



WEB COPY



A.S. Nos. 76, 90 & 994 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

A.S. Nos. 76, 90 & 994 of 2019

&

C.M.P. No. 3194 of 2019

A.S. No. 76 of 2019

1. Grace Kanagaraj @ Nora
 2. Lleen
 3. Ethel
 4. Meera Bai
 5. Ramani Watts
 6. C.W. Daisy Sampooram
 7. Simpson Watts
- (Appellants 2 to 7 represented by their
Power of Attorney 1st appellant)
8. Nirmala
 9. Prisilla
 10. Sheela

..Appellants in all three
appeals

Vs.

1. Stephen Thomas



A.S. Nos. 76, 90 & 994 of 2019

2. Anne Inbaraj

..Respondents in all
three appeals

WEB COPY

Prayer in A.S. No. 76 of 2019:

Appeal Suit as against the judgment and decree dated 31.07.2018 passed in O.S. No. 9 of 2017 by the learned District Judge, Nilgiris at Udhagamandalam.

Prayer in A.S. No. 90 of 2019:

Appeal Suit as against the judgment and decree dated 29.06.2018 passed in I.A.No. 204 of 2017 in O.S. No. 9 of 2017 by the learned District Judge, Nilgiris at Udhagamandalam.

Prayer in A.S. No. 994 of 2019:

Appeal Suit as against the judgment and decree dated 31.07.2018 passed in I.A. No. 204 of 2017 in O.S. No. 9 of 2017 by the learned District Judge, Nilgiris at Udhagamandalam.

For Appellants :: Mr.S. Mukund,
Senior Advocate for
Mr. Jayaraj

For Respondents :: Mr.C. Prakasam

J U D G M E N T



A.S. Nos. 76, 90 & 994 of 2019

(Delivered by S. Vaidyanathan, J.)

A.S. No. 76 of 2019 has been filed by the plaintiffs as against the judgment and decree dated 31.07.2018 passed in O.S. No. 114 of 2004, renumbered as O.S. No. 9 of 2017 while A.S. Nos. 90 and 994 of 2019 have been filed as against the orders dated 29.06.2018 and 31.07.2018 passed in I.A. No. 204 of 2017 respectively.

2. Originally, the suit in O.S. No. 114 of 2004 was numbered as O.S. No. 139 of 2003 and was filed before the Sub Court, Udhagamandalam by the appellants herein as plaintiffs for a declaration that they are the absolute owners to the suit properties and for recovery of possession, free from obstruction, with future mesne profits payable by the respondents/defendants from that date till date of delivery of possession of the suit properties. The appellants/plaintiffs valued the suit property as Rs.51, 860/- and paid court-fee of Rs.3,890 under Section 25(a) of Tamil Nadu Court Fees and Suits Valuation Act. The respondents/defendants, among other objections, raised an issue relating to court-fee also. As objection had been raised by the respondent/defendants, with regard to the



A.S. Nos. 76, 90 & 994 of 2019

court-fee paid, contending that the value of the suit properties was more than Rs.2 crores even in the year 2003, the suit was transferred to the file of District Munsif Court, Coonoor on the point of enhanced jurisdiction and the suit was renumbered as O.S. No. 114 of 2004. A Court Commissioner was suo motu appointed by the learned District Munsif to value the suit property with the help of a Civil engineer, who accordingly valued the suit property and filed his report. Both sides filed their objections to the Advocate Commissioner's report. As the valuation of the Advocate Commissioner exceeded the pecuniary jurisdiction of District Munsif Court, Coonoor, the appellants/plaintiffs were directed to amend the plaint. On a memo filed by the appellants/plaintiffs to return the plaint to be re-presented before the competent jurisdictional Court, the learned District Munsif, Coonoor, returned the plaint with a specific direction to re-present before the competent jurisdictional Court within 30 days. Without re-presenting the plaint, the plaintiffs preferred an appeal before Sub Court, Udthagamandalam and the said appeal was dismissed on merits, as against which they approached this Court in C.R.P. No. 3824 of 2016 and the said revision also came to be dismissed on 14.12.2016 confirming the judgment



