



C.R.P.No.1219 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 27.03.2023

Delivered on 20.12.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.1219 of 2021
and C.M.P.No.9403 of 2021

1.S.Dava Yoga Rajan
2.S.Kalyani

...Petitioners/Plaintiffs

-Vs-

R.Adhilingam

...Respondent/Defendant

Prayer:-Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 12.03.2021 made in O.S.No.109 of 2020 on the file of the learned Subordinate Judge, Tindivanam.

For Petitioners : Mr.Om Prakash
Senior Counsel
for Mr.M.Ravichandran

For Respondent : M/s.R.V.Gayatri
for Mr.P.B.Ramanujam Associates



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ORDER

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This Civil Revision Petition is filed to set aside the fair and decretal order dated 12.03.2021 made in O.S.No.109 of 2020 on the file of the learned Subordinate Judge, Tambaram.

2.Mr.Om Prakash, learned Senior Counsel for the Revision Petitioners submitted that the learned Subordinate Judge, Tambaram, had returned the plaint several times, raising many queries. Subsequently, it was complied with by the learned Counsel before the Trial Court. After several returns and compliances, the same were taken on file and the suit was numbered. After issuance of summons to the Defendant, the Defendant entered appearance and filed a written statement.

3.The learned Senior Counsel for the Revision Petitioners contended that the Plaintiff had purchased the property from the Defendant to the extent of 175 Sq.ft. Subsequently, on measuring by the Firka Surveyor, it was found that it was not as per FMB Sketch. Therefore, he sought another property marked as Schedule 'D' in the sketch attached to the typed set. In the meanwhile, the Defendant, who had sold the property, was staying on



the first floor of the building as a permissive occupier. The learned Senior Counsel invited the attention of this Court to the prayer in the plaint seeking for a declaration, mandatory injunction and also damages for use and occupation of the Defendant until he delivers vacant possession. The learned Subordinate Judge, Tambaram, *suo moto* took up preliminary issues regarding court fee valuation. After hearing, both parties have given a finding that the jurisdiction of the Sub-Court, Tambaram, is not attracted and the valuation is higher.

4.The learned Senior Counsel for the Revision Petitioners submitted that the learned Judge had valued the court fee for the purpose of mandatory injunction and also based on market value and thereby arrived at the wrong conclusion. The learned Senior Counsel further submitted that regarding the valuation of the entire court fee, it is the subject matter involving facts and law that cannot be decided without evidence. The learned Judge also relied on a judgment of the Hon'ble Supreme Court, in which he chose a few lines and arrived at the conclusion that a permissive occupier cannot be evicted on prayer for a mandatory injunction and that the mandatory injunction is maintainable either against the tenant or the



permissive occupier. Therefore, the finding of the learned Subordinate Judge, Tambaram, is against the judgment of the Hon'ble Supreme Court, which the learned Judge himself had relied on and the same is to be set aside.

5.The learned Senior Counsel for the Revision Petitioners relied on the following rulings:-

- (a) In the case of ***Bharat Bhushan Gupta Vs. Pratap Narain Verma and Another*** reported in (2022) 8 SCC 333, wherein the Hon'ble Supreme Court is held as follows:-

“24.It remains trite that it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation. As a necessary corollary, the market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation. The market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed.

25.So far as the present suit is concerned, the plaintiff has alleged the defendants to be the licensees and has sought mandatory injunction obliging them to remove themselves and their belongings. Not much of discussion is required to find that with such pleadings, claim of relief of mandatory injunction is not unknown to the legal process. For ready reference, we may refer to the relevant passage from the decision in Maria Margarida Sequeira Fernandes [Maria Margarida Sequeira



Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370 : (2012) 3 SCC (Civ) 126] as under : (SCC p. 389, para 65

“65. A suit can be filed by the title-holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.”

27. In fact, in *Mulk Raj Khullar* [*Mulk Raj Khullar v. Anil Kapur*, 2013 SCC OnLine Del 3964 : (2013) 139 DRJ 303] as referred by the High Court in its impugned order, the aforesaid decision in *Sant Lal Jain* [*Sant Lal Jain v. Avtar Singh*, (1985) 2 SCC 332 : AIR 1985 SC 857] as also another decision in *Joseph Severance v. Benny Mathew* [*Joseph Severance v. Benny Mathew*, (2005) 7 SCC 667] were taken note of and the High Court concluded as follows : (*Mulk Raj Khullar case* [*Mulk Raj Khullar v. Anil Kapur*, 2013 SCC OnLine Del 3964 : (2013) 139 DRJ 303] , SCC OnLine Del para 16)

“16. The legal position that follows is that where a suit is filed with promptitude against a licensee whose licence is terminated, a suit for mandatory injunction is maintainable.”

