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C.R.P.Nos.1958 of 2019 & 1342 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.Nos.1958 of 2019 & 1342 of 2021
and CMP.No.12783 of 2019

Natarajan Marignan Mouniradjammallee
@ Pooshalakshmi (Died)

Caladevy Marignan @ Kaladevi Mani Sankar
... Petitioner in both CRPs

VS

1.Lakshmi Sakthivel
2.Irudayaraj .. Respondents in both CRPs

Prayer in CRP(NPD)No.1958 of 2019: Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 06.02.2019 passed in Review Petition No.02 of 2016 in O.S.No.72 of 2009 on the file of the Additional Subordinate Judge at Puducherry.

Prayer in CRP(NPD)No.1342 of 2021: Petition filed under Article 227 of the Constitution of India, against the Judgment and Decree dated 05.02.2016 passed in O.S.No.72 of 2009 on the file of the Additional Sub Judge at Puducherry.

(cause title accepted vide court order dated 23.6.2021 made in CMP.No.9275 of 2021 in CRP.SR.No.94168 of 2020)



C.R.P.Nos.1958 of 2019 & 1342 of 2021

(In both CRPs)

For Petitioner : Mr.S.Subbiah, Senior Counsel
for M/s.Elizabeth Ravi

For Respondents : Mr.R.Ganesh Kumar (for R1)
Mr.R.Rajasekaran (for R2)

COMMON ORDER

The disposal of CRP.No.1342 of 2021 will govern the order to be passed in disposal of CRP.No.1958 of 2019.

2.It is unfortunate that the parties have been litigating on an issue relating to Court fee for the past 14 odd years.

3.O.S.No.72 of 2009 was presented by the civil revision petitioner. She claims that she purchased the property from one Louis Marie Joseph Anandane Gnany on 25.04.1994.

4.According to her, she found that the defendants entered the property and started construction on 22.05.2009 and therefore she filed a suit for declaration and for mandatory injunction not to interfere with the possession of the property. The entire extent of the property is given in 'A' schedule and the subject matter of the claim by the plaintiff is the 'B' schedule.

5.According to the plaintiff, 'A' schedule has been assessed to kist and therefore, treating it as such under Section 7(2)(a) of the Puducherry Court Fees and Suits Valuation Act, 1972, she valued the suit on 30



times of the kist and presented the plaint.

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6.The defendants entered appearance and in the written statement questioned the pecuniary jurisdiction. In paragraph No.3 they stated the valuation of the property is not less than Rs.500/- per sq. ft. and therefore that Sub Court does not possess the pecuniary jurisdiction to try the suit.

7.In pursuance thereof, an application in I.A.No.452 of 2009 was filed under Order 7 Rule 10 read with Section 11 of the Puducherry Court Fees and Suits Valuation Act, 1972. After receiving a counter in I.A.No.452 of 2009, the learned Subordinate Judge passed an order on 10.01.2012 dismissing the petition on the ground that the Court possess the jurisdiction.

8.It is the admitted case on either side that the order passed by the Court on 10.01.2012 in I.A.No.452 of 2009 has attained finality. The first defendant did not file a revision to ascertain the correctness of the order before this Court.

9.In due course, the matter was listed for framing of issues. The learned Additional Subordinate Judge, Puducherry without reference to the order passed in I.A.No.452 of 2009 had held that the Court Fee that has been paid is improper. In order to arrive at this conclusion, the learned Judge did not record evidence on this issue, but merely chose to



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take the valuation given by the first defendant in her sale deed (without even making an attempt to mark the same) and on that basis, returned the plaint.

10.The plaintiff made an attempt to review the said order by filing Review Petition No.2 of 2016. The said review was dismissed by an order dated 06.02.2019. Challenging the order in review, CRP.No.1958 of 2019 has been filed. Challenging the original order of the Court dated 05.02.2016, CRP.No.1342 of 2021 has been presented.

11. I heard Mr.S.Subbiah, learned Senior Counsel for M/s.Elizabeth Ravi, learned counsel appearing for the petitioner, Mr.R.Ganesh Kumar, learned counsel appearing for the first respondent and Mr.Rajasekaran, learned counsel appearing for the second respondent. I have gone through the records.

