

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	20.04.2022
PRONOUNCED ON	29.04.2022

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

C.R.P.No.1050 of 2017

&

C.M.P.No.5085 of 2017

1.S.Gurunathan

2.S.Sekar

3.S.Mohan

4.S.Devan

5.S.Viswanathan

6.S.Muthu ... Petitioners/Defendants 4 to 9

Vs.

1.Thenmozhi

2.Vanaja

3.Mala

4.Devi

5.Madhumalar ... Respondents/Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, as against the fair and decreetal order as made in I.A.No.60 of 2015 in O.S.No.183 of 2013 dated 14.12.2016 on the file of the I Additional District and Sessions Judge, Cuddalore dismissing the application filed by the petitioners under Order VII Rule 11 C.P.C., r/w Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

For Petitioners	..	Mr.R.Karthikeyan
For Respondents	..	Mr.D.Baskaran
		for Mr.R.Gururaj

ORDER

The revision petition has been filed by the 4th to 9th defendants in O.S.No.183 of 2013 questioning an order dated 14.12.2016 in I.A.No.60 of 2015 passed by the I Additional District Judge, Cuddalore.

2. O.S.No.183 of 2013 has been filed by the plaintiffs / 1st to 5th respondents herein, seeking a preliminary decree of partition and separate possession of undivided 5/6th share or 5/8th share with respect to the property given in Schedule B in the plaint and for consequential relief to pass final decree and also for costs of the suit. The property mentioned in schedule B are the lands in Dry Sy.No.1792 in Manjakuppam Village, Cuddalore.

3. A written statement had been filed by the 4th to 9th defendants contesting the claim of the plaintiffs to seek the relief of partition and separate possession. They, very specifically stated that the plaintiffs are not in possession and therefore have stated that the plaintiffs should have paid the Court Fees under Section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 (hereinafter 'the Act') and not under Section 37(2) of the Act. They have also questioned the valuation of the suit in accordance with the kist value. Other averments in the plaint have also been denied and disputed.

4. Thereafter, the said 4th to 9th defendants, filed I.A.No.60 of 2015, under Order VII Rule 11 of C.P.C and also under Section 12(2) of the Act. They sought a relief that the Court should take up the issue regarding the valuation of the suit and the sufficiency of the Court fees paid as a preliminary issue and adjudicate on the same.

5. In the affidavit filed in support of the said application, they had contended that the respondents / plaintiffs were not in possession of the said property and they have also stated that therefore, the Court fee should have been paid under Section 37(1) of the Act and not under Section 37(2) of the Act. They have stated that therefore, this issue should be taken as a preliminary issue as provided under Section 12(2) of the said Act.

6. A counter had been filed to the said application by the plaintiffs in the suit, wherein they stated that the issue of possession will have to be decided only during the course of trial and therefore, the Court fees paid is proper and stated that the application should be dismissed.

7. The said application came up for consideration before the

I Additional District Court at Cuddalore and by order dated 14.12.2016 the said Application had been dismissed, holding that the issue of possession can be decided only during the course of trial and an issue on the same had already been framed based on the pleadings and therefore it cannot be taken up as preliminary issue. Questioning that particular order, the Revision Petition has been filed by the 4th to 9th defendants.

8. Heard arguments advanced by Mr.R.Karthikeyan, learned counsel for the petitioner and Mr.R.Gururaj, learned counsel for the respondent.

9. Let me not enter into a detailed discussion on the right of the plaintiffs to seek partition and separate possession of the schedule mentioned property. The scope of the Revision Petition is quite narrow. It is to be examined whether an application under Section 12(2) of the Act will have to be decided as a preliminary issue particularly, when it revolves around possession. It is the contention of the revision petitioners that the respondents are not in possession and therefore when they had instituted suit for partition and separate possession they should have paid Court fees under Section 37(1) of the Act and not under Section 37(2) of the said Act.

10. Even before examining further, the provisions of the law may be extracted for better appreciation.

(a) Section 12(2) of the Act is as follows;

"(i)....

(ii) 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 be 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.

(iii)"

(b) Section 37(1) & (2) of the Act is as follows;

(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates:-- When the plaint is presented to --

(i) a District Munsif's Court. Rupees one hundred.

(ii) the City Civil Court, Chennai or a Sub-Court or a District Court. Rupees one hundred, if the value of plaintiffs share is rupees thirty thousand or less; rupees five hundred, if it is above rupees thirty thousand but below rupees one lakh; and rupees seven hundred and fifty, if the value is rupees one lakh and above.

(iii) The High Court. Rupees one thousand]."

