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C.R.P.No.2512 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2512 of 2019

and

CMP No.16550 of 2019

1. Raboo Jan

2. Hakkim Jan

....

Petitioners

Vs

1. Noorjahan

2. Share Khan

3. Nazir Khan

4. Ramjan Khan

5. Samshath

....

Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 27.06.2018 passed by the learned Principal Subordinate Judge, Coimbatore in I.A.No.1000 of 2013 in O.S.No.212 of 2012.

For Petitioners : Mr.Mouli L.

For Respondents : Mr.C.R.Prasanan

ORDER

This Civil Revision Petition has been filed to set aside the fair and final order dated 27.06.2018 passed in I.A.No.1000 of 2013 in O.S.No.212 of 2012 on the file of the learned Principal Subordinate



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Judge, Coimbatore, thereby partly allowed the application filed under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, to decide the correctness of the valuation of the suit property as preliminary issue.

2. The petitioners are the defendants in the suit filed by the respondents for declaration declaring that the decree dated 20.12.2011 obtained by the defendants using the forged unregistered Will dated 10.11.1999 in O.S.No.963 of 2011 on the file of the Principal Subordinate Judge, Coimbatore, as null and void. Pending suit, the petitioners filed an application to decide the correctness of the valuation of the suit property as preliminary issue.

3. According to the petitioners, the respondents valued nine house sites of the suit properties for the purpose of court fee and jurisdiction a sum of Rs.1,03,000/- and to be paid court fee on the plaint a sum of Rs.7,726.50. The respondents have also entered into an agreement for sale by an agreement dated 21.11.2011. Therefore, the respondent ought to have paid the court fee a sum of Rs.90,00,000/- on the plaint to the market value of the suit properties.



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4. The learned counsel appearing for the petitioners would submit that though the petitioners had examined as P.W.1 and marked Exs.P1 and P2. The Court below partly allowed the petition on the ground that the valuation raised by the petitioners is not admitted. The suit is filed for declaration, declaring that the decree passed in O.S.No.963 of 2011 as null and void and market value calculated as Rs.1,03,000/-. No document was filed on both sides to show the market value of the property. Hence, the Court below, without any document for the market value, cannot decide the preliminary issue. However, the Court below framed the additional issues with regard to the valuation of the suit. Therefore, the Court below, without even considering the documents, which were marked as Exs.P1 and P2, mechanically decide the case as if no document was marked on behalf of the petitioners.

5. Per contra, the learned counsel appearing for the respondents would submit that it is settled law that both the decree has challenged under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 is applicable and it must be treated as the value shown in the document and not its market value. The relief of declaration should have been valued under Tamil Nadu Court Fees and Suit Valuation Act, 1955.



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6. Heard, Mr.L.Mouli, learned counsel appearing for the petitioners and Mr.C.R.Prasanan, learned counsel appearing for the respondents and perused the materials available on record.

7. The Trial Court had partly allowed the petition filed by the petitioners and framed issues as follows :

1. Whether the suit property is properly valued or not ?
2. Whether the Court fee paid by the plaintiff is correct and valid ?

8. On perusal of the plaint filed for declaration and injunction, insofar as the prayer of declaration is concerned, to declare the decree passed in O.S.No.963 of 2011 dated 20.12.2011 on the file of the Principal Subordinate Judge, Coimbatore, as null and void. It is relevant to extract the provision under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, reads as follows :

“40. Suits for cancellation of decree, 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 or 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 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.

9. Thus, it is clear that when a suit is filed for cancellation of decree, the court fee shall be computed on the value of the subject matter of the suit. Therefore, the expression "value" as found under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, must be treated as the value shown in the document and not its market value.



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10. Insofar as the valuation of the suit is concerned, the present suit had been valued under Section 25 (d) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, as the suit was filed for declaration declaring the decree as null and void in O.S.No.963 of 2011 on the file of the Principal Subordinate Judge, Coimbatore. Therefore, it should have been valued under Section 40 of the the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

11. The proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which the court fee is payable and in such situation, it is not correct to say that it has to be determined on the basis of evidence and it is a matter for the benefit of the revenue and the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. It is because the Act empowers the defendant to raise the plea of jurisdiction on a different yardstick.

12. In view of the above, the fair and final order dated 27.06.2019 made in I.A.No.1000 of 2013 in O.S.No.212 of 2012, on the file of the Principal Subordinate Judge, Coimbatore, is hereby set aside



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and the matter is remanded back to the Trial Court for fresh consideration, in view of the settled position of law, within a period of eight weeks from the date of receipt of a copy of this order.

13. In the result, this Civil Revision Petition is allowed.

Consequently, connected miscellaneous petition is closed. No costs.

13.12.2022

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To

The Principal Subordinate Judge,
Coimbatore.



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G.K.ILANTHIRAIYAN, J.

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