A.S. Nos. 76, 90 & 994 of 2019

and decree passed by the learned Sub Judge, Udhagamandalam. While dismissing the revision, the High Court had directed the appellants/plaintiffs to re-present the plaint after paying the requisite court-fee on or before 03.04.2017. As per the said direction, the plaint was re-presented before the Court on 23.03.2017. The plaintiffs valued the suit at Rs.90,29,107/- and paid a court fee of Rs.2,70,995/- by calculating at 3% as per the Amended Court Fees Act. The said suit was taken on file and re-numbered as O.S. No. 9 of 2017. Contending that the appellants/plaintiffs, once again, had not paid correct and proper court fees payable on the date of presentation of the plaint, as early as 2003 and had paid only a sum of Rs.2,70,905/- as against Rs.6,77,183.52/-, the respondents/defendants filed I.A. No. 204 of 2017 under Order VII Rule 11 CPC to reject the plaint on the ground of non-payment of deficit court fee.

3. The learned Trial Judge, after considering the arguments advanced on both sides and upon perusing the relevant documents, by order dated 29.06.2018 directed the appellants/plaintiffs to pay the remaining court fees on or before 30.07.2018 and further observed that in the event of



A.S. Nos. 76, 90 & 994 of 2019

failure, the application in I.A. No. 204 of 2017 to reject the plaint would be allowed and the suit would be rejected. However, the appellants/plaintiffs failed to comply with the conditional order, thereby resulting in I.A. No. 204 of 2017 being allowed by order dated 31.07.2018. Consequent thereto, the suit also came to be rejected by judgment dated 31.07.2018. Challenging all the three orders passed by the Trial Court, the above appeal suits have been filed.

4. Heard the submissions made by the learned Senior counsel for the appellants and the learned counsel for the respondents.

5. From a perusal of the records, it is evident that originally, the suit was filed as early as on 22.04.2003 and therefore, the Court Fees Act, on that date, would alone be applicable. The Trial Court had rightly observed that if the case of the appellants/plaintiffs that the Court Fees payable would be as per the Amended Court Fees Act, since on the date of re-presentation, i.e, on 03.04.2017, the Amended Court Fees Act had come into effect, is accepted, then it has got to be presumed that the suit was filed



A.S. Nos. 76, 90 & 994 of 2019

only on 22.03.2017 and the suit will be barred by law of limitation. The appellants/plaintiffs should have paid court fees @ 7.5%, which was prevalent on the date of filing of the suit in 2003 and not at the reduced rate of 3%. Hence, we are of the view that the appeal suits are liable to be dismissed as the Trial Court is justified in rejecting the suit.

6. However, at this juncture, it is submitted by the learned Senior Advocate for the appellants/plaintiffs that the plaintiffs are ready to pay the deficit court fee and the matter may be remanded back to the Trial Court for disposal of the suit on merits. The respondents submitted that the original suit is of the year 2017 and more than five years have gone by and they are unable to enjoy the fruits of the litigation. However, the learned counsel for respondents would submit that the Trial Court may be directed to decide the matter at the earliest point of time.

S. VAIDYANATHAN,J.

AND



WEB COPY



A.S. Nos. 76, 90 & 994 of 2019

K. RAJASEKAR,J.

nv

7. Considering the submission made by the learned Senior Counsel for the appellants/plaintiffs, the appellant/plaintiffs are permitted to deposit the difference in court fee within a period of three weeks from the date of receipt of a copy of this order and on such deposit, the Trial Court is expected to take up the suit in O.S. No. 114 of 2004, renumbered as O.S. No. 9 of 2017, on a day-today basis, without adjourning the matter beyond 7 working days at any point of time and pass final judgment and decree within six months from the date of receipt of this order.

8. With the above observation, the appeal suits are disposed of.
No costs. Connected C.M.P. is closed.

nv

(S.V.N.J.) (K.R.S.J.)
07.06.2023

To
The District Court,
Udhagamandalam.
2019

A.S. Nos. 76, 90 & 994 of