IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 07.06.2024

Delivered On : 14.06.2024

CORAM:

THE HON`BLE MR.JUSTICE P.B.BALAJI

Application No.2297 of 2024
in T.O.S.No.24 of 2021

Manorama Vijayan .. Applicant/first defendant

..Vs.

1. U.Ramprasad Menon @ U.R.Prasad ... 1st respondent/plaintiff

2. M/s Adroit Urban Developers Private Lt.d.,
Having Office at No.1, Bheemanna Garden Street,
Alwarpet, Chennai-600 018, Tamil Nadu,
Represented by its Director Mr.Gaurav Goenka

3. Rajendran

4. Rajeev

5. Mrs.Vrinda Kunjamma @ Vrinda Menon

6. M/s Kavalappara Aarayamkavu
Bhagavathy Seva Trust, 14/333-B, Koonathara,
Kavalapara, Palakkad, Kerala State-678 001.
Represented by its Managing Trustee
U.Ramprasad Menon @ U.R.Prasad .... Respondents

Prayer: Application has been filed under Order XIV Rule 8 read with Section 59 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 to direct the Collector to ascertain valuation of the estate of the deceased Valsala Menon and to direct the plaintiff to pay ad valorem Court Fee on the value so ascertained as per the provisions of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

For Applicant	:	Mrs.Mehek Ashrani
For Respondents	:	Mrs.Chitra Sampath Senior Counsel for Mr.K.Gowtham Kumar For 1st respondent/plaintiff

ORDER

The present application has been taken out by the first defendant in the testamentary original suit, seeking a direction to the Collector to ascertain the valuation of the estate of the Testatrix deceased Valsala Menon and to direct the plaintiff to pay *ad valorem* Court Fee on the value so ascertained in terms of the provisions of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

2. I have heard Mrs.Mehek Ashrani, learned counsel for the applicant/1st defendant and Mrs.Chitra Sampath, learned Senior Counsel for Mr.K.Gowtham Kumar, counsel for the first respondent/plaintiff.

3. Learned counsel for the applicant/1st defendant, Mrs.Mehek Ashrani would submit that the huge and valuable estate of the deceased has been grossly under valued at Rs.7,05,20,000/-. According to the applicant/1st defendant, the value of the estate would be approximately Rs.75,00,00,000/- and hence, the plaintiff has to be called upon to pay proper court fee upon the estate being valued by the Collector.

4. Learned counsel for the applicant/1st defendant would further submit that the court fee paid by the plaintiff post conversion of the Original Petition into a testamentary original suit is also not in line with the proviso to Article 11(k) of Schedule II of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

5. Per contra, learned Senior Counsel Mrs.Chitra Sampath, appearing for the the 1st respondent/plaintiff would submit that the plaintiff has never shied away from paying the court fee and the apprehensions of the applicant/1st defendant are baseless. Learned Senior Counsel would place reliance on Section 57 of Tamil Nadu Court Fees and Suits Valuation Act, 1955 and state that the

said provision fully protects the applicant/1st defendant and as and when the Collector ascertains the market value and if it is found that any further court fee is payable, the plaintiff is always willing to pay the same.

6. The learned counsel for the applicant/1st defendant would place reliance on the decision of the Division Bench of this Court in the case of ***R.Ramachandran vs G.Hariharan*** reported in ***2001 (2) L.W. 318.*** In fact, learned Senior Counsel appearing for the 1st respondent/plaintiff also places reliance on the very same decision to fortify her contention that the issue of Court fee relates to the petitioner in the Original Petition and the revenue.

