



CRP (MD) No.1008 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	12.07.2023
Pronounced on	21.12.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.1008 of 2021

and

C.M.P(MD)No.5821 of 2021

1.Johnbosko

2.Adaikkalamery

... Petitioners

Vs.

1.Clatvin

2.Thilaka

3.Sasivan

4.Parimalam

5.Sebastian

6.Velchamy

7.Dalwar

8.Marconi

9.Mariya Rosma

10.Dernishiya

11.Irulandi

12.Balu



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13.Kalyanasundaram

14.Kappal

15.Thangam

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records in I.A.No.46 of 2021 in O.S.No.45 of 2020 dated 22.03.2021 on the file of the learned Subordinate Judge, Mudukulathur and set aside the same and allow the Civil Revision Petition.

For Petitioners : Mr.V.Meenakshi Sundaram
for Mr.K.Arunraj

For Respondents : Mr.K.,Kumaravel

ORDER

This civil revision petition is preferred as against the order passed in I.A.No.46 of 2021 in O.S.No.45 of 2020, dated 22.03.2021, on the file of the learned Subordinate Judge, Mudukulathur.



2. According to the revision petitioners, the petitioners as plaintiffs filed a suit in O.S.No.45 of 2020 before the Sub Court, Mudukulathur, against the defendants for declaration, recovery of possession, permanent injunction and to declare the sale deeds of the defendants as null and void in respect of the suit properties. The defendants made appearance and filed their written statement. Thereafter, the defendants 9 to 23/respondents herein have filed I.A.No.46 of 2021 under Section 12(2) of Tamil Nadu Court Fees and Suit Valuation Act to decide the valuation of the suit property as a preliminary issue. The petitioners herein filed their counter. However, the trial Court allowed the said application by its order dated 22.03.2021, against which, the present revision is preferred.

3. The learned counsel for the revision petitioners would submit that the trial Court committed irregularity in allowing the application on the ground that Item No.3(i) and (ii) of the suit properties are classified as residential area and therefore, the plaintiffs ought to have calculated the *ad-valorem* fee on the half of the market value fixed by the Registration Department, whereas the said item No.3(i) and (ii) of the suit properties are



being a panai punja land and having no other residential area nearer to the suit properties and no panai punja lands have been converted into house plots. The trial Court erred in accepting Ex.P.5, registered sale deed, produced on the side of the defendants, which is a commercial property, whereas item No.3(i) and (ii) of the suit properties are only pannai punja lands used as agricultural land. Therefore, Ex.P5 sale deed cannot be correlated with the disputed property in Survey No.231, which is having a larger extent. The revenue records would also go to show that the property of the revision petitioners/plaintiffs being a larger extent of 6 acres 59 cents as Panai Punja lands. Therefore, the market value fixed by the trial Court on the basis of Ex.P.5 is totally erroneous and unsustainable in the eye of law. He would further submit that the trial Court ought to have considered the classification of land maintained by the revenue records and original usage of disputed lands. The registration authorities may even classify the agricultural land as house-site for their departmental income and make a registered sale deed by calculating the outside market value, which is totally not valid in the eye of law. He would further submit that the registration authority has properly followed the guidelines, while fixing the guideline/market value of



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the disputed land from time to time. There is no commercial/industrial units in and around the disputed land. The trial Court ought to have determined the market value of the disputed lands based on its usage recorded by the revenue authorities in their records and the mere fact that the land is in close proximity to the residential land will not convert an agricultural land into a residential land. The trial Court ought to have dismissed the application filed by the defendants considering the revenue records maintained by the Government Officials and since the disputed land is an agricultural land, the ad-volorem fee paid by the petitioners herein is proper and the Court is having pecuniary jurisdiction to try the above suit. Therefore, the order passed in I.A.No.46 of 2021 in O.S.No.45 of 2020 dated 22.03.2021 is liable to be set aside.

4. On the other hand, the learned counsel for the respondents would submit that the revision petitioners/plaintiffs failed to produce the valuation certificate from Sub Registrar's Office, Kayalgudi, where the suit property is situated at the time of filing the suit on 04.10.2020. He would further submit that the cost of the total extent of the suit property is about Rs.1,02,25,512/-.



