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CRP.No.260 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRP.No.260 of 2020

1. A.Arthanarisamy
2. K.G.Palanisamy
3. K.G.Arunachalam : Petitioners/Petitioners/Defendants1,3,4

Versus

Alagumani (died)
1. Selvi Ragavi
2. Ranjith Anand : Respondents 1 &2/Respondents 2 &3
/Plaintiffs 2 & 3

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 18.12.2019 made in I.A.No.4 of 2019 in O.S.No.196 of 2011 on the file of the learned Principal District Munsif, Tiruchengode.

For Petitioners : Mr.N.Manoharan
For Respondents : Ms.R.A.Monalisa
for Mr.R.Marudhachalamoorthy

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 18.12.2019 made in I.A.No.4 of 2019 in O.S.No.196 of 2011 on the file of the learned Principal District Munsif, Tiruchengode.



CRP.No.260 of 2020

2. The brief facts, which are necessary for appreciation and consideration in this Revision Petition, are as follows:

2.1. The Suit in O.S.No.196 of 2011 was filed by the Plaintiffs seeking declaration of the Plaintiffs are absolute owners of the Suit properties; for declaration of the cancellation deed of the sale deed as null and void; for permanent injunction against the Defendants 1 to 3, restraining him from alienating or creating any encumbrance over the Suit properties; for permanent injunction restraining the second Defendant from entertaining any document, if the first Defendant produce it before the second Defendant's office for registration with respect of the Suit property; for directing the second Defendant deleting the entry of cancellation sale deed executed in favour of the first Plaintiff by the second Defendant and declaring the title to the Plaintiffs 2 and 3 in the Suit property and seeking cancellation of the sale deed as null and void. After the Plaintiff had filed an affidavit as P.W-1-examination in chief, the first Defendant had filed a Petition in I.A.No.4 of 2019 seeking valuation of the property and also to decide the pecuniary jurisdiction of the subject matter of the Suit property by filing Petition under Section 12 (2) of the Tamil Nadu Court fees and Suit Valuation Act. As per the contents of the Petition, I.A.No.4 of 2019 in O.S.No.196 of 2011, the first Defendant as Petitioner has claimed that if the property had been properly



CRP.No.260 of 2020

valued as per the Tamil Nadu Court fees and Suit Valuation Act, the learned Principal District Munsif, Tiruchengode will not have the jurisdiction to try the Suit. The Plaintiff had wantonly suppressed the valuation of the Court fees by clever drafting and avoided payment of Court fees by claiming 30 times kist as “market value”. The Suit is for declaration of title and for seeking the relief of declaration that the sale deed executed by the second Defendant in favour of the first Plaintiff as null and void. Therefore, to consider the Court fees as in the light of the market valuation of the property. The same was resisted by the Plaintiff as Respondent stating that amendment to the Tamil Nadu Court Fees and Suit Valuation Act came into force in the year 2017 whereas the Suit was filed in the year 2011. Therefore, as on the date of filing of the Suit what was the valuation was in force as stated in the statute book is to be applied and the law as amended cannot be invoked. After due enquiry, the learned Principal District Munsif, Tiruchengode had dismissed the I.A.No.4 of 2019 in O.S.No.196 of 2011. Aggrieved by the same, the first Defendant as Petitioner had approached this Court by filing the Civil Revision Petition under Article 227 of Constitution of India.

3. The learned Counsel for the Revision Petitioners submitted that the first Defendant in the Suit in O.S.No.196 of 2011 on the file of the learned



CRP.No.260 of 2020

Principal District Munsif, Tiruchengode, Namakkal District, is the first Revision Petitioner herein.

4. The deceased first Plaintiff in the Suit in O.S.No.196 of 2011 is the Daughter-in-Law of one K.C.Periyasamy and first Defendant is the Son-in-Law of K.C.Periyasamy. The deceased first Plaintiff had executed a sale deed dated 29.04.2011 vide document No.1339 of 2011 in favour of the first Defendant. Even though the valuation of the suit property is stated to be Rs.22,42,000/-, the sale consideration of Rs.10,00,000/- only was paid. The sale deed was cancelled on 11.05.2011 vide document No.1352 of 2011 on the file of the second Defendant in the Suit.

5. The Plaintiffs had filed the Suit seeking the relief, which are as follows:-

“14. The Plaintiff, therefore prays that this Hon'ble Court may be pleased to pass a decree:-

(a) declaring the title to the Plaintiffs 2 and 3 to the suit properties as per the Sale Deed registered as Document No.1339 of 2011 in the second Defendant's office; and granting permanent injunction against the Defendants 1 to 3, his men, agents, assigns and nominees from interfering with the Plaintiff's peaceful possession and enjoyment of the suit properties;

(b) to declare the Cancellation Deed of the Sale Deed registered as Document No.1352 of 2011 in the second Defendant's office for cancelling the Sale Deed No.1339 of 2011 as null and void;

(c) granting permanent injunction against the Defendants 1 to 3,



CRP.No.260 of 2020

WEB COPY

restraining him from alienating or creating any encumbrance over the suit properties;

(d) granting permanent injunction restraining the second Defendant, from entertaining any document, if the first Defendant produce it before the second Defendant's office for registration with respect of the suit property;

(e) to direct the second Defendant to delete the cancellation entry made against the Sale Deed No.1339 of 2011 on the registers maintained by him in his office;

(f) awarding cost of the suit.”