(c) Order VII Rule 11 of CPC is as follows;

"11. Rejection of plaint-- The plaint shall be rejected in the following cases:--

(a)

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d)

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

11. Section 37 of the Act relates to Partition Suits. Section 37(1) stipulates that in a suit for partition and separate possession, if the plaintiff has been excluded from

possession, then Court fees shall be paid on the market value of the share of the plaintiffs. Sub Section (2) provides that if the plaintiff is in joint possession then he can pay fixed Court Fees as provided in the said provision.

12. In the instant case, the revision petitioners in their written statement have contended that there was an earlier decree in O.S.No.571 of 2006 before the Principal District Munsif Court, Cuddalore, whereby, possession had been handed over to them. It is therefore contended that they are in possession. It is therefore stated that since the respondents have been excluded from possession, they should pay Court fees under Section 37(1) of the Act and not under Section 37(2) of the Act.

13. Section 12 of the Act, relates to the proper Court fee. In the written statement, it had been stated that the property had not been properly valued and that proper Court fees had not been paid. If that be the averment, then that issue should be taken as a preliminary issue and decided first. It is also seen that on those two grounds, the plaint can be rejected under Order VII Rule 11(b) and (c) of C.P.C. which provisions have been extracted above.

14. The learned counsel for the respondents placed reliance on (i)AIR 1961 SCC 1299 (Sri Rathnavaramaraja Vs. Smt.Vimala). In that particular case, the plaintiffs had valued the properties under Section 28 of the Act. The defendants filed a written statement raising an objection. The trial Court, adjudicated that the Court fees paid was adequate. The High Court set aside the order of the Trial Court and appointed a Commissioner and passed orders with respect to the valuation of the suit and the Court fees paid. The Court fees were then determined. Questioning that particular order, revisions were preferred before the High Court. The High Court had confirmed the order of the Trial Court but with respect to one had directed re-hearing. Questioning that order of the High Court, an appeal was preferred before the Hon'ble Supreme Court. The Hon'ble Supreme Court held as follows;

"2.The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction against the order adjudging court-fee payable on the plaint, all

progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. Again, the jurisdiction in revision exercised by the High Court under s. 115 of the Code of Civil Procedure is strictly conditioned by cls. (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The defendant who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior court by appeal or in revision against the order adjudging payment of court-fee payable on the plaint. But counsel for the defendant says that by Act 14 of 1955 enacted by the Madras Legislature which applied to the suit in question, the defendant has been invested with a right not only to contest in the trial court the issue whether adequate court-fee has been paid by the plaintiff, but also to move the High Court in revision if an order contrary to his submission is passed by the Court. Reliance in support of that contention is placed upon sub-s. (2) of s. 12. That sub-section, in so far as it is material, provides :

"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.....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....."

3. But this section only enables the defendant to raise a contention as to the proper court-fee payable on a plaint and to assist the court in arriving at a just decision on that question. Our attention has not been invited to any provision of the Madras Court-fees Act or any other statute which enables the defendant to move the High Court in revision against the decision of the court of first instance on the matter of court-fee payable on a plaint. The Act, it is true by s. 19, provides that for the purpose of deciding whether the subject-matter of the suit or other proceedings has been properly valued or whether the fee paid is sufficient, the court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislature to collect court-fee due from the litigant is manifest from the detailed provisions made in ch. III of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision, against an order determining the court-fee payable. In our view, the High Court grievously erred in entertaining revision applications on questions of court-fee at the instance of the defendant, when no question of jurisdiction was involved."

15. The learned counsel for the respondents therefore stated that a revision petition would not be maintainable.

16. It is however seen that in the instant case, the trial Court had not adjudicated on the adequacy of the Court fees paid. In my opinion, refusal to so adjudicate is not correct. The trial Court should have examined the application and decided as preliminary issue, the valuation of the suit and the Court fees paid and thereafter passed an order indicating whether the Court fees paid is sufficient or insufficient. The Hon'ble Supreme Court had stated that if such a valuation is given, as against that finding, a revision would not lie to the High Court. But here the trial Court had deferred the issue for further consideration at a latter stage. The facts are therefore distinguishable.

17. The learned counsel for the revision petitioners placed reliance on S.N.S.Sukumaran Vs. C.Thangamuthu reported in 2012 (5) CTC 705. The relevant portions in that judgment are as follows;

"10. In S.N.S. Sukumaran vs C. Thangamuthu and batch of Civil Revision Petitions reported in 2012 (5) CTC 705 (DB) : (2012) 5 LW 197 (DB), a reference was made, in view of conflicting decisions by various Single Bench judgments, before a Division Bench for deciding the issue "whether payment of Court-fees on Plaint, being a jurisdictional issue, has to be decided as a preliminary issue?"