(b) In the case of ***G.Rengarajan @ Ravi Vs. K.N.S.Gopal & Others*** reported in ***CDJ 2011 MHC 659***.

(c) In the case of ***V.L.Ramanathan Vs. Salem Nagarathar Sangam, rep. By its President, M.S.B.Subramanian, Chetty Naidu Thirumana Mahal, Santhi Nagar, 4th Street, Yercaud Road, Salem and 3 Others*** reported in ***2008 (5) CTC 792***.



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6.M/s.R.V.Gayatri for Mr.P.B.Ramanujam Associates, learned Counsel for the Respondent submitted her arguments.

7.The learned Counsel for the Respondent vehemently objected to the lines of the arguments of Mr.Om Prakash, learned Senior Counsel appearing for the Revision Petitioners stating that the learned Trial Judge has the power of the Civil Court to consider *suo moto* the valuation of the court fees and that it need not be considered based on pleadings by the Defendant. At the initial stage, when the suit is instituted, the learned Judge either the learned District Munsif, Tambaram, or the learned Subordinate Judge, Tamabaram, in the Civil Court jurisdiction, has the powers to consider the valuation of the court fees, to raise objections and also to pass appropriate orders refusing to entertain the plaint. The learned Subordinate Judge, Tambaram, had properly considered the pleadings of the Plaintiffs in the plaint in the light of the provisions of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1995). The learned Subordinate Judge, Tambaram, had rightly considered the preliminary issue and had raised the issues on point of jurisdiction. If the provisions of the court fees are invoked correctly, the jurisdiction of the



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Sub Court, Tambaram, will be exceeded while granting the relief.

Therefore, the relief, if assessed properly, will exceed the pecuniary jurisdiction of the Sub Court, Tambaram, for assessing the value of the property for recovery of possession. The learned Counsel for the Plaintiffs had cleverly drafted the plaint in such a manner that instead of suit for recovery of possession, the Plaintiffs had instituted the suit for mandatory injunction thereby cleverly avoiding court fees and causing loss to the State. The learned Subordinate Judge, Tambaram, was cautious and careful while entertaining the suit and therefore, rightly had passed a well-reasoned order that the suit, if valued as per the provisions of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1995), the suit cannot be entertained before the Sub Court, Tambaram, has to be instituted before the Court of the learned District Judge, Chengalpattu. It is a well-reasoned order in the light of the provisions of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1995), does not warrant any interference by this Court.

8. Section 12(2) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1995), is extracted hereunder:



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“Section 12: Decision as to proper fee in other Courts

(2) 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.”

9.The learned Counsel for the Respondent invited the attention of this Court to the provisions of Order XIV, Rule 2 of CPC and Section 12(2) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1995).

10.Also, the learned Counsel for the Respondent invited the attention of this Court to the relief in the plaint, which is hereunder:

“The Plaintiffs therefore humbly prays that this Hon'ble Court may be pleased to grant judgment and decree in favour of the Plaintiffs and against the Defendant.



- i. *declaring that the suit 'E' schedule property belongs to the 2nd Plaintiff and consequential directing the Defendant to handover the possession of the 'E' schedule property within a stipulated time fixed by this Hon'ble Court, on failure to effect the same through process of Court at the cost of Defendant;*
- ii. *a mandatory injunction directing the Defendant to vacate the first floor residential building occupied by him in the suit 'C' schedule property belonging to the 1st Plaintiff;*
- iii. *directing the Defendant to pay the 1st Plaintiff damages at the rate of Rs.500/- per day from the date of plaint till he vacates and deliver the vacant possession of the first floor at 'C' schedule property to the Plaintiffs;*
- iv. *a permanent injunction restraining the Defendant from evicting the 1st Plaintiff and their men from suit 'D' schedule property without following due process of law;*
- v. *for the cost of the suit; and*
- vi. *for such other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case and thus render justice.*

SCHEDULE OF PROPERTIES

SCHEDULE 'C'

The property owned and possessed by the Plaintiffs in the western side of the 'A' schedule property with land an extent of 123 Sq.Ft. and corner shop with two rolling shutters and residence building therein in first floor comprised in New S.No.484/20 Part shown in the rough sketch annexed to the plaint and bounded on the

North by	:	Property belongs to Mrs.Vijayalakshmi
South by	:	Kamarajar High Road – S.No.485
East by	:	Property belongs to Mr.Amirthalingam
West by	:	Kamarajar High Road



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Linear Measurements:

East to West on the Northern Side : 12.5 Feet
East to West on the Southern Side : 12.5 Feet
North to South on Eastern Side : 9.2 Feet
North to South on Western Side : 12.5 Feet

well within the Registration Chennai South and Sub Registration District of Padappai as shown in the rough sketch.