6. Therefore, the first Defendant in the Suit filed I.A.No.4 of 2019 seeking to raise preliminary issue regarding valuation of the suit property as per the prayer sought by the Plaintiffs. If the valuation of the property was considered by the learned Principal District Munsif, Tiruchengode, the jurisdiction of the Court of the learned Principal District Munsif will not be attracted, which is the subject matter to be dealt with by the learned Sub-Judge. The Plaintiffs had filed Counter to the same. After enquiry, the learned Principal District Munsif, Tiruchengode, dismissed the I.A.No.4 of 2019 as per order dated 18.12.2019. Aggrieved by the same, the first Defendant, who is the Revision Petitioner in this Civil Revision Petition, has approached this Court under Article 227 of the Constitution of India, seeking to set aside the order dated 18.12.2019 passed by the learned Principal District Munsif, Tiruchengode.



Petitioners relied upon the following rulings:-

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7.1. In the case of ***Suhrid Singh Alias Sardool Singh Vs. Randhir Singh and Others***, reported in **(2010) 12 SCC 112** the Hon'ble Supreme Court has held as under:

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under [Article 17\(iii\) of Second Schedule of the Act](#). But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under [Section 7\(iv\)\(c\) of the Act](#).”

7.2. In the case of ***Satheedevi Vs. Prasanna and another***, reported in **(2010) 5 SCC 622** the Hon'ble Supreme Court had held as follows:

“17. Section 40 deals with suits for cancellation of decrees etc. which are not covered by other sections. If this section is interpreted in the light of the expression 'save as otherwise provided' used in [Section 7\(1\)](#), it becomes clear that the rule enshrined therein is a clear departure



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from the one contained in [Section 7](#) read with Sections 25, 27, 29, 30, 37, 38, 45 and 48 which provide for payment of court fee on the market value of the property. In that sense, Section 40 contains a special rule.

18. Section 40(1) lays down that in a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject matter of the suit and further lays down that such value shall be deemed to be if the whole decree or other document sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed. If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property constitute the basis for fixation of court fee. Sub-section (2) lays down that if the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of the property belonging to the plaintiff or the plaintiff's share in such property, fee shall be computed on the value of such property, or share or on the amount of the decree, whichever is less.

19. The deeming clause contained in the substantive part of Section 40(1) makes it clear that in a suit filed for cancellation of a document which creates any right, title or interest in immovable property, the court fees is required to be computed on the value of the property for which the document was executed. To put it differently, the value of the property for which the document was executed and not its market value is relevant for the purpose of court fee. If the expression 'value of the subject matter of the suit' was not followed by the deeming clause, it could possibly be argued that the word 'value' means the market value, but by employing the deeming clause, the legislature has made it clear that if the document is sought to be cancelled, the amount of court fee shall be computed on the value of the property for which the document was executed and not the market value of the property. The words "for which" appearing between the words "property" and "other documents" clearly indicate that the court fee is required to be paid on the value of the property mentioned in the document, which is subject matter of challenge.

20. If the legislature intended that fee should be payable on the market value of the subject matter of the suit filed for cancellation of a document which purports or operates to create, declare, assign, limit or extinguish any present or future right, title and interest, then it



CRP.No.260 of 2020

would have, instead of incorporating the requirement of payment of fees on value of subject matter, specifically provided for payment of court fee on the market value of the subject matter of the suit as has been done in respect of other types of suits mentioned in Sections 25, 27, 29, 30, 37, 38, 45 and 48. The legislature may have also, instead of using the expression "value of the property for which the document was executed", used the expression "value of the property in respect of which the document was executed". However, the fact of the matter is that in Section 40(1) the legislature has designedly not used the expression 'market value of the property'."

7.3. In the case of *Solaiammal (died) and another Vs. Rajarathinam and five others*, reported in **2003 (4) CTC 268** this Court had held as follows:

“19. Defendants 1 to 3 filed written statement on 17.4.1998. In their written statement D1 to D3 have raised the question of jurisdiction only in few sentences alleging:

எதிர்வழக்குரையில் கூறப்பட்டுள்ளபடி துறைகளைப்
பார்க்கும்போது இவ்வழக்கு சமூகம் நீதிமன்றத்தில்
செல்லத்தக்கதல்ல.

Defendants 1 to 3 have not elaborated on the valuation nor raised the question of Pecuniary Jurisdiction and insisting upon that point to be determined as the Preliminary Issue. Nearly two years after filing the written statement defendants 1 to 3 have filed the application I. A. No. 552/2000 on 16.10.2000 raising the issue of valuation and Pecuniary Jurisdiction. This is opposed by the Respondent/Plaintiff that the trial Court ought not to have entertained the application under Order 14, Rule 2, C.P.C questioning the Pecuniary Jurisdiction of the Court to be tried as the Preliminary Issue nearly after the lapse of three years. The delay in filing the application by the defendants 1 to 3, calling upon the Court to exercise the discretion in determining the valuation of the suit as the Preliminary Issue does not in any way take away the jurisdiction of the trial Court nor does it render the decision as improper exercise of discretion. Since the question of valuation of the suit and the Pecuniary Jurisdiction in the light of apparent valuation of the suit is a pure question of law and the trial Court has rightly exercised the discretion in determining the question of valuation as the Preliminary Issue and this point is answered accordingly.



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23. But consistent views of most of the Courts are that the Courts are not to be governed by the plaint averments, but the substance of the relief asked for is to be looked into. If the relief asked for is avoidance of the sale deed, relief of declaration is necessary and the Court fee is to be paid for the same [Kayathan Roche v. K. Chinnayya Roche](#), AIR 1939 Mad. 435. In a suit for declaration the Bank Guarantee is not enforceable. In *Transformer and Switch Gear Ltd* rep by its [Chief Executive v. M.P. Electricity Board](#) rep by its Controller of Stores and Purchases Jabalpur and another, 1990 (1) L.W. 89 Abdul Hadi, J. held that the Court fee is payable under [Section 40](#) of the Court Fee Act and the same cannot valued under [Section 25\(d\)](#) since the sum and substance of the prayer was to cancel the said Bank Guarantee.

