THE HON'BLE Ms. JUSTICE P.T.ASHA

C.M.A.No.4041 of 2019

1.D.Tamizharasan
2.D.Tamizhchelvan … Appellants

versus

1.Kumarasamy
2.K.Manimozhi … Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(u) of CPC., against the Judgment and Decree dated 05.02.2019 in A.S.No.57 of 2018 on the file of the Additional Sub-Judge, Puducherry setting aside the Judgment and Decree dated 28.03.2018 in O.S.No.37 of 2010 on the file of the I Additional District Munsif, Puducherry.

For Appellants : Mr.K.S.Ilangovan
for M/s.Achari and Antoni Association

For respondents : Mr.R.Thiagarajan

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JUDGMENT

This Civil Miscellaneous Appeal is filed challenging the order passed by the Additional Sub-Judge, Puducherry in A.S.No.57 of 2018 in and by which the learned Judge has remanded the matter back to the trial Court to decide the issue of payment of proper Court fee in the suit under Section 7(1)(b) of Pondicherry Court Fees and Suit Valuation Act, in respect of the first relief sought for by the plaintiffs.

2. The facts in brief which are necessary for disposing of the above appeal are herein below narrated and the parties are referred to in the same rank as before the I Additional District Munsif, Puducherry.

3. The plaintiffs had filed the suit O.S.No.37 of 2010 on the file of the I Additional District Munsif, Puducherry for the following reliefs:

> *"a. Declaring the 2nd and 3rd plaintiffs to be the absolute owner of the Suit B schedule property more clearly delineated in RED in the plan annexed with the plaint.*

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b. Declaring that the Partition Deed dated 11.12.1985 in Doc.No.1182/1985 to the extent it allots the B schedule property hereunder in favour of 1st defendant is void ab initio, and does not convey any title to the 1st defendant.

c. Declaring that the sale deed dated 7/9/2001 in Doc.No.1436/2001 and the sale deed dated 11/2/2004 in Doc.No.297/2004 is void ab initio and does not convey any right, title or interest in the B schedule property to the 2nd defendant.

d. Restraining the defendants, their men, agents, heirs, representatives, assigns and transferees from interfering with the peaceful possession and enjoyment of suit B schedule property.

e. Pay cost of the suit. "

4. The plaintiffs would submit that the A-Schedule property belonged to one Subramania Gurukal who had under a settlement deed dated

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17.10.1926 donated various properties including the A-Schedule property to his three sons Kuppusamy Gurukal, Chinnasamy Gurukal and Thiyagaraja Gurukal. From the date of settlement they have been in possession and enjoyment of the same. The said Kuppusamy Gurukal had died intestate leaving behind him surviving his son Ganapathy. Likewise, Chinnasamy Gurukal died intestate leaving behind him surviving his two sons namely Sundaram and Abirami and Abirami inturn died leaving behind his wife and son. Yet another son of Subramania Gurukal namely Thiyagaraja Gurukal is alive and has one son Sekar. The 1st plaintiff had purchased the properties described as B-Schedule property situate in northern portion of A-Schedule property from the aforesaid persons. The 1st plaintiff had also purchased the properties adjacent to the B-Schedule property in R.S.Nos.207/5, 207/8, 207/9 and 207/10 from various other persons. The said properties were purchased for forming house sites. The 1st plaintiff submitted that from the date of purchase, he has been in peaceful possession and enjoyment of the B-Schedule property. He had constructed thatched hut and leased out the same to one P.Mani for commercial purpose. The said Mani was in occupation of the same till May 2007 and thereafter, he had handed over the property back to the 1st plaintiff. Since the thatched shed was in a

