



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.323 of 2017

and

CMP.Nos.13143, 13146, 13150 of 2021

and

CMP.No.1447 of 2017

Prema

... Petitioner/Defendant/Petitioner

Vs.

Solai @ Kumaravel

... Respondent / Plaintiff / Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.01.2017 in I.A.No.790 of 2016 in O.S.No.330 of 2012 on the file of the Principal District Munsif, Villupuram.

For Petitioner .. Mr.C.Munusamy

For Respondent .. Mr.V.Raghavachari

**ORDER**

WEB COPY The defendant in O.S.No.330 of 2012 on the file of the Principal District Munsif Court Villupuram, is the revision petitioner herein.

2.The revision petitioner is deeply aggrieved by order dated 09.01.2017 in I.A.No.790 of 2016, which Interlocutory Application had been taken out by her under Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 (the Act) and also under Order 7 Rule 11 CPC. A direction had been sought that the respondent / plaintiff should pay necessary Court fees under Section 25(a) of the Act. The said application had been filed, after plaintiff had entered the witness box and adduced evidence.

3.The suit is now posted for evidence on the side of the revision petitioner/defendant.

4.The suit in O.S.No.330 of 2012 had been filed by Solai@Kumaravel against the revision petitioner herein / Prema for a declaration that he is the absolute owner of A schedule property and for recovery of possession with respect to B schedule property and also to



grant mandatory injunction directing the defendant to demolish the construction made in the B schedule property. The A schedule property is land in Iyyan Punjai Survey No.167 measuring 1.92.338 acres and B schedule property is also in the very same S.No.167 but measures 1.00 acre. The boundaries have been given in the plaint.

5.A written statement had been filed by the revision petitioner herein and in paragraph No.15 of the written statement, the revision petitioner / defendant had stated that the plaintiff had not properly valued the suit property and had not paid proper Court fees.

6.Thereafter, on the basis of the pleadings, issues had been framed and the parties had been invited to adduce evidence. I am informed that no issue has been framed with respect to either valuation of the suit or with respect to the Court fees paid.

7.After the plaintiff had tendered evidence, that particular issue had been taken up by the revision petitioner / defendant who then filed I.A.No.790 of 2016 calling upon the Court to examine the valuation of the suit and the Court fees paid, and also for a direction to the respondent / plaintiff to pay proper Court fees.



8.The Principal District Munsif, Villupuram had examined the provision under Section 12(2) of the Act and had stated that the issues mentioned should have been taken up prior to the commencement of the trial and since evidence had commenced, in view of the words of the statute in Section 12(2) of the Act that said issue should be urged to be taken as primary issue and which is not possible, since the plaintiff had grazed the witness box, had thought it fit to dismiss the application and therefore dismissed the application. Questioning that particular order, the defendant is before this Court.

9.During the pendency of the revision petition, unfortunately, the sole plaintiff Solai@Kumaravel had died and this had come to the knowledge of the revision petitioner after some considerable delay and this necessitated the revision petitioner to file three separate Civil Miscellaneous Petitions and an order is passed along with the present Civil Revision Petition. They are CMP Nos.13143 of 2021 and 13146 of 2021 and 13150 of 2021.

10.These are petitions which are normally filed when applications are filed to bring on record legal representatives with delay and under



Order 22 of CPC when there is an issue of abatement, if legal representatives are not brought on record within the time period stipulated.

11.In CMP No.13143 of 2021, the relief sought is to bring on record as a string of legal representatives of Solai@Kumaravel and it is stated that there are as many as eight legal representatives. This could have been very easily adjudicated by me, but unfortunately, I am informed that the 4th and 6th legal representatives namely, Prabakaramoorthy who is shown as 4th respondent and Mahalingam, who is shown as the 6th respondent have also both died pending the present Civil Revision Petition.

12.Now this has thrown up a further issue whether the revision petitioner should be called upon to bring on record the legal representatives of Prabakaramoorthy and Mahalingam. But since, the issue which is now to be tested is with respect to the Court fees to be paid or rather which had been paid in O.S.No.330 of 2012, I would rather proceed further with giving a disposal to the Revision Petition. In view of the nature of the orders to be passed. I do not think the legal representatives of Prabakaramoorthy and Mahalingam would be



seriously prejudiced. The estate of Solai @ Kumaravel, the original plaintiff, is adequately represented in the present Revision Petition.

13.The relief sought in CMP No.13146 of 2021 is to set aside abatement and that abatement had arisen owing to the relief sought in CMP No.13150 of 2021 which petition had been filed to condone delay of 267 days in filing petition to set aside the abatement.

14.In view of that fact, that it would only be appropriate that the issues in the suit have to be agitated by the legal representatives of the deceased plaintiff, I would allow all the three Civil Miscellaneous Petitions but rather place a request before the Registry, that when they indicate the death of Solai@Kumaravel and bring on record the legal representatives, they must also indicate that among the legal representatives, Prabakaramoorthy and Mahalingam have also died. This would enable the parties to bring on record the legal representatives of Prabakaramoorthy and Mahalingam before proceedings further with the issues raised in the suit.