24. Indeed the allegations in the plaint should normally govern the frame of suit. Nevertheless Courts have to be not only vigilant and read between the lines with a view to arrest the tendency of the litigant to undervalue the relief, pay minimum Court fee and obtain substantial relief, but also ensure that the State does not lose revenue. This principle has been emphasized by the Supreme Court as well as the various High Courts. In [Shamsher Singh v. Rajinder Prasad and Ors.](#), , the Supreme Court has held thus:

"The Courts in deciding the question of Court fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for."

25. Thus while verifying/considering the question of Court Fee, the Court shall not be carried by the form in which the plaint is drafted. The Court has the onerous duty of going into the substance to ascertain the base for the reliefs claimed and the reliefs that are really emerging from the averments and the relief asked for in the plaint. The cardinal principle that should be borne in mind while disposing a question relating to Court Fee or verifying the plaint is that the Court should not be carried away by the form in which the plaint is drafted; but the Court should keep in mind the substance to ascertain the actual relief asked for.

27. In fact the valuation of the suit and maintainability of the same in the Court of District Munsif could have been gone into even at the time of admission of the plaint. But there seems to have been no attempt to go into that aspect. It is always desirable that the Particulars of Valuation is insisted to be furnished in the plaint. In the case in hand, from the plaint averments, no such Particulars of Valuation is stated in



the plaint. In my view, even at the time of admission of the plaint, the Court ought to have verified the substance of the plaint and the relief asked for.

28. More often than not, most of the valuable claims and money suits relating to valuable properties involving huge market value are filed under [Section 27\(c\)](#) stating "Incapable of Valuation" and notionally valuing the same at Rs. 400. This tendency of filing the suits relating to the properties of huge valuation under [Section 27\(c\)](#) need to be arrested. Courts would have to be vigilant in verifying the plaint carefully and with circumspection. Duty cast upon the Subordinate Courts in verifying the plaint and collecting the proper Court fee cannot be disowned saying that the Court is bound to accept the plaint averments. Duty is cast upon the Judicial Officers and also the Head Ministerial Officers who are in charge of verifying the plaint with regard to the valuation and the payment of Court fee."

7.4. In the case of *S.N.S.Sukumaran Vs. C.Thangamuthu*, reported in **2012 (5) CTC 705** a Division Bench of this Court had observed as under:-

"31. After giving our anxious consideration to the matter and having regard to the law discussed hereinabove, the reference is answered as under :-

(1) [The Tamil Nadu Court Fees and Suits Valuation Act, 1955 \(Section 12\)](#) enacted by the State Legislature on a subject covered by the Concurrent List, albeit inconsistent with the provisions of [the Code of Civil Procedure](#) (Order XIV, Rule 2) and being in compliance with the requirement of [Article 254](#) of the Constitution of India, having been given assent by the President of India, shall prevail over the provisions of [the Code of Civil Procedure](#).

(2) When a defendant comes forward with a case pleaded in the written statement questioning the correctness of the valuation of the suit property and payment of court fee and asks the Court, by an application, to decide it first before deciding the suit on merits, then a duty is cast upon the Court under [Section 12\(2\)](#) of the State Act to first decide the objection before deciding the suit on merits.



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CRP.No.260 of 2020

(3) However, before proceeding to decide the objection with regard to valuation and court fee as provided under Section 12(2) of the State Act, the Court shall prima facie satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the defendant has substance.

(4) Such objection with regard to improper valuation of the suit and insufficiency of court fee shall be entertained by the Court only before the hearing of the suit on merits commences and witnesses are examined. Section 12(2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merits of the case.

(5) Exercise of right by the defendant as contained in [Section 12\(2\)](#) of the Act must be bona fide and not with an ulterior motive of dragging the suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such application, and in the event the Court finds that the defendant is not diligent or co-operating with the Court in the disposal of such objection expeditiously, then the Court shall proceed with the hearing of the suit on merits and decide all issues, including the one relating to the valuation of the suit and the adequacy or otherwise of court fee, together.”

7.5. In the case of *Indirani and Ors. Vs. Raja @ Annadurai*, reported in **2019 (5) LW 455** this Court has observed as follows:-

“15. Keeping the above discussion in mind, if the facts of the present case are seen, the evidence has only commenced by PW1 getting into box and the proof affidavit being filed. This stage of the case cannot be treated as if the entire evidence has been completed on the merits of the claim. If a restricted meaning is given to [Section 12\(2\)](#) of the Act, it will militate against the very object of the language used in the provision. Therefore, this Court is of the considered view that the preliminary objection raised by the learned counsel for the petitioners is not sustainable and the Court below had the jurisdiction to entertain the application filed by the defendant under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act. This is more so, since the Valuation of the properties and the Court Fees paid was taken as a preliminary objection in the written statement itself and an issue was also framed by the Court below.”



CRP.No.260 of 2020

8. Ms.R.A.Monolisa, learned Counsel for Mr.R.Marudhachalamurthy, learned Counsel had submitted arguments on behalf of the Respondents.

9. The Revision Petitioner is the Defendant in the suit. The first Defendant in O.S.No.196 of 2011, on the file of the learned Principal District Munsif, Tiruchengode, Namakkal District, is the first Revision Petitioner herein. The first Plaintiff in O.S.No.196 of 2011 is the daughter-in-law of one K.C.Palanisamy and the first Defendant in the suit is the Son-in-law of said K.C.Palanisamy. The first Plaintiff had executed a Sale Deed dated 29.04.2011 vide Document No.1339 of 2011 in favour of the first Defendant. Even though the valuation of the suit property was stated to be Rs.22,42,000/- and consideration of Rs.10,00,000/- was paid. The Sale Deed was executed on 11.05.2011 vide Document No.1352 of 2011 in favour of the second Defendant in the suit. The suit was filed by the mother of the Respondent. After the death of the first Plaintiff, the daughter and minor son of the Plaintiff as legal heirs of first Plaintiff was conducting the suit as Plaintiff. The suit was filed seeking declaration of title over the suit property, based on the Sale Deed executed in favour of the first Defendant vide Document No.1339 of 2011, dated 29.04.2011 the Plaintiff also prayed for declaration to declare the cancellation of Sale Deed mentioned as document No.1352 of 2011 as null and void and for permanent injunction.



