



S.A.(MD).No.429 of 2020

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.11.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.429 of 2020

and

C.M.P.(MD)Nos.5086 of 2020 and 775 of 2023

Sivagnanapandiyan

... Appellant

/Vs./

1.Raja

2.Arivugnanam

3.Anthoniraj

4.Vijendhiran

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 17.12.2019, made in A.S.No.113 of 2017 on the file of Subordinate Judge, Mudukulathur, reversing the Judgment and Decree, dated 11.07.2017, made in O.S.No. 106 of 2015 on the file of District Munsif Court, Mudukulathur.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondents : Mr.A.Hajamohideen



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JUDGMENT

The plaintiff has filed the suit for partition. The 1st defendant is the appellant herein and the plaintiff is the 1st respondent herein.

2. The 1st defendant has objected to the jurisdiction of the Munsif Court by relying on Section 53(2) of Tamil Nadu Court Fees and Suits Valuation Act, 1955. The further contention of the defendant is that the suit property is already partitioned, therefore, there cannot be another partition.

3. After considering the objection on jurisdiction, the Trial Court has returned the papers. Aggrieved over the same, the plaintiff had preferred an appeal before the First Appellate Court. The First Appellate Court has held that since it is a suit for partition, the Court fee will remain the same, therefore, it is not correct to return the papers and directed the Trial Court to proceed with the Trial. Aggrieved over the said judgment, the present second appeal is preferred.



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4. The main contention of the 1st defendant is jurisdiction. The 1st defendant / appellant had relied on Section 53(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, wherein jurisdiction is prescribed and hence submitted the Appellate Court ought to have relied on section 53(2) and return the papers. But the Appellate Court had relied on Section 37(2) and directed to proceed with the Trial, but the said section 37(2) only states about the Court Fees that is payable.

5. The **Section 37(2)** is extracted hereunder:

37. *Partition suits*

(1) In a suit for partition and separate possession of a share of joint family property or of property owned, jointly or in common, by a plaintiff who has been excluded from possession of such property, fee shall be computed on the market value of the plaintiff's share.

**[(2) In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates:--*

When the plaint is presented to –



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(i)	a District Munsif's Court	Rupees one hundred.
(ii)	the City Civil Court, Chennai or a Sub-Court or a District Court.	Rupees one hundred, if the value of plaintiffs share is rupees thirty thousand or less; rupees five hundred, if it is above rupees thirty thousand but below rupees one lakh; and rupees seven hundred and fifty, if the value is rupees one lakh and above.
(iii)	The High Court.	Rupees one thousand].*

(3) Where, in a suit falling under sub-section (1) or sub-section (2), a defendant claims partition and separate possession of his share of the property, fee shall be payable on his written statement computed on half the market value of his share or at half the rates specified in sub-section (2), according as such defendant has been excluded from possession or is in joint possession.

(4) Where, in a suit falling under sub-section (1) or sub-section (2), the plaintiff or the defendant seeks cancellation of decree or other document of the nature specified in section 40, separate fee shall be payable on the relief of cancellation in the manner specified in that section.

** Substituted by the Tamil Nadu Act 17 of 2003 with effect from 15th June, 2003."*



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6. The **Section 53(2)** deals with jurisdiction and the same is extracted hereunder:

“CHAPTER V

Valuation of Suits

53. Suits not otherwise provided for. - (1) *In a suit as to whose value for the purpose of determining the jurisdiction of courts, specific provision is not otherwise made in this Act or in any other law, value for that purpose and value for the purpose of computing the fee payable under this Act shall be the same.*

(2) In a suit where fee is payable under this Act at a fixed rate, the value for the purpose of determining the jurisdiction of courts shall be the market value or where it is not possible to estimate it at a money value such amount as the plaintiff shall state in the plaint.”

7. In the Tamil Nadu Court Fees and Suits Valuation Act, 1955 Sections 21 to 52 comes under Chapter IV with Heading “Computation of Fee” deals with Court Fees payable for the suits. In the said Act Sections 53 and 54 under Chapter V with Heading “Valuation of Suits” deals with the jurisdiction of the suits. Section 53(2) specifically states



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when the court fee is at a fixed rate, the value for the purpose of determining the jurisdiction of courts shall be the market value. When it is not possible to estimate it at a money value such amount as the plaintiff shall state in the plaint. From the above provisions it is evident that for determining Court Fees the Section 37 ought to be referred, but while determining the jurisdiction section 53 ought to be referred. The Appellate Court had not referred section 53 at all and hence the impugned order is erroneous.

8. Further in the present case, the defendant has submitted evidence to prove the market value of the property. On perusing the market value, it is seen that the District Munsif Court is not having jurisdiction but only the District Court.

9. When the First Appellate Court has not referred to Section 53 then it is necessary that the Appellate Court Judgment ought to be set aside and accordingly the judgment of the First Appellate Court is set aside.



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10. The plaintiff is directed to present the papers before the District Court, Ramanathapuram District and the District Court is directed to complete the suit within a period of six months from the date of receipt of a copy of this judgment.

11. With the above said observations, the second appeal is allowed.
No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2023

Index : Yes / No
NCC : Yes / No

Tmg

TO:

1. Subordinate Judge, Mudukulathur.
2. District Munsif Court, Mudukulathur.
3. District Court, Ramanathapuram District.
4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.429 of 2020

Dated:
28.11.2023