7. The learned counsel for the applicant/1st defendant would also place reliance on the decision of the Division Bench of this Court in the case of ***K.Vasudevan and other vs K.Rangarajan and others (O.S.A No.26 of 2019 dated 06.03.2019)***, where the Hon'ble Division Bench has held that when a petition for Probate or Letters of Administration gets converted into a Testamentary Original Suit, the applicant is required to pay the valuation fixed by the Collector mandatorily. The Hon'ble Division Bench has made it clear that

once the Original Petition gets converted into a Testamentary Original Suit, the Registry will have to issue notices asking the applicant to pay the requisite Court fee on the valuation fixed by the District Collector. The Hon'ble Division Bench also held that Order XXV Rules 59 and 60 of the Madras High Court Original Side Rules will have to be complied with.

8. With regard to the submission of the learned Senior Counsel inviting my attention to Section 57 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, it is to be borne in mind that the said provision is incorporated under Chapter VI of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, which deals with "Probates, Letters of Administration and Certificates of Administration".

9. Sub Section (1) of Section 55 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 deals with the application for grant of probate or letters of administration and it requires such an application to be accompanied by a valuation of the estate in duplicate in the form set forth in Part I of Schedule III.

10. Sub Section (2) of Section 55 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 requires the Court to send a copy of the valuation of the estate to the Collector of the District, in which the estate is situate or if the estate is situate in more than one district, to the Collector of the district in which the most valuable portion of the immovable property included in the estate is situate.

11. Therefore, Section 57 of the Act has to be read and can be read only in conjunction with Section 55 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. However, the position changes when the Original Petition gets converted into a testamentary original suit. Once the Original Petition is registered as a suit, then, in terms of Order XXV Rule 55 of Madras High Court Original Side Rules, the proceedings are registered as a suit and the petitioner becomes the plaintiff and the caveator becomes the defendant. Requirement of court fee to be paid on the testamentary original suit then arises. When there is no contest, subject to the value set forth in the valuation of the estate by the petitioner in the petition being accepted or not opposed by the Collector, then the maximum court fee payable, post amendment to the Court Fees Act, in and by Tamil Nadu Act 6 of 2017 requires the petitioner to pay a maximum amount

of Rs.25,000/- alone. However, when the suit gets registered, then, the question of probate duty being payable at a maximum sum of Rs.25,000/- is entirely different from the court fee payable on the suit.

12. As a defendant, the applicant is well within his rights to question the incorrect valuation or under valuation of the estate. No doubt, as required under Section 55(2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, the valuation set forth by the plaintiff as petitioner has been forwarded to the Collector for ascertaining the correctness of the valuation set forth by the petitioner. If the Collector is of the opinion that the valuation is low, then, the Collector shall enquire into the matter, for which, Section 59 of the Act is available. If the Collector finds that there is under estimation of the value, he may hold an enquiry, take evidence and call upon the concerned petitioner to amend the valuation and pay the deficit Court fee, if any.

13. Section 64 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, enables recovery of any dues or deficit court fee, including any penalty which may become payable, as if it were an arrear of land revenue.

14. Insofar as High Court is concerned, Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 does not apply and it is only Section 11 of the Act would apply. Section 11 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, is extracted hereunder for easy reference:-

> " ***Decision as to proper fee in the High Court:-***
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> *Where, in a suit instituted in the High Court in which a fee is payable under this Act, any difference arises between the officer whose duty it is to see that proper fee is paid and any party as to the necessity of paying a fee or the amount thereof, the question shall be referred to the Taxing Officer who shall decide the same.*
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> *Provided that, if in the opinion of the Taxing Office, the question is one of general importance, he may refer it to the Chief Justice of the High Court or such Judge or Judges of the High Court as the Chief Justice shall appoint, either generally or specially in this behalf;*

Provided further that, when the case comes up for disposal before the court, the decision of the Taxing Officer may be reviewed by the Court."

