



CRP. No.3436 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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Srinivasan

...Respondent/Petitioner/Plaintiff

Vs.

1.Senniappan

2.Vasanth

3.Saravanan

4.Shankar Kumar

5.Thulasimani

6.Kokila

...Respondents/Respondents/Defendants

PRAYER: This Civil Revision Petition is filed under Article 227 of constitution of India, praying to set aside the fair and final order dated 19.07.2019 made in I.A No.2 of 2019 in O.S No.1059 of 2013 on the file of the III Additional District Munsif Court, Salem.

For Petitioner : Mr.V.Rajesh

For R1 to R6 : Mr.C.Prabakaran



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ORDER

This Civil Revision petition has been filed to set aside the fair and final Order dated 19.07.2019 made in I.A No.2 of 2019 in O.S No.1059 of 2013 on the file of the III Additional District Munsif Court, Salem.

2. The Revision Petitioner herein is the plaintiff in O.S No. 1059 of 2013 on the file of the III Additional District Munsif Court, Salem for the relief of declaration to declare sale deed as null and void and for other consequential relief in respect of suit properties, the said suit is contested by the defendant and denied the plaintiffs case, the Trial Court framed issues and both side evidence was closed and the case was posted for arguments. At that time, the defendants filed I.A No. 2 of 2019 praying to frame additional issues with regard to payment of Court fee and also another issue with regard to land lord and tenant relationship. The said application was strongly objected by the plaintiff and the same could not be accepted without detailed counter. On hearing both sides, the Trial Court allowed I.A No. 2 of 2019 by holding that to avoid multiplicity of proceedings, additional issues have to be framed.



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3.Challenging the said findings, the plaintiff preferred this Civil

Revision Petition by stating that the Trial Court failed to take note of the fact with regard to issue relating to Court fee which has to be decided under Section 12(2) of Court fee Act, as a preliminary issue and not after the examining of the Trial Court, without appreciating legal aspects and had erroneously allowed the application. To support his contention, he relied the Judgment reported in 2012 (5) CTC 705 in Sukumaran and others Vs C.Thangamuthu and others:

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

(1) 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 XIV, 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.

(2) 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.

(3) However, before proceeding to decide the objection with regard to valuation and court fee 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.

*(4) 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.*

*(5) 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.*

4. Further, he relied another Judgements reported in 2001-02 CTC 411 in Laljivora Vs Srividya:

*5. In the present case also the petitioner has allowed the plaintiff to examine herself as P.W. 1 and the evidence of P.W.2 has also been recorded as could be seen from paragraph 3 of the counter affidavit dated 15.3.2001 filed by the 1st plaintiff in the civil revision petition. Therefore, I am of the considered view that no useful purpose would be served to try the jurisdictional issue as preliminary issue at this belated stage as the trial of the suit have already been completed. However, it is seen that even though arguments were advanced before this Court as if the issue of payment of court fee should be decided as preliminary issue, the petition filed under **Section 12(2)** of the Act read with **Section 151** of C.P.C. seeks for a direction to frame an additional issue if necessary relating to the valuation and court fee in the suit and hear arguments. When the petitioner has allowed the Court to frame issues already and filed written statement and subsequently after filing additional written statement and also allowed the Court to take the case for trial to examine P.W.1 and P.W.2, it is not now open to the revision petitioner to seek for such a direction for framing an additional issue. The attempt on the part of the revision petitioner in filing the application is nothing but a dilatory tactics to prolong the litigation. Therefore, I hold that the attempt on the part of the petitioner in seeking for a direction to frame an additional issue with regard to the valuation of the suit is nothing but a dilatory tactics and the same cannot be*



entertained especially when the Court has also examined P.W.1 and P.W.2.