Therefore, the Sub Court, Muthukulathur lacks jurisdiction to try the about suit and the revision petitioners/plaintiffs ought to have paid a sum of Rs.8,232/- under Section 25(A) of the Court fee Act (Amended Act, 2017). It is further submitted that since the revision petitioners/plaintiffs sought for the relief of interim injunction as per the guideline value, they ought to have paid a sum of Rs.2,732/- as per the Court Fees Act. Since the plaintiffs have sought the relief of declaration and recovery of possession in suit item No.1, the plaintiff ought to have paid a sum of Rs.8,232/- under Section 25(A) of the Court fees Act. Likewise, since the plaintiffs have sought the relief of declaration of title and permanent injunction in suit item -2, the plaintiffs ought to have paid a sum of Rs.2,732/- under Section 25(B) of the Court Fees Act. Again the plaintiffs have sought for the relief of declaration of title and permanent injunction in suit item -3 (i)&(ii) and the plaintiffs ought to have paid a sum of Rs.1,46,535/- under Section 25(B) of the Court fees Act. However, the plaintiffs have not paid the proper Court fee and they failed to pay the correct Court fee according to the value of the suit properties. If proper Court fee is paid as per the Amended Act 2017 of the Court Fees Act, the Sub Court, Muthukulathur has no jurisdiction to try the above suit.



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Hence, the trial Court after considering the same, has rightly allowed the application filed by the defendants, which calls for no interference.

5. Heard on both side and records perused.

6. Point for consideration:-

“Whether the plaintiffs have proved that they have paid appropriate Court fee for the prayer seeking declaration of title, recovery of possession and permanent injunction and to declare the suit sale deeds as null and void?”

7. According to the respondents/defendants, the revision petitioners/plaintiffs have not properly valued the suit properly and have paid insufficient Court fees. The contention of the respondents/defendants is that the value of the suit properties is about Rs.1,02,25,512/- as per the prevailing market value. Whereas, the revision petitioners/plaintiffs would contend that the sale deed under Ex.P5 cannot be correlated with the suit properties, since it is panai punja lands and the properties covered under Ex.P.5 is a commercial property, which cannot be compared with the value of the suit



properties. It remains trite that the questions relating to suit valuation and Court fees ought to be examined at the initial stage of the presentation of plaint and the defendant is usually not expected to be interested in such a dispute, unless such questions also involved the question of jurisdiction of the Court to try the suit. In the present case, if the value of the suit property exceeds the pecuniary jurisdiction of the Sub Court, then the question relating to the suit valuation and Court fees ought to be examined at the initial stage to decide the question of jurisdiction of the Court. Moreover, Section 12(2) provides for the defendant's rights to raise the question of Court fees. No doubt, the issue regarding the Court fee normally would be a mixed question of law and fact. Evidence is to be recorded incidentally for the issue regarding Court fee, which may also involve question of pecuniary jurisdiction.

8. In answering the said issue, if the Court holds that the subject matter of the suit is more than the value over which the said Court has no jurisdiction, it has to return the plaint for presentation to the proper Court. In the present case, the trial Court has applied the comparable sales method of



valuation of the land. No doubt, the comparable sales method of valuation of land is preferred than any other method for ascertaining the true market value of the land in dispute. However, before comparable sales method of valuation of land is applied for ascertaining the true market value of the land in dispute, the Court is required first to consider certain other aspects of the matter. The first aspect is that the comparable sales should be genuine documents. The second aspect which is to be seen by the Court is whether the comparable sales relate to the land in the same vicinity or village. The third aspect of the matter is whether the comparable sales relate to small pieces of land. The revision petitioners/plaintiffs have not stated anything about the genuinity of Ex.P5 sale deed. It is also not disputed that the property covered under Ex.P5, is in the same vicinity or in the same village.

9. The only contention of the revision petitioner is that the suit property is an agricultural property whereas the property covered under Ex.P5 is a commercial property. Therefore, the usage of the land has to be considered before fixing the market value of the suit properties. However, it has been established by numerous authorities that the land is not to be valued merely



by reference to the use to which it is being put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one. No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably mere future for building purposes, but which at the valuation date is being used for agricultural purposes. The owner, however, will be intended to sell the land for its value as was to or agricultural land as the case may be. It is true that in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account.

10. In the instant case, since the lands in the vicinity are used for commercial purposes, there is a dispute that the land is also possessing the possibility of being used for building purposes. Therefore, the value has to be ascertained, is the price to be paid for the land with all its potentialities. It is true that the suit properties, as per the technical nomenclature, classified as agricultural land, but it is possessed of all the requisite potentialities for being converted into building sites. It is well established that attainability of the



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agricultural land to house-site for buildings is an essential element to be taken into account for determining the market value. The entire land required should be valued on the basis of its attainability for building purposes. As regards the measurement of valuation, it is necessary to take into account the prices that have been obtained for the lands similarly situated in the same neighbourhood at the relevant period. The trial Court has considered the market value of the disputed land with reference to the *bona fide* and genuine sale deed marked as Ex.P5 of the adjacent land or nearby land which would be a best piece of evidence in absence of any other contrary evidence. Therefor, no infirmity found in the order passed by the trial Court and the same is confirmed.

11. In view of the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.12.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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K.GOVINDARAJAN THILAKAVADI

cp

To

The Subordinate Judge,
Mudukulathur.

Pre-delivery order made in
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21.12.2023

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