CRP.No.260 of 2020

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10. The Revision Petitioner, as first Defendant in the suit, filed this application which is barred by limitation. The suit was filed in the year 2011. I.A.No.4 of 2019 was filed by the first Defendant in the year 2019. Written Statement was filed by the first Defendant on 01.12.2011. After lapse of eight years, the first Defendant had filed additional Written Statement in 2019. The issues were framed on 21.01.2012 and Trial commenced on 28.06.2012. P.W.1 was in the witness box, she deposed on 10.07.2019. On 17.07.2019, the documents relied by the Plaintiff were marked as Ex.A1 to Ex.A11. Only after marking of documents by the Plaintiff, the Defendant had filed this petition stating that Court Fees paid is not correct.

11. The learned Counsel for the Respondents invited the attention of this Court to Section 12(2) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965. After due enquiry, the learned Principal District Munsif, Tiruchengode, Namakkal District, had dismissed the application in I.A.No.4 of 2019 in O.S.No.196 of 2011 by an order dated 18.12.2019. The said order of the learned Principal District Munsif, Tiruchengode, Namakkal District, dismissing I.A.No.4 of 2019 in O.S.No.196 of 2011 is a well-reasoned order and the same does not warrant any interference by this Court exercising



CRP.No.260 of 2020

jurisdiction under Article 227 of Constitution of India. This petition is not maintainable as per Section 12(2) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965.

12. Further, the learned Counsel for the Respondents relied on the reported ruling in *MANU/TN/7306/2022* in the case of *K.S.Mohamed Saleem and others Vs. K.S.Mohamed Shakeel and others*.

“11.In support of his submission, the learned Counsel for the Petitioners/Defendants relied on the decision of this Court in the case of Arokiasamy ~vs~ Periyanaagam reported in 2009 SCC OnLine Mad 220 wherein this Court had observed as under:

□7As has been already highlighted supra without being tatalogous, I would reiterate that the object of Section 7(2)(a) of the Act should be taken note of. It is quite obvious and axiomatic that Legislators intended that agriculturists should be favoured. An agriculturist should not be compelled to pay through his nose huge Court fee, based on ordinary market value in order to seek redressal, if his property is attempted to be trespassed or if he wants to recover his property. If a poor agriculturist is compelled to pay ad valorem Court fee, then it will be discouraging for him to approach the Court. With that intention alone Section 7(2)(a) of the Act came into vogue and that cannot be misused by other persons, who are converting the lands into house sites. Hence, in this view of the matter it is clear that the District Judge fell into error in deciding the C.M.A.□

12.The learned Counsel for the Respondents/Plaintiffs vehemently objected to the submissions of the learned Counsel for the Petitioners/Defendants that the suit is of the year 2013 and I.A.No.43 of 2015 is filed only in the year 2018 with an intention to drag the proceedings the Defendants had filed this Interlocutory Application and challenging the order dismissing the I.A.No.43 of 2015, this Civil



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Revision Petition had been filed in the year 2020 and kept pending thereby preventing the trial Court from proceeding with the trial. As per the plaint averments, the Respondents/Plaintiffs had sought declaration that alleged gift deed by the first Plaintiff in favour of the first Defendant who is the elder brother of the Plaintiff as null and void and non-est in law. Therefore, the finding of the learned trial Judge that to determine the value of the property, the appointment of Advocate Commissioner is not at all necessary as the property is an agricultural property. The learned Counsel for the Respondents/Plaintiffs invited the attention of this Court to the order of the learned Sub Judge/Civil Judge Senior Division, Uthagamandalam, wherein the learned Sub Judge had relied on the ruling in *Sorna Pandey Nadar ~vs~ Sivasubramania Nadar* [1976~TNLJ~69]. The order passed by the learned trial Judge need not be set aside as it is a well reasoned order. Further, the learned Counsel for the Respondents/Plaintiffs submitted that the suit itself is part heard stage. In the suit, the same can be considered by adducing evidence regarding the valuation of the properties by producing documents either revenue records from the Revenue Officials viz., Kist receipt and market value by summoning the documents from the Revenue as well as Registration Department. For determining the value of the property, the Advocate Commissioner need not be appointed. The Court has the powers to summon documents from officials concerned. The Respondents/Plaintiffs or the Petitioners/Defendants can also summon the officials with relevant registers regarding the guideline value/market value in support of their contentions or as Court witness during trial.

13. In support of his submission, the learned Counsel for the Respondents/Plaintiffs relied on the decision of this Court in the case of *R.C.Sundravalli ~vs~ T.D. Shakila* reported in CDJ 2001 MHC 401 wherein this Court had observed as under:

¶ Any way, the narration of events shows that the question relating to Court fee has been raised not before the first hearing of the suit nor before evidence was recorded on the merits of the claim. The learned counsel for the petitioner repeatedly urged that there is no delay on his part because additional issues were framed only on 20.9.99 and the application had been filed on 22.9.99. But paragraph 3 of the counter filed by the respondent shows that even the question relating to the payment of Court fees itself was carried in the additional statement only after the trial had commenced and P.W.1-s evidence has been recorded. (Italics supplied). This



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CRP.No.260 of 2020

is not contradicted. So it is clear that it is belated. The delay is not with reference to the date on which additional issues were framed. The delay is with reference to the stage at which it is raised in view of the provisions of Section 12(2) of the Act. I see no reason to interfere with the order of the Court below. The C.R.P. is dismissed with costs. CMP 5690 of 2001 is closed.□”

The facts of the above reported ruling squarely applies to the facts of this case. Therefore, this Civil Revision Petition is to be dismissed as having no merits.