12.Mr.S.Subbiah, learned Senior Counsel would submit that the Court having held that it has the pecuniary jurisdiction to deal with the issue and having found no merits in the application filed under Section 11 of the Puducherry Court Fees and Suits Valuation Act read with Order 7 Rule 10, it erred in returning the plaint.

13.Per contra, Mr.R.Ganesh Kumar would vehemently contend that the Court has the jurisdiction under Section 11(1) of the Puducherry



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Court Fees and Suits Valuation Act, not only to pass an order at the first instance, but also has the power to review the same by virtue of the very same provision. He would also state that dehors the provisions under Section 11(1), the Court has the power to frame the issue and decide the same under Order 14 Rule 1 and 2 of the Code of Civil Procedure and therefore, the revision does not deserves acceptance and has to be dismissed.

14. I have to recollect the position of law that *res judicata* not only applies for suits, but also for proceedings of the same nature between the same parties in the same suit. [*See, Barkat Ali and another v. Badri Narain reported in (2008) 4 SCC 615*]. The issue of Court Fee having been raised in I.A.No.452 of 2009 and having been rejected on 10.01.2012, it is rather surprising that the Court below should hold that it has an inherent power to review the order passed by the Court on its jurisdiction.

15. The power of review is not an inherent power, but is one conferred by the statute. In the present case, neither the first defendant nor the plaintiff had moved an application for review of the order. Ignoring the order already passed in I.A.No.452 of 2009 and holding that the Court does not have jurisdiction, amounts to bye-passing the order



and giving a go-by to the principles of *res judicata*.

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16.As submitted by Mr.Ganesh Kumar, I read Section 11(1) of the Act 6 of 1973. It shows that as per Section 11(1), further review and correction which has been incorporated under Section 11(1) is in terms of Section 11 itself. The exceptions to the rule being where a new defendant has been impleaded as a party to the suit or the power of the appellate Court to re-visit the issue on its own motion or on application filed by a party to review the order that is passed by the trial Court on the matters of Court fee. As already stated in this case, the matter has been pending and has not yet gone for trial and therefore, the question of the appellate Court reviewing Court fee has not arisen.

17.It is also not a case where a new defendant has been impleaded as a party to the suit. Therefore, the review and further review that has been provided in Section 11(1) does not mean that the very same Court can re-visit an order which has already been passed, without an application by either party.

18.Insofar as the principle under Order 14 Rule 1 and 2 which has been urged by Mr.Ganesh Kumar, I am not agreeable with the same, because matters of Court Fee are decided on the basis of the averments made in the plaint.



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19. Apart from that, under Section 21(2) of the CPC, an objection as to the pecuniary jurisdiction should be raised at the earliest available opportunity (it has been raised in this case) and in addition, there must be a failure of justice. There is absolutely no finding by the trial Court that there is a failure of justice on account of the valuation of the suit. On the contra, since the order of the learned Trial Judge in I.A.No.452 of 2009 has already attained finality, the review of the said order by the learned Judge “suo motu” has resulted in one. Therefore, the order dated 05.02.2016 deserves interference.

20. In fine, the order passed by the learned Judge is contrary to the settled principles of *res judicata* in the same proceeding as well as to the provision under Section 11(1) of the Puducherry Court Fees and Suits Valuation Act. Therefore, the revision is accepted. The order passed by the learned Additional Subordinate Judge, Puducherry dated 05.02.2016 is set aside.

21. The learned Additional Subordinate Judge is directed to take the suit in O.S.No.72 of 2009 on its file and proceed with and dispose of the same in accordance with law.

22. CRP.No.1342 of 2021 having been allowed, CRP.No.1958 of



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2019 becomes infructuous and no orders are necessary. No costs.

Consequently, connected miscellaneous petition is closed.

16.08.2023

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

vs

To

The Additional Subordinate Judge,
Puducherry.

V. LAKSHMINARAYANAN,J.



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