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dilapidated condition, it was not in use and the plaintiffs continued to be in peaceful possession and enjoyment of the said property. Whileso, in the year 2000, the 1st plaintiff had applied for patta and he had came to know that the entire A-Schedule property stood in the name of Kanagasabai Trust and the 1st defendant. Neither of them have anything to do with the suit schedule property. The 1st defendant is actually the owner of the adjacent land in R.S.No.207/2 which is already sold to third parties. The 1st plaintiff applied for mutating the revenue records in respect of B-schedule property in his name under application dated 19.07.2000 before the Settlement Officer. An enquiry was conducted by the Settlement Officer on 11.07.2005, the Settlement Officer directed to issue joint patta in the names of the 1st plaintiff and the 1st defendant. The Settlement Officer observed that the 1st plaintiff was the owner of the southern portion instead of northern portion which was the property that the 1st plaintiff had purchased. An appeal was preferred and the Director of Survey and Settlement remanded the matter back to the Settlement Officer by his order dated 27.09.2007. The 1st plaintiff before every Authority / Forum mentioned that it was a northern portion that has been allotted to him and not the southern portion. Taking advantage of the mistake, the 1st defendant and his family

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members clandestinely included the B-Schedule property as to their property. Therefore, the suit was filed for the relief.

5. In the written statement filed by the defendants 1 and 2, the defendants would deny the averments contained in the plaint including original ownership of Subramania Gurukal. It is the case of the defendants that the B-Schedule property amongst other properties belongs to the 1st defendant's father Kanakasababathi Naicker under Sale Deed dated 17.04.1971. He would further submit that he was in possession and enjoyment of the said property till his life time. After his life time, there was a partition between the 1st defendant and his family members on 16.09.1985 in and by which the suit B-Schedule property and other properties situate outside the B-Schedule property were allotted to the share of the 1st defendant and from the date of partition, he and his family members were in peaceful possession and enjoyment of the same. The revenue records were mutated in his name and tax is also paid by him. Whileso, the plaintiffs who had no right, title or interest in the above property had made an illegal claim to the B-Schedule property on the basis of a sham and void sale dated 27.01.1987. The 1st defendant would submit that the thatched shed put up

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in the B-Schedule property was put up only by the 1st defendant and not by the plaintiffs as contended by him. The said Subramania Gurukal had property only on the east and not abutting the main road as alleged by the plaintiffs. The defendants would therefore seek to have the suit dismissed.

6. The defendants had also raised the issue that the plaintiffs have not properly valued the B-Schedule property and the Court Fee that has been paid also not in respect of the relief claimed.

7. The 1st Additional District Munsif, Pondicherry had framed about 14 issues and issue No.2 reads as follows:

> *"2.Whether the plaintiff has not properly valued the suit of B schedule mentioned property and not paid the correct Court Fees which is payable under section 40 of the Pondicherry Court Fees and Suit Valuation Act, 1972 ?*
>
> *"*

8. The learned District Munsif has returned a finding with regard to Issue No.2 by holding that the Court fee has been properly paid. The

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learned Judge observed that the revenue records would show the suit property was assessed to revenue and there is no pleading that the suit property was converted into house sites. Ultimately, the learned Judge decreed the suit as prayed for. Challenging the same, the defendants had filed A.S.No.57 of 2018 on the file of the Additional Sub-Judge, Puducherry. The learned Sub-Judge, took note of the admission of the 1st plaintiff as PW1, that he had purchased the property and started a real Estate business and that all the plots have been sold with only the suit property remaining unsold. Therefore, taking into consideration the fact that the suit property is a house site, the appellate Court held that the 1st relief in respect of B-schedule property is for declaration and therefore, the plaintiff ought to have valued the suit property under Section 11(1)(d) of the Pondicherry Court Fees and Suit Valuation Act and not under Section 7(1)(b) of the Pondicherry Court Fees and Suit Valuation Act. The learned Judge further observed that the first and foremost issue is whether the 2nd and 3rd plaintiffs are the absolute owners of the B-Schedule property and therefore, Court fee ought to have been calculated on the basis of the market value. Therefore, the learned Judge has remitted the matter back to the trial Court to re-consider the same and pass orders. Consequently, the

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decree passed in O.S.No.370 of 2010 was set aside. Challenging the same, the plaintiffs are before this Court.