13. The learned Counsel for the Respondent invited the attention of this Court to the affidavit filed by the Petitioners/Defendants-1,3 & 4. The relevant portion reads as follows:

“3. I humbly submits that, the respondents/plaintiffs sought the relief of declaration by declaring their title to the suit property as per the sale deed registered as Doc. No.1339/2011, dated 29.04.2011, which was alleged to have been executed in favour of the first Plaintiff for the value of Rs.10,00,000/- (Rupees Ten Lakhs Only). Whereas, the respondents/plaintiffs in their plaint has valued the said relief of declaration for Rs.1,000/- as higher value adopting the Kist to the suit property.

4. I humbly submit, when the respondents/plaintiffs sought declaration of their title to the suit property based upon the sale deed dated 29.04.2011, they ought to have valued the suit by adopting the value of the document instead of adopting the Kist. The respondents/plaintiffs purposely under valued the suit to evade from paying the stamp duty to the Hon'ble Court. If the suit has been valued properly this Court will have no jurisdiction to try this case.”



CRP.No.260 of 2020

14. Section 7 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965, the Plaintiff had valued the suit with correct Court Fee and amended the plaint before the Trial Court with reference to Section 7 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965.

15. The learned Counsel for the Respondents invited the attention of this Court to the reply statement filed by the second Plaintiff and adopted by the third Plaintiff. The relevant portion reads as follows:

“Valued under Section 46 of Tamil Nadu Court Fees and Suits Valuation Act 1955.

Total value of the Suit - Rs.5000.00/-

Total Court Fee paid - Rs.401.50/-”

16. Declaration of cancellation of Sale Deed as null and void the Plaintiff in the suit is not a party to the Sale Deed.

17. The learned Counsel for the Respondent invited the attention of this Court to the decision of this Court in C.R.P.(MD)No.10 of 2023, dated 09.02.2023. The relevant portion is extracted hereunder:

“9.In yet another decision this Court in ***K.L.R. Niranjana and Ors. L. Leelakrishnan and Ors [C.R.P. (PD) Nos. 4749 of 2013 decided on 12.04.2018]*** has held as follows:



CRP.No.260 of 2020

“15.....This stand taken by petitioners clearly reveals that the first respondent is not a party to the sale deed and he need not seek cancellation of said sale deed and pay court fee under Section 40 of Tamil Nadu Court Fees and Suits Valuation Act. The proper relief is for a declaration that sale deed is null and void and court fee payable is only under Section 25(d) of the Act. In the judgments relied on both the petitioners and first respondent, it has been held that when a person is a party to a document, he has to seek setting aside the same namely cancellation even if he alleges fraud and pay court fee under Section 40 of the Act. If a person is not a party to a document, he need not seek cancellation and can seek declaration that same is null and void and pay court fee under Section 25(d) of the Act.”

18. As per the above ruling, the plaintiff had already paid the correct Court Fee under Section 25(d) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965, since the Plaintiff is not a party to the Sale Deed. The relevant portion reads as follows:

“11.Admittedly, the petitioner is a third party to the document and she presented a plaint to declare the documents as null and void and also for a permanent injunction. Applying the ratio laid down in above cited judgments, the suit filed by the petitioner has to be valued as per section 25(d) and 27 (c) of the Act and accordingly the petitioner has valued the suit and paid the necessary court fee.”

19. The learned Counsel for the Respondent invited the attention of this Court to the decision of this Court in C.R.P.(PD).Nos.4749 of 2013 & 256 of 2014 dated 12.04.2018 and C.R.P.(PD).No.256 of 2014. The relevant portion is extracted hereunder:

“14. To decide whether the first respondent has to pay the court



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fee as per Section 40 of the Tamil Nadu Court Fees & Suits Valuation Act paid by the first respondent as per Section 25 (d) of Tamil Nadu Court Fees & Valuation Act after dismissal of the application filed by the petitioners, the relevant portion of the plaint to be considered or para 13 (G) and 16(f). In the plaint, Para 13(G) and 16(f) reads as follows -

13(G) The plaintiff states that it is now necessary in the interest of justice to set aside the illegal and sham sale and to restore the suit property to the plaintiff who is the beneficial owner and who had exercised the right of redemption prior to the fraudulent execution of the sale deed in the name of the 10th Defendant. It is therefore necessary to declare the sale as null and void and also to cancel the sale deed registered as document no.1649 of 2005 at the Sub Registrar's office at Purasawalkam.

16 (f) make a declaration that the execution and registration of the sale deed dated 25.04.2005 registered as document No.1649 of 2005 with the Sub-Registrar Office, Purasawalkam is illegal and null & void and not binding upon the plaintiff and the Defendants 4 to 9.”

Therefore, this Respondent had paid Court Fees as per Section 7 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1965. Section 7 of the Tamil Nadu Court Fees and Suits Valuation Act, 1965 is extracted as under:

7. Determination of market value

(1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) The market value of land in suits falling under sections 25(a), 25(b), 27(a), 29, 30, 37 (1), 37 (3), 38,45 or 48 shall be deemed to be --

(a) where the land is ryotwariland-thirty times the survey assessment on the land: Provided that, where the landforms part of a survey field and is not separately assessed to revenue, the value of such part shall be deemed to be thirty times such proportion of the survey assessment as



CRP.No.260 of 2020

the part bears to the entire survey field.

Explanation.-- Lands in the areas in which the Malabar Tenancy Act, 1929 (1 [Tamil Nadu] Act XIV of 1930), is in force shall be regarded as ryotwari lands.

