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CRP.No.1357 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1357 of 2020

and

CMP.No.7793 of 2020

1.Savithiri Naidu
2.Vikram R.Naidu

...Petitioners

Vs.

1.R.Santhosh
2.R.Vimala

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.02.2020 in IA.No.551 of 2017 in OS.No.24 of 2008 on the file of the V Additional District Judge, Coimbatore.

For Petitioners : Mr.Nithyaesh Natraj

For Respondents : Ms.Chitra Sampath
Senior Counsel
for Mr.T.S.Baskaran for R1 & R2



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ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioners/defendants 3 & 4 seeking an appointment of Advocate Commissioner to assess the market value of the suit property.

2. The first respondent herein originally filed a suit seeking declaration that settlement deed dated 30.01.2004 executed by the first defendant in favour of the fourth defendant and various other documents were null and void. He also sought for declaration that the settlement deed dated 05.11.2007 executed by the first defendant in favour of the plaintiff is valid and binding on the defendants and for permanent injunction. Later on the plaint was amended and the respondents 1 & 2/plaintiffs added a new prayer for declaration of title and recovery of possession and valued the new prayer under Section 25 (a) of the Tamil Nadu Court Fee Act and paid the Court fee by valuing the suit property at Rs.90,00,000/-. Thereafter, the petitioners filed the present application stating that the value of the suit



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property would be much more and hence, the Advocate Commissioner shall be appointed to assess the market value of the suit property. The said application was dismissed by the Court below mainly on the ground that the correctness of the value of the suit property can be assessed at the time of final disposal. Aggrieved by the same, the petitioners are before this Court.

3. The learned counsel for the petitioners submitted that when the value of the suit property is disputed by the defendants in their written statement, Section 12 (2) of the Tamil Nadu Court Fee Act should be applied and the Court should decide the question of correct valuation before recording the evidence in respect of the other issues.

4. In support of his contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in ***J.Vasanthi and others Vs. N.Ramani Kanthammal (Died)*** represented by legal representatives and others, reported in (2017) 11 SCC 852.

5. Per contra, the learned Senior Counsel appearing for the



respondents submitted that the issue of Court fee is between the plaintiff and the Court and no revision is maintainable at the instance of defendants. In this regard the learned Senior Counsel for the respondents relied on the judgment of the Hon'ble Apex Court in ***Sri Rathanavarmaraja Vs. Vimla***, reported in ***AIR 1961 SC 1299***.

6. The learned Senior Counsel for the respondents further submitted that the plaint is presented before the Court below with unlimited pecuniary jurisdiction and therefore, even assuming the valuation adopted by the plaintiff is wrong, it will not affect the pecuniary jurisdiction of the Court concerned. Therefore, the defendants are not entitled to raise the issue by filing revision petition.

7. In support of her contention the learned Senior Counsel for the respondents relied on the judgment of the Court in ***P.B.Kasee Sah Vs. P.T.Hiru Sah***, reported in ***2012 (3) CTC 48***.

8. It is admitted fact that the earlier plaintiff filed suit with



following prayers.

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“A) To declare that the settlement deed dated 13.01.2004 and Registered as document No.70 of 2004 executed by the first defendant to the fourth defendant is void and illegal;

B) Consequently to set aside the settlement deed dated 13.01.2004 and registered as Document No.70 of 2004 executed by the first defendant and fourth defendant.

C) To declare that the settlement deed dated 30.01.2004 executed by the fourth defendant in favour of the third defendant and registered as document No.229 of 2004 is void and illegal.

D) Consequently to set aside the settlement deed dated 30.01.2004 and registered as document No.229 of 2004 executed by the fourth defendant to the third defendant.

E) To declare that the settlement deed dated 05.11.2007 and registered as document No.3102 of 2007 executed by the first defendant to the plaintiff is valid and binding on the defendants.”

9. Later on the plaint was amended and the plaintiff sought for declaration of title and recovery of possession. In view of the same, the plaint



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was valued under Section 25 (a) of the Tamil Nadu Court Fee Act and market value of the suit property was mentioned as Rs.90,00,000/- and appropriate Court fee was paid on the valuation adopted in the plaint.

10. The learned counsel for the respondent submitted that after amendment of the plaint, the defendants have not filed any additional written statement. Therefore, the valuation adopted by the plaintiff in the amended plaint is not disputed by the defendants in the written statement.

11. The said statement of the learned Senior Counsel appearing for the respondent was not disputed by the petitioner. When new valuation adopted by the plaintiff as per the new prayer introduced by way of amendment, was not at all disputed by the defendants by way of additional written statement, the argument made by the learned counsel for the petitioner based on Section 12(2) of the Tamil Nadu Court Fee Act, falls to the ground.

12. In *Sri Rathnavarmaraja Vs. Vimla, reported in AIR 1961 SC 1299*, the Hon'ble Apex Court said issue of the Court fee is the matter



between the plaintiff and the Court and no revision was maintainable at the instance of defendants. In the case on hand, admittedly the suit is filed before the Court having unlimited pecuniary jurisdiction. Therefore, the issue of Court fee can be decided at the time of final disposal and the valuation adopted by the plaintiff will not affect the pecuniary jurisdiction of the Court concerned. In other words, even if the valuation adopted by plaintiff is found to be incorrect at the time of final disposal, the suit will not go out of pecuniary limits of trial Court. Hence, the order impugned in the revision will not cause any prejudice to the respondent. Hence, as per law laid down by ***P.B.Kasee Sah*** case, cited supra, the issue regarding Court fee can be decided along with other issues, when decision there on will not render plaint out of pecuniary limit of trial Court.

13. The reading of the affidavit filed in support of petition by the petitioner seeking appointment of Advocate Commissioner would indicate that there is no serious dispute with regard to the plaintiff's title of the suit property. The dispute is only with regard to the valuation of the suit. In such circumstances, the parties are at liberty to lead evidence to prove the actual



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market value of the suit property and the same can be decided at the time of final disposal. It is always open to the petitioner to examine witnesses and lead evidence regarding the valuation of the suit property. The issue regarding the correct market value of suit property requires evidence. Hence, the said issue is to be decided by the Court below at the time of final disposal, as observed in the impugned order. I do not find any error in the order passed by the Court below. Therefore, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
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To

The V Additional District Judge, Coimbatore.



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S.SOUNTHAR, J.

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