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C.M.P.No.19975 of 2022 in AS.No.338 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :01.12.2022

PRONOUNCED ON :23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.P.No.19975 of 2022
in AS.No.338 of 2022

C.M.P.No.19975 of 2022:

S.Semmalai

... Petitioner/4th respondent

VS

1.All India Anna Dravida Munnetra Kazhagam
(Presently known as All India Anna Dravida
Munnetra Kazhagam (Ammma)),
As per order dated 22.03.2017 and 23.03.2017 passed in
Dispute Case No.2/2017 by the Election Commission of India)
having its Headquarters at 226 Avvai Shanmugam Salai,
Royapettah, Chennai – 600 014.
Through its General Secretary.

2.V.K.Sasikala,
General Secretary,
All India Anna Dravida Munnetra Kazhagam,
(Presently known as All India Anna Dravida
Munnetra Kazhagam (Ammma)),
As per order dated 22.03.2017 and 23.03.2017 passed in
Dispute Case No.2/2017 by the Election Commission of India),



D/o.Late Vivekanandan,
Prisoner No.9234, Parappana Agrahara Jail,
Bengaluru, Karnataka – 560 100 and
Permanent resident of 81, Poes Garden,
Chennai – 600 086.

... Respondents/Appellants

3.All India Anna Dravida Munnetra Kazhagam
(Presently known as All India Anna Dravida
Munnetra Kazhagam (Puratchi Thalaivi Amma)),
As per Order dated 22.03.2017 and 23.03.2017 passed in Dispute Case
through its Office bearer, E.Madhusudanan,
S/o.Sehsaiah Naidu,
R/o.41, Kothanda Raman Street,
Old Washermanpet, Chennai - 600 021.

4.E.Madhusudhanan (deceased)

5.O.Panneerselvam

6.Edappadi K.Palanisamu

7.Dindigul Sreenivasan

8.Karur Vysya Bank Ltd.,
Through its Branch Manager,
Mylapore Branch, Chennai-600 004.

9.Indian Bank,
Through its Branch Manager,
Abhiramapuram Branch, Chennai – 018.

10.Bank of India,
Through its Branch Manager,
Cathedral Road Branch, Chennai-86.

11.T.T.V.Dhinakaran,
Deputy General Secretary,
All India Anna Dravida Munnetra Kazhagam,
(Presently known as All India Anna Dravida
Munnetrakazhagam (Amma)),



As per order dated 22.03.2017 and 23.03.2017 passed in
Dispute Case No.2/2017 by the Election Commission of India),
S/o.T.Vivekandan, R/o No.5, 4th Street, Venkateswara Nagar,
Adyar, Chennai – 600 020. ... Respondents/Respondents

Prayer in C.M.P.No.19975 of 2022: Civil Miscellaneous Petition is filed under Section 151 read with Order VII Rule 11(b) of the Code of Civil Procedure, read with Section 52 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1995, praying to direct the appellants to remit the Court Fee as per the value of relief claimed in the suit, failing which dismiss this Appeal Suit.

Prayer in A.S.No.338 of 2022 First Appeal is filed under Section 96 of the Civil Procedure Code, 1908, praying to set aside the decretal order dated 11.04.2022 passed in I.A.No.10 of 2021 in O.S.No.1413 of 2021 on the file of the IV Additional City Civil Judge, Chennai.

For Petitioner	:Mr.Vijay Narayan (Sr.Advocate) for M/s.Athiban Vijay
For Respondents	:Mr.G.Rajagopalan for M/s.Pa.Elantamil Arvalan for R1 Mr.M.Srisharan Rangarajan for M/s.N.S.Amogh Simha for R3 Ms.Narmatha Sampath



and E.Balamurugan
for M/s.S.R.Ragunathan for R5
S.R.Rajagopal for R6

O R D E R

This petition is filed by the petitioner/4th respondent seeking a direction to the respondents 1 to 3/appellants to remit the Court fee as per the value of relief claimed in the suit and on their failure, to dismiss the appeal.