(b) where the land is situated in an estate as defined in subsection (2) of section 3 of the [Tamil Nadu] Estates Land Act, 1908 (1 [Tamil Nadu] Act I of 1908), not being a land of the description mentioned in sub-clause (g) and such estate has been taken over by the Government under the 1 [Tamil Nadu] Estates (Abolition and Conversion into Ryotwari) Act, 1948 (1 [Tamil Nadu] Act XXVI of 1948)-thirty times the land revenue payable on the land under section 23 of that Act; but if a ryotwari settlement has since been effected in pursuance of section 22 of that Act, in respect of such land, thirty times the assessment as so fixed;

(c) where the land is situated in an estate which became an estate under the 1 [Tamil Nadu] Estates Land (Third Amendment) Act, 1936 (1 [Tamil Nadu] Act XVIII of 1936)-thirty times the rent payable for the land fixed under the 1 [Tamil Nadu] Estates Land (Reduction of Rent) Act, 1947 (1 [Tamil Nadu] Act XXX of 1947);

(d) where the land is an 'estate' as defined in the 1 [Tamil Nadu] Estates Land Act, 1908 (1 [Tamil Nadu] Act I of 1908) -- (i) where separate peishkush is recorded in the Collector's register as payable for the estate-thirty times such peishkush; (ii) in any other case-thirty times the annual melvaram realizable from the estate;

(e) where the land is a minor inam held under inam title deed-thirty times the assessment as noted in the village 'B' Register;

(f) where the land is in an inam village which, is not an 'estate' as defined in sub-section (2) of section 3 of the 1 [Tamil Nadu] Estates Land Act, 1908 (1 [Tamil Nadu] Act I of 1908) - thirty times the rent payable in respect of it;

(g) where the land is a house-site whether assessed to full revenue or not, poramboke land, or is land not falling within the foregoing description-its market value."

Therefore, the Civil Revision Petition is to be dismissed as having no merits.

20. By way of re-joinder, the learned Counsel for the Petitioner invited



CRP.No.260 of 2020

the attention of this Court to the Plaint. The prayer (A) is declaring the title to the Plaintiffs 2 and 3 and prayer, (B) is declaring the cancellation of Sale Deed registered vide Document No.1352 of 2011 in the office of the second Defendant for cancelling the Sale Deed vide Document No.1339 of 2011 as null and void. The document in favour of the Plaintiff was sought to be cancelled by the Cancellation Deed.

21. The learned Counsel for the Revision Petitioner also invited the attention of this Court to the amended copy of the Plaint and Section 12 of the Tamil Nadu Court-Fees and Suit Valuation Act, 1965, the cancellation was obtained by force. Section 12 of the Tamil Nadu Court-Fees and Suit Valuation Act, 1965, reads as under:

“12. Decision as to proper fee in other Courts (1) In every suit instituted in any Court other than the High Court, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under section 10 the proper fee payable thereon, the decision being however subject to review, further review and correction in the manner specified in the succeeding sub-sections.

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee



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paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

(3) A defendant added after issues have been framed on the merits of the claim may, in the written statement filed by him, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim, and if the Court finds that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall follow the procedure laid down in sub-section

(2). Explanation.-- Nothing in this sub-section shall apply to a defendant added as a successor or a representative in interest of a defendant who was on record before issues were framed on the merits of the claim and who had an opportunity to file a written statement pleading that the subject-matter of the suit was not properly valued or that the fee paid was not sufficient.

(4) (a) Whenever a case comes up before a Court of Appeal, it shall be lawful for the Court, either of its own motion or on the application of any of the parties, to consider the correctness of any order passed by the lower Court affecting the fee payable on the plaint or in any other proceeding in the lower Court and determine the proper fee payable thereon.

Explanation.-- A case shall be deemed to come before a Court of Appeal even if the appeal relates only to a part of the subject-matter of the suit.

(b) If the Court of Appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of a relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower Court is in excess, the Court shall direct



the refund of the excess to the party who is entitled to it.

(5) All questions as to value for the purpose of determining the jurisdiction of Courts arising on the written statement of a defendant shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim.

Explanation.-- In this section, the expression "merits of the claim" refers to matters which arise for determination in the suit, not being matters relating to the frame of the suit, misjoinder of parties and causes of action, the jurisdiction of the Court to entertain or try the suit or the fee payable but inclusive of matters arising on pleas of res judicata, limitation and the like."

The learned Counsel for the Revision Petitioner also invited the attention of this Court to the amended copy of the Plaint. The relevant portion reads as follows:

"11. So far as the cancellation of the sale deed by a deed registered as document No.1339/2011 is concerned, the cancellation deed was signed by the Plaintiff out of fear, as stated in fra, coercion, duress, threatening, undue influence exercised by abusing his power and office torture and inhuman treatment meted to her by Muthamil Mudhalvan, Inspector of Police and Ramamoorthy, Inspector of Police, Tiruchengode Police Station at the Police Station, Pallipalayam at about 2 p.m., The first Defendant with preplan has himself prepared the cancellation deed and with the help of the above police."

22. Therefore, the contention of the respondent is to be rejected as not applicable to the facts of this case. The rulings relied by the learned Counsel for the Revision Petitioner is applicable to the facts of this case and Civil Revision Petition is to be allowed and the order passed by the learned

Principal District Munsif, Tiruchengode, Namakkal District, dismissing



CRP.No.260 of 2020

I.A.No.4 of 2019 in O.S.No.196 of 2011 dated 18.12.2019 is to be set aside.

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Point for consideration:

Whether the order passed by the Principal District Munsif, Tiruchengode, Namakkal District, dismissing the petition in I.A.No.4 of 2019 in O.S.No.196 of 2011 by order dated 18.12.2019 is to be set aside?