6. However, as has been held by this Court in the judgment reported in *M.Thandavaraya Poosall and Five others v. M.Periyasamy Asari and nine others*, 2000 (3) MLJ 342 that under Order 14, Rule 2 of Civil Procedure Code, only two categories of issues can be decided as preliminary issue namely (a) the jurisdiction of the court or (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue. The issue relating to the valuation of the court fee does not fall under the provisions of Order 14, Rule 2 of C.P.C. Therefore, the submission of the learned counsel for the petitioner that the question as to the valuation and payment of court fee should be decided as preliminary issue cannot be accepted. Moreover, as already communicated, the prayer in the I.A. is only for framing the additional issue and not seeking for a direction to the Court to decide the question of valuation and payment of court fee as preliminary issue under Order 14, Rule 2.

5. Further he relied upon the Judgement reported in 2013 (3) MWN (Civil) 603 in Gandhimathi and others Vs P.Baby and others

14. By a reading of Order 14 Rule 5 C.P.C., I am of the opinion that the amending of the issue or framing of the issue should be based on the materials in controversy between the parties. But, in the instant case, no controversy is raised by the respondents either in pleadings or during the course of recording of evidence with regard to the pecuniary jurisdiction of the Court. Therefore, the submission made by the learned counsel appearing for the respondents in justifying the action of the Court below in framing additional issue at the fag end of the trial with regard to the pecuniary jurisdiction cannot be appreciated.

6. By indicating the above judgements, the learned counsel for the petitioner indicated that if there is insufficient Court fee issue, the same has to be framed along with other issues and prayed to allow this petition.

7. By way of reply the learned counsel for the respondent submitted that considering the entire facts and the disputes pending between the



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parties, wherein, the value of the properties is higher than what the plaintiff mentioned in the suit. However, the plaintiff has not paid the correct Court fee. Though the respondent formally raised objection in the written statement it was not followed by the Trial Court while framing the issues. Hence, he filed application to frame additional issue as per order 14 Rule 5 and the same was appreciated by the Trial Court which needs no interference. Order 14 Rule 5 extracted below:

5. Power to amend and strike out, issues.- (1) The Court may at anytime before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

8. It states about the power to amend and strike out the issue. Though at any stage of the proceedings issues can be framed but it depends upon facts and circumstances of the case. In this case plaintiffs approached Court for relief of declaration to declare the sale deed as null and void and other consequential relief by paying necessary Court fee and the allegation was denied by the defendants in the written statement on 2013 itself thereafter



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issues were framed on 18/11/2015. After examining both side evidence, on 05.04.2019 the case was posted for the arguments, in the meantime, the defendant filed this application for framing Additional issues and also with regard to land lord tenant relationship.

9.As rightly pointed out by the learned counsel for the plaintiff, if he really want to raise the objection with regard to Court fee he can raise such issue as preliminary issue. Initially, the defendant not assigned any reason as to why he has not sought such remedy before examining all the witnesses. But after completion of Trial, he filed this application with regard to framing of additional issues in Court fee and land lord tenant relationship. But in written statement the learned counsel for the respondent submitted that he has raised objection with regard to value of the property and the same was denied by the plaintiff counsel as it is formal denial. However, considering the entire facts now the additional issue which sought to be framed as such is highly belated. The defendant not produced any reason for taking steps as to why he was not taken steps to decide as preliminary issue at earliest point of time. Furthermore, he want to include issue regarding landlord tenant relationship which was not raised by him in the written statement. Therefore, objection raised by the revision petitioner



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as such is maintainable and the Judgements relied by him is squarely applicable to the facts of the present case. Hence, the findings rendered by the Trial Court in I.A No. 02 of 2019 in O.S No. 1059 of 2013 is hereby set aside and the Trial Court is empower to decide valuation of the properties while adjudicating the issues in the suit. Further, the Trial Court is directed to dispose the case within three months from the date of receipt of a copy of Order.

10. In the result, the Civil Revision Petition is allowed. No costs.

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T.V.THAMILSELVI,J.

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To

1. III Additional District Munsif Court, Salem.

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