2. The respondents 1 and 2 filed the present appeal, challenging the order passed by the learned Trial Judge, allowing the application filed by the 6th respondent herein, seeking to reject the plaint. The respondents 1, 2 and 11 herein filed a suit seeking following reliefs:

(i) The respondents 4 to 7 are not members of the first respondent party and all acts, deeds, things done and representation made by them, pursuant thereto holding themselves as members and office bearers of first respondent party are illegal and without the sanction of the By-laws of the first respondent party;



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(ii) For a declaration in favour of respondents 1, 2 and 11 that the notification dated 12.03.2017 issued by the deceased 4th respondent/second defendant in his alleged capacity as Presidium Chairman of the first respondent party, whereby, the 4th respondent appointed himself as Chief of Board and the 5th respondent as the alleged Treasurer and the 6th respondent as Organizing Secretary of the first respondent party is illegal, void and not binding upon the plaintiff;

(iii) The respondents 1, 2 and 11, the plaintiffs in the suit also sought for a declaration in their favour that the notice dated 28.08.2017 issued by the 4th respondent herein is illegal and inoperative and void;

(iv) For declaration in favour of the plaintiffs in the suit that the alleged meeting dated 12.09.2017 convened by the defendants and their supporters under the guise of AIADMK (All India Anna Dravida Munnetra Kazhagam) representing themselves as the representatives of the first respondent party is illegal and void;

(v) For declaration in favour of the plaintiffs in the suit that all



resolutions passed and adopted by the defendants and their supporters in the alleged meeting dated 12.09.2017 and all consequential actions taken by the defendants and their supporters acting upon the same are illegal, inoperative and void;

(vi) For permanent injunction in favour of the plaintiffs in the suit restraining the petitioner and respondents 4 to 7 from holding out themselves as office bearers and members of the first respondent party on account of their expulsion in February 2017;

(vii) For permanent injunction in favour of the plaintiffs against the respondents 4 to 6 from carrying out any consequential act by virtue of Notification dated 12.03.2017 illegally issued by the 4th respondent in his alleged capacity as Presidium Chairman of the first respondent party whereby the 4th respondent appointed himself as Chief of the Board and the 5th respondent as the alleged Treasurer and 6th respondent as organizing Secretary of the first respondent party;

(viii) For permanent injunction in favour of the plaintiffs and against the respondents 3 to 7 from giving effect to resolution 1 to 12 passed and adopted by them in the meeting dated 12.09.2017 and from carrying out



any consequential acts thereto;

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(ix) Pass a decree of permanent injunction in favour of the plaintiff restraining the petitioner and respondents 3 to 7 from operating any bank accounts of the first respondent party;

(x) Permanent injunction in favour of the plaintiffs restraining the petitioner and respondents 4 to 7 from operating any bank accounts of the first respondent with respondents 8 to 10 except through the Treasurer appointed on 10.09.2017 by the second respondent as General Secretary of first respondent party;

(xi) For a decree of injunction in favour of the plaintiffs and against the petitioner and respondents 3 to 7 from interfering with the functions of the present validly appointed office bearers appointed by the respondents 2 and 11 in the discharge of their duties in the day-today affairs of the first respondent party and to restrain them from convening any general council meeting and passing any resolutions thereat.

3. When the above suit was pending, the 6th respondent herein



filed an application in I.A.No.8 of 2021 seeking rejection of the plaint mainly on the ground that the first respondent/first plaintiff party and 3rd respondent/1st defendant party came into existence only due to an interim order passed by the Election Commissioner of India by order dated 22/23-3-2017 and those two parties are really two groups of original All India Anna Dravida Munnetra Kazhagam. It was specifically pleaded by 6th respondent in his petition for rejection of the plaint that those two groups had no independent existence and could not sue or be-sued in their names and it could only be represented through its office bearers with the leave of the Court under Order 1 Rule 8 of CPC. It was also pleaded by the 6th respondent that the first and 3rd respondent parties cease to exist after the order passed by the Election Commissioner of India dated 23.11.2017.

