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C.R.P.No.3684 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE P. DHANABAL

C.R.P.No.3684 of 2022

and

C.M.P.No.19500 of 2022

1. S.Ravichandran
2. R.Vijayalakshmi
3. R.Muthulakshmi

... Petitioners

vs.

S.K.Karunakaran

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal Order dated 24.08.2022 passed in I.A.No.294 of 2022 in O.S.No.19 of 2018 on the file of the I Additional District & Sessions Judge, Cuddalore.

For Petitioners : Mr.R.Rajavelavan

For Respondent : D.Ravichander

ORDER

This Civil Revision Petition has been filed by the petitioners, challenging the Fair and Decreetal Order dated 24.08.2022 passed in I.A.No.294 of 2022 in O.S.No.19 of 2018 on the file of the I Additional District & Sessions Judge, Cuddalore, wherein, the trial Court dismissed the said Interlocutory Application.

2. These petitioners filed an interlocutory application before the trial



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court under Section 12(2) of TamilNadu Court Fees and Suits Valuation Act, 1955 & Order VII Rule 11, r/w.Section.151 of Code of Civil Procedure seeking to pass an order by holding enquiry as regard the valuation o f suit as preliminary issue before hearing of the suit and if the suit has not been properly valued, direct the respondent/plaintiff to pay deficit court fee on proper valuation. The trial Court dismissed the said Interlocutory Application.

3. Aggrieved by the said order, the present Civil Revision Petition has been filed.

4. The brief facts of the case are as follows :

The petitioners are the defendants in the main suit. The respondent herein had filed the main suit for the relief of declaration of title and recovery of possession in respect of the suit property. According to the petitioner, the suit property was valued at Rs.13,00,000/- and paid Court fees of Rs.39,000/-. In fact, the value of the property is Rs.26,72,158/- and thereby the respondent ought to have paid court fees of Rs.80,165/-. In the suit property, the respondent had put up construction, but the respondent only value the vacant site. Further, the suit is barred by limitation.

5. According to the respondent, this petition is filed only to delay the proceedings and the valuation certificate was issued by the concerned



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authorities and based on the said value only, they valued the suit property. The respondent referred the document dated 09.06.2017, but the suit was filed in the year 30.01.2018. The valuation certificate filed by the petitioners was superseded and the value of the property is only Rs.1,810/- per square meter, as per the valuation certificate issued by the Sub-Registrar, Cuddalore dated 23.01.2018. When the suit was filed by the respondent before the District Munsif Court, Cuddalore in O.S.No.140 of 2016 only to avoid technical objections, he filed a petition in I.A.No.397 of 2017 to withdraw the suit and filed the present suit on the same cause of action. The suit is not barred by limitation. Therefore, the petition has no merits, the superstructure available in the suit property does not belong to the respondent/Plaintiff. Therefore, the present petition is liable to be dismissed.

6. Before the trial Court, on the side of the petitioners Ex.P.1 was marked and on the side of the Respondent Ex.R1 was marked, no oral evidence adduced by either parties. The trial Court after hearing both side dismissed the said petition.

7. The learned Counsel for the petitioners would contend that the respondent herein has filed a suit for the relief of declaration and recovery of possession in respect of the suit property and valued the suit property as



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Rs.1,810/- per square meter and he failed to include the superstructure value in the suit property. The suit is also barred by limitation, since the relief of cancellation of sale deed is well beyond three years from the date of its execution. Therefore, he filed a petition before the trial Court in I.A.No.294 of 2022 in O.S.No.19 of 2018 under section 12 (2) of TamilNadu Court Fees and Suits Valuation Act, 1955 & Order VII Rule 11, r/w. Section 151 of C.P.C. Further, the sale deed was registered on 24.03.2016, in respect of the same two survey number for Rs.59,99,400/-. The original value of the suit property is Rs.26,72,158/- and as per the guideline value dated 25.01.2017, the value is Rs.346/- per square feet. The suit property is 7723 Square feet. Therefore, the value is Rs.26,72,158/- But the plaint is valued only Rs.13,00,000/- The trial Court failed to consider the above said aspects and dismissed the petition. Therefore, the order passed by the trial Court is liable to be set aside. In support of his contention, he relied upon the following judgments

i) ***S.N.S.Sukumaran vs C.Thangamuthu reported in 2012 (5) LW 197***

ii) ***S.Gurunathan and others vs Thenmozhi & others reported in 2022 (2) LW 87***, iii) ***C.S.Ramaswamy vs V.K.Senthil in Civil Appeal No.500 of 2022 on the file of the Hon'ble Supreme Court of India dated 30.09.2022***, iv) ***B.Baleeshwari vs J.Gunavathy Baby and another reported in 2020 (2) MWN (Civil) 435*** and v) ***Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajra) (D) thr.***



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LRs and others reported in 2020 (5) CTC 471.

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8. The learned Counsel for the Respondent would contend that in respect of the suit property, he filed a suit for declaration and recovery of possession. The suit was valued based on the document i.e., valuation certificate issued by the Sub-Registrar, Cuddalore dated 23.01.2018. As per the said certificate, the guideline value is Rs.1,810/- per square meter. Therefore, the respondent has correctly valued the property. As far as the question of limitation is concerned, it could be decided only after full trial, because it is mixed with question of fact and law. Therefore, the trial Court after considering all the aspects correctly dismissed the petition. The present Civil Revision Petition is liable to be dismissed. In support of his contention, he relied upon the judgments *i)Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others vs Tuticorin Educational Society and others* reported in 2019 (9) SCC 538, *ii)Sri Rathnavarmaraja vs Vimla* reported in 1961 SCC online SC 280 : 1961 (3) SCR 1015 : AIR 1961 SC 1299.