15. Here it is a peculiar case, the plaintiff/1st respondent herein cannot be accused of paying any deficit court fee because the court fee paid on the Original Petition being converted into a testamentary original suit is as required under the taxing statute. However, it is the grievance of the applicant/1st defendant that the valuation is improper and in fact, grossly under valued. It is for safeguarding the interest of the revenue that Section 55 (2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 has been incorporated. Unfortunately, after the amendment to the Tamil Nadu Court Fees and Suits Valuation Act, 1955 by Act 6 of 2017, especially Article 6 of Schedule I, the *ad valorem* court fee payable is 3% on the amount or value of the estate in respect of which the grant of probate or letters of administration is made, subject to a maximum of Rs.25,000/-. As now there is a maximum cap of Rs.25,000/- introduced by the Amendment Act, the revenue is also not probably seriously examining the valuation set forth by the petitioner in probate/letters of administration applications. There is no issue as long as the probate/letters of

administration is non-contentious. However, when the issue becomes contentious, then, apart from paying the maximum *ad valorem* court fee of Rs.25,000/-, the court fee is also payable on the testamentary original suit, as prescribed under the Act which depends on the value of the estate.

16. No doubt, as in the instant case, the petitioner in the Original Petition has given his valuation which is subject to scrutiny by the Collector and the petitioner has paid necessary court fee payable in terms of the valuation made by him. At the same time, the stand of the applicant/1st defendant that the estate has been undervalued and consequently, inadequate court fee has been paid cannot also be neglected.

17. In fact, as pointed out by the learned counsel for the applicant/1st defendant, in a case of this nature, where the first respondent/plaintiff seeks grant in his favour based on a Will, said to have been executed by the testatrix and the said Will is being contested on the ground that it is not a true and genuine Will and ultimately, if the first respondent/plaintiff fails to establish the truth and genuineness of the Will, then, there is every likelihood that there will

be a charge on the estate of the deceased being the deficit court fee recoverable as an arrear of land revenue and it would seriously prejudice the defendant who may ultimately succeed in getting the Will disproved. Thus, I feel that suitable directions have to be issued to protect the rights of the parties, including the interest of the State in recovering its due revenue by way of Court Fees. At the same time, I find force in the submission of the learned Senior Counsel Mrs.Chitra Sampath that the adjudication of the market value estate need not postpone the hearing of the testamentary original suit especially when the attesting witnesses are said to be very aged and their evidence is very vital and relevant for proving the Will in question.

18. In the light of the above, I am inclined to pass the following orders:-

(i) The Registry shall re-issue the valuation of the estate in Form set forth in Part-I of Schedule -III to the Collector, calling upon the Collector to hold an enquiry as mandated under Section 59 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and submit his/her findings to this Court within a period of four weeks from the date of receipt of the notice from this Court along with the valuation of the Estate. Further orders regarding payment of any further court fee/deficit court fee shall be passed depending on the findings of the Collector regarding the valuation of the estate;

(ii) the plaintiff shall be entitled to lead evidence in the testamentary original suit and proceed with the trial for which purpose, the testamentary original suit shall be listed before the learned Additional Master No–IV for recording evidence.

(iii) It is however made clear that the liberty granted to the 1st respondent/plaintiff to proceed with the trial is subject to further orders that may be passed with regard to the valuation and payment of further court fee, if warranted.

(iv) It is needless to state that in the event of the 1st respondent/plaintiff not paying adequate court fee on the basis of the value fixed by the Collector, then, it shall be open to the applicant to move appropriate application to seek further directions including dismissal of the suit.

19. With the above direction, the application is disposed of.

20. Registry is directed to forward a copy of the Order to the Original Side section and the District Collector, Chennai so that this procedure of re-

issuing the notice to the Collector under Section 55(2) of the Act is followed in all cases, where Original Petitions are converted into Testamentary Original Suit and to ensure that the Report of the Collector regarding valuation is obtained within a period of four weeks from the date of receipt of the notice under section 55(2) of the Act.

21. Post the matter before this Court on 02.07.2024 for trial.

14.06..2024

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Index:yes/no
Internet:yes/no

P.B.BALAJI,J.,

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**Pre-Delivery Order in Appn. No.2297 of 2024
in T.O.S.No.24 of 2021**

14. 06.2024