4. The learned trial Judge came to the conclusion that all the reliefs sought for by the plaintiffs/respondents 1,2 and 11 herein had become either infructuous or unsustainable in view of the final orders passed by the Election Commissioner of India recognizing the petitioner and the respondents 4 to 7 herein as true representatives of original political party namely AIADMK and consequently allowed the petition seeking rejection of



the plaintiff. Aggrieved by the said order, the respondents 1 and 2 have filed the first appeals in A.S.Nos.337, 338 and 339 of 2022.

5. When these appeals were posted for hearing, the learned counsel for the petitioner had taken a preliminary objection as to the correctness of the court fee paid on the memorandum of appeals and thereafter, the petitioner has filed the present petition raising his objection as to the valuation of the appeals made by the respondents 1 and 2 and the court fee paid thereon.

6. Mr.Vijay Narayan, learned Senior counsel appearing for the petitioner submitted that the respondents 1 and 2 valued the relief sought for by them in the suit at Rs.25,80,001/- and when the plaint filed by them was rejected by the Trial Court on the application filed by the petitioner and others, in effect the reliefs sought for by the respondents 1 and 2 were negatived and therefore, when appeal is filed against the order rejecting the plaint treating it as deemed decree, the valuation of the appeal shall be valuation of reliefs as made by the respondents 1 and 2 in their plaint. He further submitted that in the present appeal memorandum of grounds, the



appellants conveniently adopted the valuation as incapable as if they are challenging the order passed in I.A, which was valued as incapable.

7. The learned Senior Counsel elaborated by saying that as per the definition of Section 2(2) of CPC the expression “decree” includes an order of rejection of plaint. When the plaint is rejected, the order passed by the trial Court in an interlocutory application filed for rejection of plaint becomes a deemed decree. Further, on allowing of I.A for rejection of the plaint, as a necessary consequence, the plaint prayers stand negatived and it results in dismissal of the suit. Therefore, it is the contention of the learned Senior counsel, in cases, where the plaint is rejected on the ground of failure of cause of action or bar created by any law, under Order 7 Rule 11 (a and d) of CPC, the rights of the parties are considered on merits and whenever there is a final adjudication of the rights of the parties, the appeal filed against an order rejecting the plaint shall be valued as the plaint had been valued before the trial Court. In the case on hand, the respondents 1 and 2 valued their reliefs in the plaint at Rs.25,80,001/- and when their plaint is rejected on the ground of failure of cause of action and bar created under law, in an appeal against rejection of plaint, the value of the appeal shall be equivalent to the



value as mentioned by them in their plaint. The learned Senior Counsel also submitted that if the appeal is valued as mentioned by the respondents 1 and 2 in their plaint, as per Order 1 Rule 2 (5) (c) of AS Rules, the present appeal will go out of the pecuniary jurisdiction of the Single Judge and the matter shall be posted before the Division Bench for hearing.

8. The learned Senior Counsel by relying on the decisions of the Patna High Court reported in AIR 1929 page 615 in *Munshi Mahton Vs Lachman Lal* submitted that an appeal filed against an order rejecting the plaint is an appeal against deemed decree. Therefore, a memorandum of appeal against an order rejecting the plaint must be stamped at ad-valorem rate on value of plaint. The learned Senior Counsel also relied on the judgment of the *Madhya Pradesh High reported in ILR 1973 MP 330 in M.G.Tipnis Vs. The Secretary, Ministry of Commerce, Union of India* wherein Madhya Pradesh High Court had taken a view that in cases where appeal is filed against the order rejecting the plaint, the court fee is payable under Schedule 1, Article 1 of Court Fees Act and it shall be ad-valorem on the subject matter in dispute in appeal which shall be the same as valued in



the Court of first instance.

