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C.R.P.No.1876 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

C.R.P.No.1876 of 2023

1.D.Amsa

2.S.K.Varathan

..Petitioners

Vs.

1.T.Murali Dass

2.K.Jothi Ammal

3.Deenadayalan

4.Vedhachalam

5.Venugopal

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the return order dated 25.04.2023 made in ASSR.No.137 of 2023 by the learned Principal Sub Judge at Chengalpattu returning the Memorandum of Grounds of Appeal, direct the learned Principal Sub Judge, Chengalpattu to number the Appeal by allowing the Civil Revision Petition.

For Petitioner : Ms.S.Ruban Prabu



C.R.P.No.1876 of 2023

ORDER

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This petition is filed questioning the return endorsement of the learned appellate Court returning the appeal in AS.Sr.No.137 of 2023 dated 25.04.2023 on the file of Principal Sub Court, Chengalpattu.

2. The 1st respondent/ plaintiff had filed a suit for declaration of title and perpetual injunction against the petitioners/ defendants 4 and 9 in the year 2011 in O.S.No.1 of 2011. The said suit came to be decreed on 23.12.2022 and aggrieved by the same, the appellants being the defendants preferred an appeal before the appellate Court viz., the Principal Sub Court, Chengalpattu by paying the Court fee as the 1st respondent/ plaintiff paid in O.S.No.1 of 2011, when the plaint was presented. However, the learned appellate Court has returned the said appeal with the following endorsement:-

Perused records. This Appeal is filed challenging the Decree dated 23.12.2022 in O.S.No.1 of 2011 on the file of the DM. Cum JM Thirukazhukundram. As per Amended Court Fee Act Under Act 6/2017 value has to be arrived on the basis of Guideline Value, market value. TNCF Act would mean the phrase "Court of first



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C.R.P.No.1876 of 2023

*instance” as only the Court which passed the decree and not the Court in which the suit was filed, so the valuation and Court Fee has to be computed and paid at that would be payable at the time of passing of Decree. Hence, the Registry of this Court is directed to return the Appeal for purpose of deficit Court Fee.
Time One Month.*

3. The learned counsel for the petitioner has taken this Court to Explanation 5 of Section 52 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, wherein, it is clearly mentioned that for determining the Court fee payable, the market value shall be ascertained as on the date of presentation of the plaint. If that is taken into consideration, the observation made by the appellate Judge in returning the appeal that the Court fee has to be paid as per the present market value is erroneous.

4. The learned counsel for the petitioner also referred to the judgment of the Hon'ble Supreme Court in ***State of Bomba Vs. Supreme General Films Exchange Ltd., and others*** reported in ***AIR 1960 SC 980***, wherein, it was held that the appellant had a vested right of appeal



C.R.P.No.1876 of 2023

when the proceedings were initiated and the right of appeal was governed by the law as it stood then. It was further held that the amendment could not be regarded as a mere alteration in procedure or an alteration regulating the exercise of the right of appeal.

5. Taking into consideration the provision as mentioned above in respect of the Amended Tamil Nadu Court Fees and Suits Valuation Act, 1955, the learned appellate Court is directed to re-consider the appeal and number the same, if it is otherwise in order and issue notice to the respondents, in case, the respondents raise any objections in respect of the Court fee and the same can be determined after giving opportunity to both sides.

6. With the above observation, this Civil Revision Petition is disposed of. No costs.

21.06.2023

dsa

Index :Yes/No

Internet :Yes/No

Neutral Citation :Yes/No

Speaking order/Non-Speaking order



C.R.P.No.1876 of 2023

To:-
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The Principal Sub Judge, Chengalpattu.



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C.R.P.No.1876 of 2023

Dr.D.NAGARJUN, J.

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C.R.P.No.1876 of 2023

21.06.2023