23. Heard the learned Counsel for the Petitioner, Mr.N.Manoharan and the learned Counsel for the Respondent Ms. R.A.Monalisa.

24. Perused the typed set of papers filed by the learned Counsel for the Revision Petitioner in which copy of the sale deed in the name of the first Plaintiff executed by the first Defendant. Copy of the Plaint in O.S.No.196 of 2011, Copy of written statement in O.S.No.196 of 2011, additional written statement, reply statement of second Plaintiff, affidavit of first Defendant in the Petition in I.A.No.4 of 2019 is filed. Counter filed by the second Respondent in O.S.No.196 of 2011 as Respondent in I.A.No.4 of 2019 and the Order passed by the learned Principal District Munsif in I.A.No.4 of 2019 in O.S.No.196 of 2011 dated 18.12.2019 and the grounds of Civil Revision Petition.

25. Perused the reported rulings cited by both the parties, in support
<https://www.mhc.tn.gov.in/judis>



CRP.No.260 of 2020

of their respective contention.

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26. As per Order XIV Rule 1 of CPC, the Court shall pronounce Judgment on all issues. At the same time, it is stated that it is the discretion of the Court to decide any issue as primary issue. As per the submission of the learned Counsel for the Revision Petitioner who was the first Defendant in the Suit, the Order passed by the learned Principal District Munsif, Tiruchengode dismissing the Petition for primary issue is to be set aside as perverse in the light of the reported ruling relied by the learned Counsel for the Revision Petitioner are as follows:

(i) (2010) 5 SCC 622 in the case of Satheedevi Vs. Prasanna and another

(ii) 2012 (5) CTC 705 in the case of S.N.S.Sukumaran Vs. C.Thangamuthu

(iii) 2003 (4) CTC 268 in the case of Solaiammal (died) and another Vs. Rajarathinam and others

27. As per the decision of the Hon'ble Supreme Court in ***(2010) 5 SCC 622 in the case of Satheedevi Vs. Prasanna and another*** with regard to Kerala Court Fees and Suit Valuation Act, the Hon'ble Supreme Court has held



as follows:

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“21. If the interpretation placed by the trial Court and the High Court on the expression “value of the property for which the document was executed” is accepted as correct then the word “value” used in Section 40 (1) of the Act will have to be read as “marked value” and we do not see any compelling reason to add the word “market” before the word “value” in Section 40 (1) of the Act.”

28. As on the date of filing of the Suit, the market value was determined by the Court Fees and Suit Valuation Act by imposing 30 times of the Kist for the agricultural land and for the vacant site, the market value was mentioned in the sale deed. In this case, before the learned District Munsif, Tiruchengode, the Plaintiff had sought declaration of title to the property and also sought declaration of the sale deed as null and void. Therefore, the sale deed is put to challenge seeking declaration of the sale deed as null and void. Therefore, the relief of declaration of the cancellation of the sale deed has to be valued, as per the value of the property mentioned in the cancellation deed.

29. As per the decision of this Court in **2003 (4) CTC 268 in the case of Solaiammal (died) and another Vs. Rajarathinam** and five others, it is held that Order 14 Rule 1 CPC is subject to discretion vested with Court to try issue as preliminary issue and this discretion is spelt out in Order 14 Rule 2 CPC.



CRP.No.260 of 2020

WEB COPY

30. Preliminary issue is a pure question of law only. Issue which is mixed question of law and fact cannot be tried as preliminary issue. Factual issue may require recording of evidence. Whether issue is pure question of law or not depends upon facts and circumstances of each case. One such circumstance would be where preliminary issue can be disposed of on plaint averments and documents mentioned in the Plaint without recording further evidence. Pecuniary jurisdiction could be tried as preliminary issue when valuation of Suit is apparent on face of Plaint averments and no further recording of evidence is required. But where factual enquiry about market value of Suit property is to be made, it cannot be tried as preliminary issue.

31. As per the reported ruling of the Division Bench in **2012 (5) CTC 705 in the case of S.N.S.Sukumaran Vs. C.Thangamuthu**, Tamil Nadu Court Fees and Suit Valuation Act, 1955 shall prevail over the Provisions of Civil Procedure Code. When a Defendant comes forward with a case pleaded in the Written Statement questioning the correctness of the valuation of the Suit property and payment of Court fee and asks the Court by an Application, to decide it first before deciding the Suit on merits, then a duty is cast upon the Court under Section 12 (2) of the State Act to first decide the objection before deciding the Suit on merits.



CRP.No.260 of 2020

WEB COPY

32. However, before proceeding to decide the objection with regard to the Valuation and Court Fee as provided under Section 12 (2) of the State Act, the Court shall *prima facie* satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the Defendant has substance. Such objection with regard to improper valuation of the Suit and insufficiency of Court Fee shall be entertained by the Court only before the hearing of the Suit on merits commences and witnesses are examined. Section 12 (2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merits of the case.

33. Exercise of right by the Defendant as contained Section 12(2) of the Act must be *bona fide* and not with an ulterior motive of dragging the Suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such Application, and in the event the Court finds that the Defendant is not diligent or co-operating with the Court in the disposal of the such objection expeditiously, then the Court shall proceed with the hearing of the Suit on merits and decide all issues, including the one relating to the valuation of the Suit and the adequacy or otherwise of Court-fee, together.



CRP.No.260 of 2020

WEB COPY

34. As per the submission of the learned Counsel for the Respondent/Plaintiff, the decision of this Court in CRP.No.10 of 2023 in which unnumbered Plaint was returned that the Court has no pecuniary jurisdiction to entertain the Plaint. This Court had directed the District Court to number the unnumbered Suit. As per the decision of this Court reported in CRP.(PD).No.593 of 2020, regarding the market value of the property, the Revenue Officials can be summoned and examine the witnesses instead of appointment of Advocate Commissioner to decide the Court fees and Suit Valuation.