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9. The learned Senior Counsel also relied on the following decisions in support of his contentions:

(i) 1952 SCC online RAJ 72 reported in *Shah Dharamchand Vs Shah Punamchand*;

(ii) 1982 BLD 201 reported in *Md.Basiruddin and others Vs. Jamiruddin and others*;

(iii) (2016) 6 SCC 675 reported in *Rishab Chand Jain and another Vs. Ginesh Chandra Jain*.

10. The learned Senior Counsel also tried to distinguish the judgment of this Court reported in **2017 SCC online Mad 3663 in *L.Rathanchand Sarma Vs. M/s.Vinayaka Exports and Imports***, wherein the learned Single Judge of this Court has taken a view that the subject matter in an appeal against an order rejecting the plaint is only the right of the plaintiff to maintain the suit which is incapable of valuation and hence the court fee payable would be minimum court fee that is paid on the application for rejection of the plaint before the trial Court.



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11. The learned senior counsel by taking this Court to Schedule 1, Article 1 of Tamil Nadu Court Fee and Suit Valuation Act, submitted that the ad-valorem Court fee payable on the memorandum of appeal shall be on the value of the subject matter in dispute. It is the specific contention of the learned Senior counsel that when the relief sought for by the plaintiff in the present suit are rejected, as a necessary consequence of an order rejecting the plaint, the subject matter in dispute shall be treated as the entire subject matter of the suit.

12. The learned senior counsel also by taking this Court to the explanation 1 to Section 52 of Tamil Nadu Court Fees and Suit Valuation Act contended that by virtue of rejection of the plaint, suit stands dismissed and hence in an appeal against the rejection of the plaint, the value of the appeal should be the value of the suit and the learned Single Judge of this Court in the decision cited supra failed to take into consideration the impact of explanation 1 to Section 52 of Court Fees Act.

13. It is the contention of the learned senior Counsel in the case on hand that all the contentions of the respondents 1, 2 and 11/plaintiffs had



been gone into by the Court below on merits in a petition for rejection of plaint and it has been held that the relief sought for had become infructuous by virtue of the final order passed by the Election Commissioner of India and consequently there is a final adjudication on the rights of the parties. Therefore, in an appeal challenging the order dismissing the plaint, what is in dispute is the entire claim of the plaintiffs in the suit.

14. Mr.S.R.Rajagopal, learned Counsel for the 6th respondent supplemented the arguments of the learned senior counsel for the petitioner by submitting that in the case on hand the rights of the plaintiffs have been conclusively determined by the order impugned in revision and hence it should be treated as a decree. The learned counsel further submitted that explanation 1 to Section 52 of Tamil Nadu Court Fees Act had not been considered by the learned Judge in the judgment reported in **2017 SCC online Mad 3663 in L.Rathanchand Sarma Vs. M/s.Vinayaka Exports and Imports.**

15. The learned counsel further submitted that the subject matter of the appeal in the present case is the subject matter of the relief



sought for by the plaintiffs which were rejected as a result of rejection of the
plaint.

16. Mr.G.Rajagopalan, learned Senior Counsel appearing for the respondents 1 and 2 countered the arguments of the learned Senior Counsel for the petitioner and that of the counsel for the 6th respondent by submitting that in the present appeal the subject matter of the appeal is only the correctness of the order rejecting the plaint and therefore, the subject matter of the appeal cannot be equated with the subject matter of the suit.

17. It is the contention of the learned Senior Counsel that the petitioner and other respondents supporting the petitioners filed an application seeking the relief of rejection of the plaint. The said relief was valued as incapable by them. The trial Court granted the relief of rejection of the plaint. Hence in an appeal to set aside the relief granted by the trial Court, the valuation of the appeal shall be the one which was the value of the relief before the trial Court. The learned Senior Counsel further submitted that the learned Single Judge of this Court in a decision cited supra in **2017 SCC online Mad 3663 in L.Rathanchand Sarma Vs. M/s.Vinayaka**



Exports and Imports followed the decisions of the Division Bench of this Court and hence the said judgment is binding on this Court.