SCHEDULE 'D'

The remaining property retained by the Defendant in the eastern side of 'A' schedule property an extent of 76 Sq.Feet as shown in the rough sketch annexed to plaint bounded on the

North by : Property belongs to
Mrs.Vijayalakshmi
South by : Kamarajar High Road – S.No.485
East by : Property belongs to
Mr.Amirthalingam
West by : Property belongs to Plaintiffs

Linear Measurements:

East to West on the Northern Side : 7.8 Feet
East to West on the Southern Side : 5.9 Feet
North to South on Eastern Side : 11.8 Feet
North to South on Western Side : 10.4 Feet

well within the Registration Chennai South and Sub Registration District of Padappai.

SCHEDULE 'E'

The property owned by the Defendant on the western side of his 'D' schedule property land had measuring an extent of 40 Sq.Ft area (rounded off to lessor



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extent as the boundaries are uneven) along with building thereon comprised in New Survey No.484/20, Part, as shown in the rough sketch annexed to plaint bounded on the

*North by : Property belongs to
Mrs.Vijayalakshmi
South by : Kamarajar High Road – S.No.485
East by : Property belongs to Defendant
West by : Property belongs to 2nd Plaintiff*

Linear Measurements:

*East to West on the Northern Side : 4 Feet
East to West on the Southern Side : 3 Feet
North to South on Eastern Side : 10.4 Feet
North to South on Western Side : 11 Feet*

*well within the Registration Chennai South and Sub
Registration District of Padappai.*

11.The Plaintiffs cannot suppress or evade paying appropriate court fees by clever pleading instead of recovery of possession it is stated as “Mandatory Injunction” only for the purpose of evading or avoiding proper court fees and also to institute the suit as though it attracts the pecuniary jurisdiction of the Sub Court, Tambaram. Therefore, the learned Subordinate Judge, Tambaram, was right in rejecting the plaint. Hence, this Civil Revision Petition has no merits and is to be dismissed as having no merit.



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12.The learned Counsel for the Respondent relied on the following rulings:-

(a) In the case of ***S.N.S.Sukumaran Vs. C.Thangamuthu*** reported in ***2012 (5) CTC 705*** which was reference regarding different orders passed by the different Benches of our High Court, which held as follows:-

“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.

32. 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 vs. C. Shanmughasundaram](#), 2003 (1) C.T.C. 87 and [A. Chinnaraj vs. Saroja Ammal](#), 2008 (1) M.L.J. 75 stand overruled. Further, the decision rendered in [Solaiammal vs. Rajarathinam](#), 2003 (4) C.T.C. 268 stands partly overruled. The decisions rendered in [Laljivora vs. Srividya](#), 2001 (2) C.T.C. 411 and [V.R. Gopalakrishnan vs. Andiammal](#), 2002 (2) C.T.C. 513 are affirmed.”

(b) In the case of **Indirani & another Vs. Raja @ Annadurai** reported in **2019 (5) LW 455**, wherein this Court has held as follows:-

11. The learned counsel for the petitioners has raised a preliminary objection with regard to the jurisdiction of the Court below in entertaining the application after examination of PW1 and filing of proof



affidavit. According to the learned counsel for the petitioners, the objection with regard to the improper valuation of the suit and insufficiency of Court fees can be entertained by the Court only before hearing of the suit on merits and examination of the witnesses. In order to substantiate his submissions, the learned counsel for the petitioners relied upon the judgment of this Court in S.Saibullahkhan Vs. Hairunisha Beevi and others, referred supra. The relevant portion of the judgment is extracted hereunder.

“9.In [S.N.S.Sukumaran V. C.Thangamuthu](#), 2012 (5) CTC 705 (DB), the Division Bench of this Court has observed as follows:

“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 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.

(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



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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 bonafide 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.”

13. *It has to be seen whether the judgment of the Division Bench and the judgment cited by the learned counsel for the petitioners will apply to the facts of the present case. The provisions of [Section 12\(2\)](#) of the Act gives a clue that the power should be exercised before the evidence is recorded. The object of the Section is that after recording the entire evidence in the case, if the Court holds an enquiry as regards the valuation of the suit properties and if the plaintiff, on the basis of enhanced valuation, does not carry out the plaint amendment or pay the deficit Court fees, the entire exercise done by the Court in recording the evidence would become futile and stultification of the evidence already recorded. It is only with this object in mind, [Section 12\(2\)](#) of the Act insists the*



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power to be exercised by the Court before the evidence is recorded.”