9. Heard the learned counsel on either side and perused the materials on record.

10. The only issue that has to be considered is whether the judgment and decree of the learned Sub-Judge in remanding the matter back to the trial Court on the ground that the Court fee has not been properly valued is correct. To appreciate the same, it is necessary to extract certain provisions of the Pondicherry Code relating to Court fee and Suit Valuation Act, 1962. These provisions would throw some light upon the argument of the counsel on either side. Section 7 of the said Act, talks about the determination of market value as follows:

> *"7.Determination of market value.- (1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the*

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plaint.

(2) The market value of land in suits falling under section 25(a), 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45 or 48 shall be deemed to be ---

(a) where the land is assessed, thirty times the survey assessment on the land:

Provided that, where the land forms part of a survey field and is not separately assessed to revenue, the value of such part shall be deemed to be thirty times such proportion of the survey assessment as the part bears to the entire survey field.

(b) where the land is a house-site whether assessed to full revenue or not, poramboke land, or any other land not falling under clause (a),- its market value."

11. Section 40 deals with the suit valuation regarding suit for cancellation of a decree for money or other property having a money value or if the decree or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any

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right, title or interest in money movable or immovable property.

Section 40 reads as follows:

"40. Suits for cancellation of decrees, etc.- (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be-

if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed on other document was executed;

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed

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relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree whichever is less.

Explanation.- A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section."

12. A reading of Section 7 make it clear that where the land is assessed to revenue then the market value of the suit would be 30 times of the survey assessment on the land, but, however, if the land is a house site whether assessed to full revenue or not, then market value of the land has to be taken into account. The said factum is also reiterated in Section 40. Section 11 of the Act would further state that for the purpose of determining Court fees, the material allegation contained in the plaint have been taken into account. The plaintiffs' argument is that the property is assessed to revenue and therefore, they have calculated the value at 30 times the assessment. The learned counsel for the plaintiffs/appellants has produced the additional typed set of papers containing Exs.A2, A5 and A6.

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13. A perusal of the description of the property given in Ex.A2, sale deed dated 27.01.1987 under which the 1st plaintiff had purchased the suit property would show that it was described as Nanja lands. Ex.A5 extract of the settlement register also describes the property as nanja lands. Therefore, the plaintiffs would submit that the valuation done by the plaintiffs was very much in order. However, a perusal of the contents of the plaint would show that the plaintiffs have themselves stated that the properties adjacent to the B-Schedule property have been formed into a layout of residential plots. In paragraph No.4 of the plaint, the plaintiffs have stated as follows:

> *"4. The 1st plaintiff also purchased the adjacent properties to B schedule properties in R.S.No.207/5, 207/8, 207/9 and 207/10 from various other persons including the above named persons and laid out the properties into residential plots. The rough sketch of the said lay out is annexed with the plaint and may be treated as part and parcel of the plaint.* ***The portion demarcated in GREEN in the said layout is the A-Schedule property and the portion delineated in RED in the said lay out is the B-Schedule property."***

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14. The plaintiffs have themselves had admitted that the portion marked as RED in the layout is the B-Schedule property and the layout consists of residential plots. Therefore, on the plaintiffs own admission, it is a house site. Therefore, applying the provisions of Section 7 of the said Act, the Court fee has to be calculated as per the market value. The appellate Court has rightly considered the above and remitted the matter back to the trial Court to consider the market value particularly since the calculation of the Court fee as per market value would result in the District Munsif's not having the jurisdiction to try the suit. Therefore, I see no reason to differ with the view taken by the learned I Additional Sub-Judge, Puducherry in A.S.No.57 of 2018.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the Judgment and Decree dated 05.02.2019 in A.S.No.57 of 2018 on the file of the Additional Sub-Judge, Puducherry setting aside the Judgment and Decree dated 28.03.2018 in O.S.No.37 of 2010 on the file of the I Additional District Munsif, Puducherry is hereby confirmed. However, there shall be no order as to costs.

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Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1.The Additional Sub-Judge,
Puducherry.

2. The I Additional District Munsif,
Puducherry.

3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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P.T.ASHA, J.,

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