18. The learned Senior Counsel relied on the judgment reported in ***2014(1) CTC 673 in Darsana Bai (died) and others Vs. C.Saroja and 16*** and submitted that when the relief prayed for in the appeal is different from the relief refused by the Court of first instance, the fee payable in appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal. The learned Senior Counsel elaborated it by saying that in the appeal the respondents 1 and 2 seek reversal of the order rejecting the plaint. The relief of rejection of the plaint is valued as incapable even by the petitioners herein in the interlocutory application filed before the Court below and hence the relief sought for in the appeal is also incapable.

19. The learned Senior Counsel for the respondents 1 and 2 also submitted that question of Court Fee is a matter between the appellant and the Court and therefore the present petitioners are not entitled to raise the question of Court Fee as they are not aggrieved by the same.



20. Heard the arguments of the learned Senior Counsel for the petitioner, counsel for the 6th respondent and learned Senior Counsel for the respondents 1 and 2.

21. The issue of valuation of the appeal raised in this miscellaneous petition assumes significance in view of the fact, if value of the appeal is ultimately held to be equivalent to the value of the relief sought for in the original suit, the appeal would go out of the pecuniary limits of the Single Judge. In the case on hand, the reliefs sought for in the plaint were valued at Rs.25,80,001/-. As per the Order 1 Rule 2 (5) (c) of AS Rules, if the value of the subject matter of the appeal is Rs.25,00,000/- or more, the appeal shall be heard by the Division Bench. Therefore, the issue raised in this miscellaneous petition is also relating to the pecuniary jurisdiction of the

Single Judge to hear the matter as per the AS Rules framed by this Court. Therefore, though the Court Fee is the matter between the appellant and the Court, in view of the fact that the objection also relates to the pecuniary limits of the Single Judge, the respondent is entitled to canvass this point and hence this Court rejects the contention of the learned Senior Counsel for the respondent that the petitioner has no locus to question



valuation adopted by the appellant.

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22. The provision relating to the valuation of an appeal namely

Section 52 of Tamil Nadu Court Fee and suit valuation Act reads as follows:

The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal: Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.

Explanation (1).-- Whether the appeal is against the refusal of a relief or against the grant of the relief, the fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance.

Explanation (2).-- Costs shall not be deemed to form part of the subject-matter of the appeal except where such costs form themselves the subject-matter of the appeal or relief is claimed as regards costs on grounds additional to, or independent of, the relief claimed regarding the main subject-matter in the suit.



Explanation (3).-- In Claims which include the award of interest subsequent to the institution of the suit, the interest accrued during the pendency of the suit till the date of decree shall be deemed to be part of the subject-matter of the appeal except where such interest is relinquished.

Explanation (4).--Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal.

Explanation (5).-- Where the market value of the subject-matter of the appeal has to be ascertained for the purpose of computing or determining the fee payable, such market value shall be ascertained as on the date of presentation of the plaint.

23. A close scrutiny of the above provision would make it clear that the court fee payable on memorandum of appeal shall be the same as the fee that would be payable in the trial Court on the subject matter of the appeal. Therefore, it should be decided first what is the subject matter of the appeal in the case on hand. As per the facts narrated above, the petitioner and some of the supporting respondents filed an application seeking a relief



of rejection of the plaint. The said application was allowed and the present appeal is filed challenging the order allowing the relief of rejection of the plaint. Therefore, the relief sought for in this appeal is relief of reversal of order rejecting the plaint granted by the trial Court. Though as a consequence of rejection of the plaint, suit was dismissed and the appellant prayed for setting aside of the consequential order, in effect the appellant prayed for reversal of the relief of rejection of the plaint granted by the trial Court. It is not the case of the appellant that the relief sought for in the plaint should be granted in this appeal and in fact the respondents 1 and 2/appellants cannot seek the relief, they prayed for in the main suit in this appeal. In case, if the appeal is ultimately allowed, the result would be reversal of the order allowing the petition for rejection of the plaint. Therefore, as a necessary consequence suit will be restored to the file and the rights and liabilities of the parties need to be adjudicated after full fledged trial. This Court by reversing the order granting relief of rejection of the plaint cannot as a consequence grant the reliefs that were prayed for in the suit. Hence, the subject matter of the present appeal is only the correctness or otherwise of the relief of rejection of the plaint granted by the trial Court. Explanation 1 to Section 52 makes it clear, if the appeal is against the refusal