13. **Point for consideration:**

Whether the order passed by the learned Subordinate Judge, Tambaram, rejecting the plaint dated 12.03.2021 is to be set aside?

14. On consideration of the rival submissions and perusal of the plaint averments in O.S.No.109 of 2020, written statement filed by the Defendant and the order passed by the learned Subordinate Judge, Tambaram, it is found that the Defendant had raised the court fees and suit valuation in the pleadings in the written statement. Therefore, the learned Senior Counsel appearing for the Revision Petitioners submitted that the learned Subordinate Judge, Tambaram, *suo moto* raised it and rejected the plaint, which cannot at all be accepted. As per Order XIV, Rule 2 of CPC, preliminary issues can be raised only in cases where the jurisdiction of the Court is raised by the Defendant and the contention of the Defendant is that the suit is barred under any law in the statute. In this case, the Defendant had raised the issue of court fees and suit valuation in the pleadings and in the written statement. Therefore, the contention of the



learned Senior Counsel appearing for the Revision Petitioners that the learned Subordinate Judge, Tambaram, *suo moto* raised it and rejected the plaint. He had properly applied the law and raised the preliminary issues.

15.The reliance placed by the learned Senior Counsel for the Revision Petitioners on the ruling of the Hon'ble Supreme Court in the case of ***Bharat Bhushan Gupta Vs. Pratap Narain Verma and Another*** reported in ***(2022) 8 SCC 333*** is also not applicable to the facts of this case. In the reported rulings, the suit was filed for the relief of mandatory injunction and prohibitory injunction, where the learned Judge had refused the valuation, claiming that it should be valued on the basis of the market value of the property. Therefore, the Hon'ble Supreme Court has held that it remains straight that it is the nature of relief claimed in a plaint which is decisive of the question of suit valuation. Market value does not become decisive in suit valuation merely because an immovable property is the subject matter of litigation.

16. The learned Counsel for the Respondent submitted that the order of the learned Subordinate Judge, Tambaram, is a well-reasoned



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order that does not warrant any interference and is found acceptable.

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17.Before ever proceeding with the trial and the recording of evidence, only the preliminary issue is to be decided. The learned Subordinate Judge, Tambaram, had rightly considered this before recording evidence.

18.In this case, the Plaintiffs had sought declaration of title to the property and mandatory injunction. By clever drafting, instead of seeking recovery of possession, they had claimed mandatory injunction to remove the Defendant from the suit property. Also, they had sought damages for use and occupation. Therefore, it is practically a declaration of title to the suit property and recovery of possession. It is a case of wanton suppression of material facts to avoid payment of court fees for the relief of recovery of possession from the Defendant. Therefore, the well-reasoned order of the learned Subordinate Judge, Tambaram, cannot be faulted.



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19.The ruling of the Hon'ble Supreme Court reported in ***Bharat Bhushan Gupta Vs. Pratap Narain Verma and Another*** reported in **(2022) 8 SCC 333**, is not applicable to the facts of this case and is hence rejected.

20.The rulings relied on by the learned Counsel for the Respondent are applicable to the facts of this case. The order passed by the learned Subordinate Judge, Tambaram, is found to be a well-reasoned order in the light of the ruling, particularly the Division Bench ruling in the case of ***S.N.S.Sukumaran Vs. C.Thangamuthu*** reported in **2012 (5) CTC 705**.

21.Before ever recording of evidence, before ever commencement of trial, the learned Subordinate Judge, Tambaram, had rejected the plaint under Order XIV, Rule 2 of CPC, by invoking Section 12(2) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1995). Therefore, the order passed by the learned Subordinate Judge, Tambaram, is found to be proper in the light of the reported rulings in

(1) ***Indirani & another Vs. Raja @ Annadurai*** reported in **2019 (5) LW 455**;

(2) ***S.N.S.Sukumaran Vs. C.Thangamuthu*** reported in



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2012 (5) CTC 705;

and Order XIV, Rule 2 of CPC, and Section 12(2) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (T.N. Act 14 of 1995).

22.In the light of the above discussion, the point for consideration is answered against the Revision Petitioners and in favour of the Respondent.

23.The order passed by the learned Subordinate Judge, Tambaram, rejecting the plaint dated 12.03.2021, is a well-reasoned order that does not warrant any interference by this Court. The same is confirmed by this Court exercising its power under Article 227 of the Constitution of India.

24.In the result, the **Civil Revision Petition stands dismissed**. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.12.2023

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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To

The Subordinate Judge, Tambaram.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

**Order made in
C.R.P.No.1219 of 2021**

20.12.2023