



CRP(MD)No.472 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 02.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.472 of 2017
and
CMP(MD)No.2277 of 2017

Lilly

: Petitioner

Vs.

1.Akash

2.Delsibai

3.Davidson

4.John Shelly

5.Gladdis

: Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 21.11.2016 passed by the learned II Additional District Munsif, Kuzhithurai, in I.A.No.76 of 2016 in O.S.No.225 of 2010 and set aside the same.

For Petitioner : Mr.C.Kishore

For Respondents : Ms.J.Anandhavalli for R.1

No appearance for R.2 to R.5



CRP(MD)No.472 of 2017

ORDER

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The petitioner is the fourth defendant in the suit in O.S.No.225 of 2010 pending before the II Additional District Munsif Court, Kuzhithurai. The suit was filed by the first respondent / plaintiff for the relief of declaration of title of the suit schedule properties. The suit was valued under Section 25(a) of the Tamil Nadu Court Fee Act and the plaintiff has valued the property for the purpose of Court fee as Rs.40,000/-, being the half of the market value of the suit property and paid a sum of Rs.3000.050/- as Court fee, as per Section 7(2) of the Tamil Nadu Court Fee Act.

2.The evidence of PW1 was completed and the suit was posted for further evidence. At that stage, the petitioner / fourth defendant has filed an interlocutory application in I.A.No.76 of 2016 under Order 14 Rule 2 CPC to take up the issue regarding pecuniary jurisdiction and to decide as to whether the suit property is under valued or not, as a preliminary issue. The trial Court, by order dated 21.11.2016, dismissed this interlocutory application, holding that a pure question of law alone can be decided as a preliminary issue and aggrieved over the same, the petitioner has moved the instant revision petition.



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3.Learned Counsel for the petitioner submitted that the first respondent / plaintiff has valued the suit property for the purpose of Court fee as Rs.40,000/- and paid a sum of Rs.3000.050/- as Court fee. Pending the suit, the plaintiff has executed the documents Ex.B1 to Ex.B3 / settlement deeds, wherein, the market value of the suit properties have been stated as Rs.40,00,000/-. Hence, the trial Court is not having the pecuniary jurisdiction to try the suit and he has made a specific averment in this regard in the written statement as well. Therefore, he prayed for appropriate orders.

4.Learned Counsel for the first respondent / plaintiff submitted that the Court fee was paid as per Section 7(2) of the Tamil Nadu Court Fee Act, ie., 30 times of the survey assessment. It is a Ryotwari land and the availability of a building in the said property does not change the character of a Ryotwari punja land. The issue raised by the petitioner is not a pure question of law and it is a mixed question of law and facts. Therefore, it cannot be decided as a preliminary issue. Moreover, the petitioner's husband / the second defendant, on the very same issue, has already filed an application in I.A.No.798 of 2010 and the same was dismissed by the trial Court on 24.11.2011. Therefore, on the ground of



constructive *res judicata* also, the application is not maintainable. Therefore, the learned Counsel prayed for dismissal.

5.This Court paid it's anxious consideration to the submissions made by the respective Counsel and also perused the available materials.

6.The suit was filed in the year 2010 and the evidence was taken in the year 2016. The evidence of PW1 was completed and the suit was posted for further evidence of the plaintiff side witnesses. At that time, the petitioner has filed an interlocutory application under Order 14 Rule 2 CPC to decide the issue regarding pecuniary jurisdiction as a preliminary issue. The trial Court dismissed this application, holding that the issue of pecuniary jurisdiction by comparing the valuation of the properties mentioned in the documents Ex.B1 to Ex.B3 with that of the suit schedule properties is a mixed question of law and facts and that it can only be decided during the trial. Against this order, this revision petition is filed in the year 2017 and is pending before this Court for the past five years. It appears that on the very same ground, the petitioner's husband / the second defendant, has also filed an application in I.A.No.798 of 2010 and the same was dismissed on 24.11.2011.



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7. In ***P.Sekar v. V.K.Vaiyapuri*** [decided on 13.08.2010], this Court has held that under Order 14 Rule 2 CPC, only a question of law can be taken up as a preliminary issue. The Court further held that the issue relating to jurisdiction involves question of law and fact and the same can be taken as preliminary issue, however, the issue relating to valuation is not a pure question of law and that it cannot be decided as a preliminary issue.

8. Here, the petitioner wants to compare the valuation of the suit properties with that of the valuation mentioned in the documents Ex.B1 to Ex.B3. The trial Court, by referring the above decision, has dismissed this application and this Court is not inclined to interfere with the same. However, the trial Court shall frame an issue with regard to the valuation of the property and payment of Court fee, as an issue and shall decide the same during the course of the trial.

9. Considering the age of the suit, the trial Court shall expedite the suit proceedings and shall dispose of the same, as expeditiously as possible, preferably within a period of five months from the date of receipt of a copy of this order.



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CRP(MD)No.472 of 2017

B.PUGALENDHI, J.

gk

Accordingly, this revision petition stands disposed of. No costs.
Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
gk

02.02.2023

To

The II Additional District Munsif,
Kuzhithurai.

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