of relief or against the grant of relief, fee payable in the appeal shall be the same as the fee that would be payable on the relief in the Court of first instance. The petitioner and other supporting respondents sought the relief of rejection of the plaint by valuing the interlocutory application as incapable. Therefore, it is abundantly clear that the petitioner and other supporting respondents valued the relief of rejection of the plaint as incapable and paid the minimum Court Fee payable. We have already come to the conclusion that the subject matter of the appeal is only the correctness or otherwise of the order granting rejection of the plaint. By no stretch imagination, we can say this Court can go further and decide the entitlement of the contesting respondents/plaintiffs to the relief prayed for in the suit.

24. In view of the explanation 1 to Section 52 of Tamil Nadu Court Fees and suit valuation Act, the appeal shall be valued as the relief granted had been valued before the trial Court. In the case on hand, the petitioner and the supporting respondents themselves valued the relief of rejection of the plaint as incapable and paid the minimum Court Fee of Rs.20/-. The appeal filed against grant of relief of rejection of the plaint should also be valued only as incapable and the minimum Court Fee shall be



payable. In the case on hand, the petitioner valued the appeal as incapable as it had been valued by the petitioner and other supporting respondents before the Court of first instance and paid the minimum Court Fee.

25. This Court in the judgment reported in **2017 SCC online Mad 3663 in L.Rathanchand Sarma Vs. M/s.Vinayaka Exports and Imports** had categorically held that the appeal challenging the order of rejection of plaint shall be valued under Article 1 Schedule 1 of the Court Fees Act and the subject matter in the appeal is only the right of the plaintiff to maintain the suit and nothing more. This Court has also come to the conclusion in the said judgment that the subject matter of the appeal filed against an order rejecting the plaint is not the same as the subject matter in the main suit. For the reasons mentioned above, I agree with the view taken by another learned Judge of this Court in the above said decision.

26. The judgment relied on by the learned Senior Counsel for the petitioner reported in **ILR 1973 MP 330 equivalent to AIR 1970 MP 5** was in fact referred before the learned Judge of this Court in the decisions cited supra, after referring to the Division Bench decisions of the Madhya



Pradesh high Court in **ILR 1973 MP 330 in M.G.Tipnis**, this Court observed as follows:

20. *The learned Additional Advocate General would however, invite my attention to the decision of a Division bench Judgment of Madhya Pradesh High Court in the case of M.G. Tipnis v. The Secretary, Ministry of Commerce, Union of India, New Delhi and others, reported in MANU/MP/0002/1970 : AIR 1970 MP 5, wherein the Division Bench has disagreed with the Full Bench decision of Andhra Pradesh High Court and chose to follow the Full Bench decision of the Nagpur High Court in the case of Apparao Sheshrao Deshmukh v. Mt. Bhagubai and others reported in MANU/NA/0001/1948 : AIR (36) 1949 Nagpur 1. I must immediately point out that MANU/NA/0001/1948 : AIR (36) 1949 Nagpur 1, in fact dissented from the view of this Court in Kalliappa Goundan v. Kandaswami Goundan reported in MANU/TN/0173/1938 : AIR 1938 Madras 498. The Division Bench of Delhi High Court in the case of Sehgal Industrial Works v. Tru-Temp Industries and others reported in MANU/DE/0156/1986 : (1986) 11 DRJ 71, has referred to M.G. Tipnis v. The Secretary, Ministry of Commerce, Union of India, New Delhi and others, reported in MANU/MP/0002/1970 :*