35. As per the submission of the learned Counsel for the Respondent, the Suit filed in the year 2011, after lapse of eight years i.e., 2019, I.A.No.4 of 2019 was filed by the first Defendant. Therefore, the Petition itself is barred by limitation. After commencement of trial, when the Plaintiff was in the witness box, when she had deposed as witness on 20.07.2011 on which date affidavit of the Plaintiff was marked as examination-in-chief and documents also marked as Ex.A-1 to Ex.A-10, the Defendants had filed this Petition in I.A.No. 4 of 2019 stating that the Court fees paid is not correct. As per the decision of the Division Bench of this Court reported in **2012 (5) CTC 705 in**



CRP.No.260 of 2020

the case of S.N.S.Sukumaran Vs. C.Thangamuthu and the decision of this

Court reported in **2003 (4) CTC 268 in the case of Solaiammal (died) and another Vs. Rajarathinam**, the Court has to pronounce the Judgments on all issues. Now, the learned District Munsif had passed Orders dismissing the I.A.No.4 of 2019 in O.S.No.196 of 2011, the Petition was dismissed on two grounds – (1) the market value of the land in the Suits falling under Sections 25 (a), 25 (b), 27 (a), 29, 30, 37 (1), 38, 45 or 48 shall be deemed to be. Where the land is Ryotwari land, 30 times the survey assessment on the land. Where the land forms part of survey field and is separately assessed to revenue, the value of such part shall be deemed to be 30 times such proportion of the survey assessment as the part bears to the entire Survey field. (2) The learned Judge had relied on Section 7 of the Court Fees and Suit Valuation Act regarding the Determination of Market Value as on the date of filing of Suit in the year 2011.

36. The first Defendant had filed Petition questioning the Suit Valuation after eight years ie., on 17.09.2019. Therefore, as per the reported ruling of **2012 (5) CTC 705 in the case of S.N.S.Sukumaran Vs. C.Thangamuthu**, the Defendant cannot be permitted to challenge the Suit Valuation and pecuniary jurisdiction after about eight years. It is only to



CRP.No.260 of 2020

protract the proceedings to delay the trial. Therefore, the Order passed by the learned Principal District Munsif, Tiruchengode in I.A.No.4 of 2019 in O.S.No.196 of 2011 dismissing the Petition under Section 12 of Tamil Nadu Court Fees and Suit Valuation Act is found justified. The reliance placed by the learned Counsel for the Revision Petitioner/First Defendant before the trial Court cannot be applied to the facts of the case on the ground that the first Defendant had filed this Petition. After that, this Petition was filed only in the year 2019 and not on the first hearing date, when he received the summons, entered appearance and filed written statement. He had entered appearance and filed written statement on 01.12.2011 and filed additional written statement in the year 2019. Therefore, the Order passed by the learned District Munsif dismissing the I.A.No.4 of 2019 in O.S.No.196 of 2011 is found justified on two grounds. One is that the law as it stood on the date of filing of the Suit in the year 2011. Second ground is on the point of limitation. The Petition is not filed in time. The Petition raising preliminary issue was filed when the Plaintiff was in the Witness Box after commencement of trial. Also the Petition was delayed by eight years from the date of filing of the Suit. The reasoning given by the learned District Munsif rejecting the Petition of the first Defendant raising the Court Fees and jurisdiction is justified. It is a well reasoned order that does not warrant any interference by this Court under



CRP.No.260 of 2020

Article 227 of the Constitution of India.

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37. In the light of the decision of this Court reported in **2003 (4) CTC 268 in the case of Solaiammal (died) and another Vs. Rajarathinam**, and as per Order XIV CPC, the Court is expected to pronounce Judgment on all issues. Therefore, in the light of the reported rulings relied by the learned Counsel for the Respondent in CRP.(PD).No.593 of 2020, the learned District Munsif, Tiruchengode issued summons to the Officials, particularly Officials of the Revenue Department and Registration Department regarding the valuation of the properties, if the same is raised in pre-trial. After recording of evidence, at the time of pronouncing Judgment before pronouncing Judgment for all the issues, the learned Judge on appreciation of evidence arrived at a conclusion that the issues raised as preliminary issue. After conclusion of the trial, can be considered either directing the Plaintiff to pay proper Court fees or if the learned District Munsif arrived at a conclusion that the pecuniary jurisdiction of the learned District Munsif is exceeding in this case he may answer preliminary issue alone and address the learned Principal District Judge to withdraw the Suit and proceed the same to the learned Sub Judge or as a case may be with the learned District Judge for answering the other issue on the basis of the evidence collected by the learned Principal District Munsif.



CRP.No.260 of 2020

The discretion is vested with the learned District Munsif to answer the issue.

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38. In the light of the decision of this Court reported in **2012 (5) CTC 705 in the case of S.N.S.Sukumaran Vs. C.Thangamuthu** and the decision of this Court reported in **2003 (4) CTC 268 in the case of Solaiammal (died) and another Vs. Rajarathinam** and in the light of the discussions, the point for consideration is answered in favour of the Respondent/Plaintiff and against the Revision Petitioner/first Defendant. The order passed by the Principal District Munsif, Tiruchengode, Namakkal District, dismissing the petition in I.A.No.4 of 2019 in O.S.No.196 of 2011 by order dated 18.12.2019 is found proper.

In the result, this **Civil Revision Petition is dismissed**. The fair and decretal order passed by the learned Principal District Munsif, Tiruchengode in I.A.No.4 of 2019 in O.S.No.196 of 2011, dated 18.12.2019 is confirmed.

29.04.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
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CRP.No.260 of 2020

SATHI KUMAR SUKUMARA KURUP, J.

dh

To

The Principal District Munsif,
Tiruchengode.

Judgment made in

CRP.No.260 of 2020

29.04.2024