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CRP No.1267 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.No.1267 of 2023

and

CMP.No.8541 of 2023

Saifuddin Sajauddin Mamooowala (died)

1.Ismail Sajauddin Mamooowala

2.Nafisa Bai

3.Nafisa

4.Rabab

...

Petitioners

/vs/

1.Mahaveerchand Kothari

2.M/s.Kriticons Ltd.,

Rep.By its Managing Director,

D.K.Jain, Having Regd.Office at

No.3, Ceebros Centre, V Floor,

Door No.45, Montieth Road, Egmore,

Chennai – 600 008.

...

Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 09.01.2023 passed in O.S.No.40 of 2011 by the learned District Munsif, Chengalpattu.

For Petitioner ... Mr.A.S.Baalaji

For Respondent ... No such person
No.1

For Respondent ... Mr.K.Balamurali
No.2 for Mr.Shivakumar



CRP No.1267 of 2023

WEB COPY

ORDER

Challenging the impugned docket order dated 09.01.2023 passed in O.S.No.40 of 2011 by the learned District Munsif, Chengalpattu, the present civil revision petition has been filed.

2.Before the trial Court, the revision petitioners/plaintiffs originally filed a suit in O.S.No.40 of 2011 for declaration declaring the sale deed dated 17.04.2006 as null and void and other reliefs. Immediately, thereafter in the year 2011, the second respondent filed a written statement denying the averment made in the plaint stating that the property is not a vacant land and in the property, 48 flats were constructed after obtaining CMDA approval. Subsequently, the plaintiff filed an I.A.No.1916 of 2014 praying recovery of possession and other consequential relief of possession of the suit property after demolishing the structures if any made in the suit property and mandatory injunction directing the 2nd defendant to remove the constructions made and hand over the vacant possession to the plaintiffs pertaining to the suit property. That application was allowed on 11.10.2022. Therefore, the trial Court, on perusal of the pleadings, passed the order stating that after the proposed amendment, the suit property was not ryotwari land. Now, the suit property is converted into house site. So, the contention of the plaintiffs that



CRP No.1267 of 2023

the land as a land capable of assessing the market value cannot be accepted and the plaintiffs' plea to fix the Court fee based on kist value of the suit property also has not been accepted and he was directed to pay the Court fee based on the market value of the suit property within one month. Aggrieved by the finding of the trial Court, the plaintiffs have filed the present civil revision petition.

3.The learned counsel appearing for the petitioners submits that while passing the impugned order, the trial Judge has not mentioned the period, on which, the market value of the suit property is to be valued. In fact, the settled proposition that once the amendment is allowed towards the original cause of action, accordingly, the suit is filed in the year 2011 and the trial Court ought to have mentioned the period, on which, the plaintiff has to calculate the market value.

4.The learned counsel appearing for the respondents submits that immediately after filing of the suit in the year 2011 itself, they have filed the written statement stating that the land is converted into the house site and there is no vacant site as pleaded by the plaintiff. So, the plaintiff ought to have paid the Court fee as per the market value on assessing the suit property instead he paid the Court fee under Section 25 d, as such is not permissible.



CRP No.1267 of 2023

5.I have considered the matter in the light of the submissions made by the learned counsel for the petitioners as well as the learned counsel appearing for the respondents and perused the materials available on record.

6.On perusal of the records, it is seen that admittedly, now the proposed amendment is recovery of possession of the suit, already the plaintiffs filed the suit for declaration to cancel the sale deed of the year 2006. Now the proposed relief of recovery of possession is also adverse to the original cause of action and for the year 2011, the market value of the property is to be assessed. Accordingly, the order passed by the trial Judge is partly modified and the plaintiffs are directed to pay the Court fee by assessing the market value for the year 2011 as per Section 25 b within a period of two months from the date of receipt of a copy of this order.

In view of the above, the civil revision petition is disposed of. No costs. Consequently connected miscellaneous petition is closed.

Index : Yes/No
Internet: Yes/No
sms
To
The learned District Munsif,
Chengalpattu.

22.11.2023



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CRP No.1267 of 2023

T.V.THAMILSELVI, J.

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