AIR 1970 MP 5, as well as the Full Bench of Judgment of Andhra Pradesh High Court in the case of Sri Maharaj Kumarika Subarna Rekha Mani Devi and others v. Sri Ramakrishna Deo and others reported in MANU/AP/0109/1968 : AIR 1968 Andhra pradesh 239, but chose to follow the Full Bench Judgment of Andhra Pradesh High Court, in preference to that of the Division Bench Judgment of the Madhya Pradesh High Court. One another reason impels me to desist from following the judgment of the Division Bench of the Madhya Pradesh is that it dissents from a Division Bench of this Court which is binding on me. (Emphasis supplied)

21. Insofar as the other decisions refers to by Mr. V. Ayyadurai, learned Additional Advocate General, I do not think that they have a bearing on the issue that has been raised by the learned counsel for the appellant. In the judgment of this Court in S. Marimuthu v. G. Kumaraswamy and others reported in MANU/TN/1353/1996 : 1997 (1) LW 76, the question involved was when the subject matter of an appeal is different from the Subject matter of the suit, what would be the Court Fee payable?. The Division Bench held that the Court Fee payable would be on the value of the subject matter in dispute as shown in the Memorandum



of grounds of appeal. On the facts of said case a suit filed by the plaintiff falls for declaration of title for a particular property and also for a direction to execute and registered a rectification deed. The Trial Court while decreeing the suit directed the plaintiff to pay a sum of Rs. 50,000/- to the 1st defendant as compensation for the illegal acts committed by him. The plaintiff had challenged the said portion of the decree directing him to pay Rs. 50,000/- as compensation for the illegal acts allegedly committed by him. While considering the question of Court Fee, the Division Bench held that the appellant should have paid Court Fee for a sum of Rs. 50,000/- granted as compensation. Lesser Court Fee paid on the valuation of the suit was not accepted. In my considered opinion this Judgment of the Division Bench, supports the case of the appellant. Yet another provision that should be taken note of, in my opinion, is explanation 4 to Section 52 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955. Section 52 provides that the Fee payable in an appeal shall be the same as the Fee that would be payable in the Court of first instance on the subject matter of the appeal. Explanation 4 to Section 52 reads as follows:-



"Explanation (4). -- "Where the relief prayed for in the appeal is different from the relief prayed for or refused in the Court of first instance, the fee payable in the appeal shall be the fee that would be payable in the Court of first instance on the relief prayed for in the appeal."

22. The explanation reproduced above would show that the legislature had in fact contemplated that in an appeal against a decree where the relief prayed for is different from the relief that was prayed for in the suit, then the Court Fee payable in such cases is the Court Fee that would be payable in the Court of first instance on the relief prayed for in the appeal. In a case of rejection of plaint falling under Clause a or d of Order 7 Rule 11 of Code of Civil Procedure, the relief prayed for in the appeal is to set aside the order of rejection and for rehearing the suit. Then the Court Fee payable as per the Explanation 4 would be the Court Fee that was payable for seeking rejection of the plaint and nothing more.

27. This Court after referring to the Division Bench judgment of the Madhya Pradesh High Court cited by the learned Senior counsel for the



petitioner in M.G.Tipnis case observed that the view taken by Madhya Pradesh High Court is contrary to the view of the Division Bench of this Court and hence it was bound to follow the Division Bench. For the same reason, I am unable to agree with the decisions of the other High Courts referred by the learned Senior Counsel for the petitioner. The learned Single Judge of this Court in ***L.Rathnachand Sarma*** case after referring to the earlier Division Bench decisions of this Court has come to the conclusion that subject matter of the appeal filed against the order rejecting the plaint is not the same as the subject matter of the main suit. Therefore, I prefer to follow the decision of this Court which is based on earlier Division Bench which is binding on me. As discussed earlier, in the appeal preferred by the respondents 1 and 2, we are only concerned with the correctness or otherwise of the impugned order rejecting the plaint. This Appeal is against grant of the relief of rejection of plaint. The petitioners themselves valued the relief of rejection of the plaint in the interlocutory application as incapable and paid the minimum court fee of Rs.20/-. Hence, as per Explanation 1 to Section 52 of Tamil Nadu Court Fees Act, the value of the appeal shall be the same as it was valued before the trial Court. Therefore, the contention raised by the learned Senior Counsel and the counsel for the



