



C.R.P.No.2874 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2874 of 2019
and C.M.P.No.18749 of 2019

Dr.Loganathan

.. Petitioner

Vs.

1. Marthar Kula Welfare Association,
Angalamman Temple Premises,
Trichy Road, Palladam,
Coimbatore District.

2. Arulmigu Angalamman Temple,
Represented by its Managing Trustee,
Angalamman Temple Premises,
Trichy Road, Palladam.

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 11.02.2019 made in I.A.No.1101 of 2017 in O.S.No.255 of 2013 on the file of II Additional District Court, Tiruppur by allowing this present Civil Revision Petition.

For Petitioner : Mr.V.Anandhamoorthy

For Respondents : Notice served
No appearance



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ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 11.02.2019 made in I.A.No.1101 of 2017 in O.S.No.255 of 2013 on the file of II Additional District Court, Tiruppur, thereby dismissing the application seeking to decide the issue of Court fees as a preliminary issue.

2. The petitioner is the defendant in the suit filed by the respondents for recovery of possession and damages in respect of the suit schedule property. Pending suit, the petitioner filed an application under Order 14 Rule 2 CPC r/w Section 12(2) of the Tamil Nadu Court fees and Suits Valuation Act, to decide the question relating to the valuation of the suit and insufficiency of the Court fees paid, as a preliminary issue. It was dismissed and aggrieved by the same, the present Civil Revision Petition.

3. The learned counsel for the petitioner would submit that the suit has been valued under Section 28 of the Tamil Nadu Court fees and Suits



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Valuation Act and paid a sum of Rs.1000/- as Court fees. It is between the trustees and rival trustees and then only Section 28 of the Tamil Nadu Court fees and Suits Valuation Act would apply. Whereas, the petitioner is a private person and he is claiming the suit property on the ground that he was already issued patta in respect of the suit property and he is not a trustee or a rival trustee.

4. Therefore, the Court fees shall be paid as per the value of the suit property and not by fixed Court fee as contemplated under Section 28 of the Tamil Nadu Court fees and Suits Valuation Act. It is a settled law that the Court fees is not the question of law and as such it cannot be taken as a preliminary issue. That apart, the Court fees shall be as per the averments made in the plaint and not as per the defence taken by the defendants.

5. Therefore, the Court below had rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below and this revision is liable to be dismissed. The suit is of the



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year 2013 and as such, the Trial Court is directed to dispose of the suit, within a period of six months from the date of receipt of a copy of this order.

6. Accordingly, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

mn

To

The II Additional District Court, Tiruppur.

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and C.M.P.No.18749 of 2019

02.03.2023