9. This Court heard both sides and perused the records.

10. In this case, the respondent/plaintiff has filed a suit for the relief of declaration and recovery of possession in respect of the suit property and he valued the suit property based on the valuation certificate given by the



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concerned Sub-Registrar dated 23.01.2018 and thereby paid the court fees.

According to the petitioner, the value of the property on the date of presentation of plaint is more than Rs.346/- per square feet as per the communication of Joint-I Sub Registrar, Cuddalore dated 25.01.2017. Further, the certificate obtained by the petitioners from the concerned Sub-Registrar is in respect of Ward No.7, Block No.34. But the respondent obtained certificate for Ward No.7, Block No.45. The suit property is situated at Ward No.7, Block No.45. Therefore, the certificate produced by the petitioner before the Trial Court cannot be relied.

11. Further, the valuation has been fixed by the petitioner based on the certificate issued by the Sub-Registrar Joint-I, Cuddalore dated 25.01.2017, but, the respondent/plaintiff obtained certificate on 23.01.2018. Both the certificates are given by the same authorities and as per Ex.R.1, the value of the property from 09.06.2017 to the date of issuance of certificate i.e., dated 23.01.2018 is Rs.1,810/- per square meter. The petitioners relied the guideline value of the same survey number and the value was fixed as Rs.346/ per square feet. The subsequent document reveals that the value of the property is Rs.1,810/- per square meter. As per Section 7(1) of TamilNadu Court Fee and Suit Valuation Act, 1955, the market value of the property shall be determined



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as on date of presentation of the plaint. The date of presentation of the plaint is 30.01.2018, on that date, the value of the property was fixed as Rs.1,810/- per square meter. Therefore, the plaintiff has valued the property based on the valuation certificate given by the concerned Sub-Registrar. The valuation certificate produced by the petitioner is not on the date of presentation of plaint that too not related to the suit block number. Therefore, the document filed by the petitioner cannot be relied to determine the market value of the suit property.

12. As far as the superstructure is concerned, the respondent himself admitted that he is not claiming the superstructure of the property. As far as the question of limitation is concerned, it is well settled law that it could be decided after full trial, since it is mixed with question of fact and law. Therefore, the petitioners are not entitled to get any relief at this stage. In this context, the trial Court also passed elaborate order after discussing about the documents produced by both the parties and also after referring Section 7 of TamilNadu Court fee and Suit Valuation Act, correctly dismissed the petition. Therefore, there is no perversity or infirmity in the order passed by the trial Court.



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13. The learned Counsel appearing for the petitioners has relied the judgments in i) ***Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajra) (D) thr. LRs and others reported in 2020 (5) CTC 471***, ii) ***B.Baleeshwari vs J.Gunavathy Baby and another reported in 2020 (2) MWN (Civil) 435***, iii) ***C.S.Ramaswmay vs V.K.Senthil in Civil Appeal No.500 of 2022 on the file of the Honb'e Supreme Court of India dated 30.09.2022***, iv) ***S.Gurunathan and others vs Thenmozhi & others reported in 2022 (2) LW 87*** and v) ***S.N.S.Sukumaran vs C.Thangamuthu reported in 2012 (5) LW 197***. On careful perusal of the judgments relied by the learned Counsel for the Petitioner, the said judgments will not applicable to the case on hand. Because in this case, the petitioner has valued the property based on the valuation certificate issued by the concerned Sub-Registrar. The learned Counsel for the Respondent also relied upon the judgments in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others vs Tuticorin Educational Society and others*** reported in ***2019 (9) SCC 538*** and in the case of ***Sri Rathnavarmaraja vs Vimla reported in 1961 SCC online SC 280 : 1961 (3) SCR 1015 : AIR 1961 SC 1299***. On careful perusal of the above judgments, they will not be applicable to the facts of the case, because, in this case, there is no provision for appeal under the TamilNadu Court Fee and Suit Valuation Act as against the order passed in Section 12 of the TamilNadu Court Fee and Suit



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Valuation Act. Therefore, this Civil Revision Petition filed under Article 226 of Constitution of India is well maintainable.

14. Moreover, already, the Division Bench of this Court in *S.N.S.Sugumaran vs C.Thangamuthu* reported in **2012(5) LW 197** while deciding the petitions filed under article 227 of Constitution of India in challenging the orders passed under Section 12 of TamilNadu Court Fee and Suit Valuation Act entertained the applications filed under article 227 of Constitution of India. Therefore, the arguments of the learned Counsel for the respondent in respect of maintainability is not acceptable one.

15. In view of the above discussion, this Civil Revision Petition has no merits and it is liable to be dismissed. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

26.07.2024

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Index :Yes/No

Internet : Yes/No

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To:

- 1.The I Additional District & Sessions Judge,
Cuddalore.
- 2.The Section Officer,
V.R.Section,
High Court of Madras.



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P. DHANABAL, J.

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