6th respondent that the learned Judge of this Court in L.Rathanchand Sharma case did not consider the impact of explanation 1 to Section 52 of Tamil Nadu Court Fees Act cannot be accepted. In my view the impact of explanation 1 to Section 52 of Tamil Nadu Court Fees Act would make the appeal filed against the rejection of the plaint as incapable of valuation and consequently, I do not find any error in the valuation adopted by the respondents 1 and 2/appellant in the memorandum of appeal.

28. The conclusion arrived at by this Court is based on the relevant provision of Tamil Nadu Court Fees and suit valuation Act and direct decision of this Court on the interpretation of Tamil Nadu Court Fees Act. The citations relied on by the learned Senior Counsel for the appellant obviously not relate to the appeals presented under the Tamil Nadu Court Fees and Suit Valuation Act, therefore, this Court prefers to follow the view taken by this Court instead of giving preference to the decisions of other high Courts which were based on other Court Fees Act.

29. As far as the decision relied on by the learned Senior Counsel for the petitioner reported in *(2016) 6 SCC 675 reported in*



Rishab Chand Jain and another Vs. Ginesh Chandra Jain is concerned, the question involved in the case was relating to the maintainability of the appeal as against the order rejecting the plaint. The said decision was not related to the payment of Court Fees in an appeal against the rejection of plaint. Therefore, the said decision will not advance the case of the petitioner.

30. Yet another argument made by the learned Senior Counsel for the petitioner and the learned counsel for the 6th respondent would be in the case on hand, the Court below went to the rival contentions of the parties and there was a conclusive determination of the rights of the parties and hence the value of appeal shall be value of the suit. As mentioned earlier in these appeals, this Court cannot adjudicate the merits of the controversy involved in the case and grant the relief prayed for in the suit. Even assuming the contentions of the appellants are accepted, at the most, this Court can only direct restoration of the suit to the file and whether the appellants are entitled to the relief prayed for in the suit or not has to be decided only by the trial Court, in the event of appellants being successful. Therefore, the relief prayed for by the appellants cannot even remotely be



treated on par with the reliefs sought for in the suit. Merely because the appeal is preferred against an order which is deemed decree or which determines the rights of the parties in one way or other, we cannot presume that subject matter of the appeal is the same as that of the subject matter of the suit. In view of the limited scope of the appeal, whether the relief of rejection of the plaint granted by the trial Court is correct or not, this Court is not in a position to adjudicate on the rights of the parties and the relief sought for in the suit on merits. The narrow scope of the petition for rejection of the plaint is entitlement of the plaintiff to maintain the plaint based on the averments found thereon.

31. The rights of the parties are not adjudicated based on the evidence let in by both the parties. In fact, even the defense raised by the defendant cannot be taken into consideration while considering the application for rejection of the plaint. The Court is only expected to see whether the plaint is maintainable, whether the relief sought for can be adjudicated upon on the basis of the averments found in the plaint.

32. In view of the discussions made earlier, I find the valuation



made by the respondents 1 and 2/appellants in the memorandum of appeal is correct and in accordance with law. The petition for direction to appellant to pay higher Court Fee is dismissed. No costs.

23.01.2023

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S.SOUNTHAR, J.



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C.M.P.No.19975 of 2022 in AS.No.338 of 2022

Pre-delivery Order made in
C.M.P.No.19975 of 2022 in
AS.No.338 of 2022

23.01.2023