



C.R.P.(MD)No.190 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P(MD)No.190 of 2024

and

CMP(MD)No.819 of 2024

1.N.Udhayakumar
2.N.Muthu Prakash
3.Pandiammal
4.R.Prabhu
5.R.Gowtham

: Petitioners/Petitioners/
18, 19 & 14 to 16 Defendants

Vs.

1.M.Vijayalakshmi

: 1st Respondent/1st Respondent/
Plaintiff

S.M.Natarajan (died)
S.M.Rajam (died)
P.Mariammal (died)

2.Rajarajeswari
3.S.Poonkodi
4.Jeya
5.Murugesan
6.Chandra
7.Indira
8.S.Sudha
9.S.Sanmugavalli
10.Minor S.Jai Sivaraman
11.Minor S.Jaiharan
(Minors 10 & 11 respondents
represented through their
Mother & Guardian 9th Respondent
S.Sanmugavalli)

: 2 to 11 Respondents/
2 to 11 Respondents/
4, 5 to 13 Defendants

Chellamanickam (died)



C.R.P.(MD)No.190 of 2024

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 28/08/2023 made in IA No.2 of 2023 in O.S No1081 of 2012 on the file of the Principal Sub Court, Madurai.

For Petitioners : Mr.S.Sankar

For 1st Respondent : Mr.V.Meenakshi Sundaran
for Mr.D.Nallathambi

O R D E R

This civil revision petition has been filed seeking to set aside fair and decreetal order, dated 28/08/2023 passed in IA No.2 of 2023 in OS No.1081 of 2012 by the Principal Sub Judge, Madurai.

2.The facts in brief:-

A suit in OS No.1081 of 2021 was filed by the first respondent herein as plaintiff seeking the relief of partition and separate possession in respect of her share and for consequential relief of declaration to declare the various deeds are as null and void. The defendants appeared and filed their written statement. Pending further process, a petition was taken out by the defendants 14 to 16, 18 and 19, who are the petitioners herein in IA No.2 of 2023 to decide the preliminary issue of court fee and pecuniary jurisdiction.



C.R.P.(MD)No.190 of 2024

3.That was resisted by the respondents. After elaborate consideration, the trial court dismissed the petition.

4.Against which, this civil revision petition is preferred.

5.Heard both sides.

6.In the plaint, it has been stated by the first respondent/plaintiff that in respect of the 1st item, to allot 1/6th share and 1/3rd share in the items 2 to 5, she valued the suit, as per section 37(2) of the Tamil Nadu Court Fees and Suits Valuations Act, 1955. The Court Fee paid is Rs.750/-. Total share available to her is valued at Rs.8,50,000/-. In respect of declaratory relief, she valued the same as Rs.8,65,000/-. The court fee of Rs.1428.50/- was paid under sections 25(d) of the Act. The total court fee paid by the first respondent is Rs.1,428.50/- in respect of the declaratory relief.

7.The petitioners herein filed a petition stating that total value of the property is more than Rs.1,70,00,000/-, even as per the Government Guideline value at the time of filing of the suit. Now it has been



C.R.P.(MD)No.190 of 2024

valued as Rs.2,00,00,000/-. Without proper value, the suit is filed and if the proper value is made, then only the plaint has to be taken out of the trial court.

8.The trial court is of the view that the question of court fee must be decided on the basis of the allegations made in the plaint and the first respondent deemed to be in joint possession. So, the payment of court fee and valuation cannot be disputed.

9.Similarly, in respect of the payment of court fee under section 25(d) of the Act also, it is valid.

10.Now in the grounds, it has been stated that the guideline value issued by the Government was annexured along with the petition. But without considering the same, the above said order is passed. But the above said guideline is not produced before this court. So, this court is handicapped with the guidelines issued by the Government. The date of filing the plaint and letter is not known. So, no finding can be recorded by this court.

11.Normally, the valuation mentioned in the plaint will be taken as correct, unless substantial proof is available to show the contra valuation. More-over, the



C.R.P.(MD)No.190 of 2024

draft issue has also been placed before this court.

Wherein, we find no issue with regard to the correctness of the payment of court fee.

12.Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act, reads as follows:-

"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



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C.R.P.(MD)No.190 of 2024

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 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



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C.R.P.(MD)No.190 of 2024

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.



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C.R.P.(MD)No.190 of 2024

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.



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C.R.P.(MD)No.190 of 2024

(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.

13. This provision is mentioned by the learned counsel appearing for the 1st respondent stating that as per section 12(2) of the Act, the earliest opportunity was not exercised by the petitioners. At what stage that petition was filed is not clear on record. But it appears that issues were framed, on 15/12/2017. The petition was filed in 2023, much after the framing of the issues. The



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C.R.P.(MD)No.190 of 2024

petitioners ought to have raised objection at the earliest opportunity available to them. The suit was filed in 2012. Almost 12 years lapsed. Still no progress could be made in the trial process.

14.In para 10 of the written statement filed by the defendants 1 and 2, it has been simply stated that the plaintiff is out of possession. So, the court fee ought to have been paid by valuing the same on the basis of the market value.

15.To show the market value of the property in 2012, they have also produced the guideline value, which is also available in the typed set of papers. But whether the plait should be valued on the market value, since the plaintiff is out of possession, cannot be considered in midway, which requires proper evidence. If the evidence is brought on record that the plaintiff is out of possession, the petitioners can be very well directed to pay the court fee in accordance with law. But stalling the further process by way of filing this petition cannot be appreciated.

16.Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 reads as under:-



C.R.P.(MD)No.190 of 2024

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"2.In a suit for partition and separate possession of joint family property or property owned, jointly or in common, by a plaintiff who is in joint possession of such property, fee shall be paid at the following rates:-

(i)	A District Munsif's court	Rupees one hundred.
(ii)	The City Civil Court, Chennai or a Sub-Court or a District Munsif.	Rupees one hundred, if the value of plaintiffs share is rupees thirty thousand or less; rupees five hundred, if it is above rupees thirty thousand but below rupees one lakh; and rupees seven hundred and fifty, if the value is rupees one lakh and above.
(iii)	The High Court	Rupees one thousand]

17.As mentioned above, if there is evidence to show that the plaintiff excluded from the possession, the market value will play the role. But, as mentioned above, it is matter for trial.

18.More-over, it is also settled proposition of law that payment of court fee is between the court and the plaintiff. Even though, the party can assist the court. On that ground, they cannot make objection. So, I find absolutely no reason to entertain this petition. Considering the oldness of the matter, there shall be a direction to the concerned trial court to follow the circular of issued by this Court in R.O.C.No.



C.R.P.(MD)No.190 of 2024

984/2015/RG/B5 dated 25.02.2016 wherein this Court directed the trial Courts to expedite the trial process in the matters pending for more than 5 years.

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19.In the result, this civil revision petition fails and the same dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

14/02/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal Sub Court,
Madurai.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.190 of 2024

G.ILANGO VAN, J

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C.R.P (MD) No.190 of 2024

14/02/2024