15. One issue which has to be now adjudicated is with respect to the Court fees and on the decision of the District Munsif, Villupuram in I.A.No.790 of 2016 dismissing the said application.

16. Section 12 of the Act, places an obligation on the Courts, other than the High Court to give a decision with respect to the proper Court fees which has to be paid. But Section 12(1) of the Act, has to be read in conjunction that sub clause (2) of Section 12 of the Act. Sub clause (2) of Section 12 of the Act, stipulates that a defendant in his written statement which should be filed before the first hearing of the suit or before evidence is recorded, plead that the subject matter had not been properly valued and that Court fees paid is not sufficient. This pleading and this statement that the Court fees had not been properly paid, requires materials to be placed before the Court to adjudicate that particular aspect.

17. In the instant case, in the written statement, the revision petitioner has stated in a stray line as is normally done in every written statement where, as a matter of course, the jurisdiction of the Court is questioned, the limitation aspect is raised and also the maintainability of



the suit is raised and incidentally, in this particular case for good measure, the valuation of the suit and the Court fees was also raised. But no particulars have been given.

18. In the written statement it had not been stated what should have been the proper value of the suit and what should have been the proper Court fees to have been paid. Naturally, an issue does not arise for consideration under Order 14 of CPC which issue would arise only on plea stated and on that plea being disputed.

19. Here no such dispute had been raised over the valuation of the Court and the Court fees paid except for one stray statement in an independent paragraph towards the end of the written statement. Therefore, since the wordings of the provision of law are quite clear that details should be given in the written statement, I would go with the order of the learned Principal District Munsif, Villupuram, who had thought it fit to dismiss I.A.No.790 of 2016.

20. However, Order 7 Rule 11 (b) and (c) of CPC also deals with valuation of suit and with requisite stamp papers to be paid as Court fees.



The Application in I.A.No.790 of 2016 had been filed under Order 7 Rule 11 CPC and also under Section 12 of the Act. This would require, that the defendant should disclose as to what actually is the correct value of the suit and what should have been the correct Court fees to have been paid by the plaintiff. Even otherwise, if the suit is to be rejected under anyone of the provision under Order 7 Rule 11 of CPC , then Order 7 Rule 13 of CPC provides a small window for the plaintiff to once again present a fresh plaint in respect of the same cause of action.

21. Therefore, I hold the defendant would not stand to gain by pressing this particular Revision Petition. Let that particular aspect be adduced in terms of evidence by the defendant namely, valuation of the suit and the Court fees paid. Since the plaintiff did not have the benefit of adducing evidence, the plaintiff would now have to give evidence in rebuttal. That may not be a proper approach. Therefore, since the Revision Petition had been filed taking advantage of Article 227 of the Constitution of India, I would exercise the power vested and direct that the evidence of the plaintiff may be reopened by the Principal District Munsif, Villupuram and opportunity may be given by the plaintiff to substantiate in his own words, the value of the suit and the Court fees



paid. Thereafter, let the defendant also address this particular issue quite apart from other aspects.

22. Recording of evidence would be of no use unless an issue had been framed on that particular aspect. Therefore, let an additional issue be framed by the Principal District Munsif, Villupuram, touching upon the valuation of the suit and whether the plaintiff had paid necessary Court fees and both parties may be given an opportunity to graze the witness box and speak for themselves regarding the valuation, under valuation, requisite Court fees and improper Court fees paid. That is an issue which can be decided only during the course of trial.

23. Therefore, even though the order in I.A.No.790 of 2016 is upheld by me and the Civil Revision Petition is dismissed, opportunity is again granted to the plaintiff to lead evidence to justify the valuation of the suit and the Court fees paid and the defendant may, if she still wants to pursue this particular aspect lead evidence with respect to her views on the valuation of the suit and the Court fees paid.



24. But I would not permit additional pleadings to be filed by either one of the two parties. Let them rest on the pleadings already filed. Let there not be any further pleadings. Let an issue on the valuation of the suit and the Court fees paid alone be framed and let evidence on that particular issue alone be recorded by the Court.

25. Before proceeding further, an obligation is placed that the death of the plaintiff should also be noted by the Principal District Munsif, Villupuram and his legal heirs should be brought. This would enable the parties to bring on record the legal representatives of the deceased legal representatives Prabakaramoorthy and Mahalingam before proceedings further with the issues raised in the suit.

26. Let the cause title be first regularized and then the suit may be proceeded to record evidence, first on the side of the plaintiff, after the evidence is reopened on the limited issue of Court fees and valuation of the suit and then by the defendant on all aspects including on the averments in the plaint / written statement.



27. With the aforesaid observations, the present Civil Revision Petition stands dismissed, but liberty is granted to the parties to raise the said particular issue during the course of trial. The learned Principal District Munsif, Villupuram, may bestow some attention and endeavour to dispose of the suit on or before 31.10.2022. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

21.03.2022

Internet: Yes/No

Index: Yes/No

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To

The Principal District Munsif Court, Villupuram.



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C.V.KARTHIKEYAN,J.

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