11. Before proceeding to answer the reference, the Division Bench also examined the conflict between Order 14 Rule 2 CPC and Section 12 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, and held as follows :

"25. As noticed above, Section 12(2) of the State Act is a complete departure from the procedure provided under Order 14, Rule 2 of the Code of Civil Procedure. Notwithstanding the inconsistency contained in the Act of the Parliament viz., the Code of Civil Procedure and the provisions contained in Section 12(2) of the State Act, having regard to the fact that the assent of the President was received, the provisions of the said Section has to be complied with and can be held to be a valid legislation".

12. The Division Bench finally answered the reference as follows :

"32. After giving our anxious consideration to the matter and having regard to the law discussed hereinabove, the reference is answered as under:

(i) The Tamil Nadu Court-fees and Suits Valuation Act, 1955 (Section 12) enacted by the State Legislature on a subject covered by the Concurrent List, albeit inconsistent with the provisions of the Code of Civil Procedure (Order 14, Rule 2) and being in compliance with the requirement of Article 254 of the Constitution of India, having been given assent by the President of India, shall prevail over the provisions of the Code of Civil Procedure.

(ii) When a Defendant comes forward with a case pleaded in the Written Statement questioning the correctness of the valuation of the suit property and payment of Court-fee and asks the Court, by an Application, to decide it first before deciding the Suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before

deciding the Suit on merits.

(iii) However, before proceeding to decide the objection with regard to valuation and Courtfee as provided under Section 12(2) of the State Act, the Court shall prima facie satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the Defendant has substance.

(iv) Such objection with regard to improper valuation of the Suit and insufficiency of Court fee shall be entertained by the Court only before the hearing of the Suit on merits commences and witnesses are examined. Section 12(2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merits of the case.

(v) Exercise of right by the Defendant as contained in Section 12(2) of the Act must be bona fide and not with an ulterior motive of dragging the Suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such Application, and in the event the Court finds that the Defendant is not diligent or co-operating with the Court in the disposal of such objection expeditiously, then the Court shall proceed with the hearing of the suit on merits and decide all issues, including the one relating to the valuation of the Suit and the adequacy or otherwise of Court-fee, together. In the light of the law discussed hereinabove, we are answering the reference as above. Consequently, the contrary view taken by the learned Single Judges cannot stand as good law. Hence, the decisions rendered in E. Pushpalatha v. C. Shanmughasundaram, 2003 (1) CTC 87; and A. Chinnaraj v. Saroja Ammal, 2007 (5) CTC 432 : 2008 (1) MLJ 75 stand overruled. Further, the decision rendered in Solaiammal v. Rajarathinam, 2003 (4) CTC 268, stands partly overruled. The decisions rendered in Lal jivora v. Srividya, 2001 (2) CTC; and V.R. Gopalakrishnan v. Andiammal, 2002 (2) CTC 513, are affirmed." 13. In view of the pronouncement of the Division Bench, a duty is cast on the Sub Judge, Kanchipuram to re-examine the order dated 04.12.2019 in I.A. No. 795 of 2017. The learned Sub Judge should ensure that the order is in conformity with the dictum laid down in S.N.S. Sukumaran vs C. Thangamuthu and batch of Civil Revision Petitions reported in 2012 (5) CTC 705 (DB) : (2012) 5 LW 197 (DB). 14. In the result, the Civil Revision Petition is allowed. The Order dated 04.12.2019 in I.A. No. 795 of 2017 passed by the Sub Court, Kanchipuram is set aside. The said Interlocutory Application is remitted back to the Sub Court, Kanchipuram for fresh

disposal in accordance with the dictum laid down in S.N.S. Sukumaran vs C. Thangamuthu and batch of Civil Revision Petitions reported in 2012 (5) CTC 705 (DB) : (2012) 5 LW 197 (DB). Connected Miscellaneous Petition is closed. No order as to costs."

18. In view of the pronouncement of the Division Bench, I hold that a duty is cast on the I Additional District Court, Cuddalore to re-examine the order dated 14.12.2016 in I.A.No.60 of 2015. The learned I Additional District Judge should ensure that the order is in conformity with the dictum laid down in S.N.S.Sukumaran (Supra).

19. In the result, the Civil Revision Petition stands allowed. The order dated 14.12.2016 in I.A.No.60 of 2015 is set aside and the matter is remitted back to the I Additional District Court, Cuddalore for fresh disposal in accordance with the dictum laid down in S.N.S.Sukumaran (Supra). There shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrm

To

The I Additional District and Sessions Judge,
Cuddalore.

+2cc to Mr.R.Karthikeyan, Advocate, S.R.No.26917,29981

C.R.P.No.1050 of 2017

RK(CO)
CT 11/05/2022