



C.R.P(MD)No.2140 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.2140 of 2023
and
C.M.P(MD)No.10772 of 2023

Sugantha Sarojini ... Petitioner / 1st respondent / Plaintiff

Vs

1.John Issac Robinson

2.Bennet

3.John Leeban

4.Jacob Arul

... 1 to 4 Respondents / Petitioners /
7,8,9 and 12 defendants

5.Anitha

6.Ramani Punithakumari

7.Thanislal

8.Saju Benitus

9.Ramesh

10.Thankamoni

11.Tipcy Kodimalar

1/12



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12.The Pastor,
C.S.I.Church,
Mission Compound,
Residing at Komanvilai,
Bethelpuram,
Pethelpuram Post,
Kanyakumari District. ... 5 to 12 Respondents/ 2 to 9 Respondents /
1 to 6 and 10,11 defendants

Prayer : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 04.07.2023 passed in I.A.No.15 of 2023 in O.S.No.130 of 2011 on the file of the Sub Court, Padmanabhapuram, Kanyakumari District by allowing this Civil Revision Petition.

For Petitioner : Mr.V.Meenakshi Sundaram

For R1 to R4 : Mr.Raguvaran Gopalan

For R5 : Mr.M.P.Senthil

For R6 and R7 : Mr.A.Mohamed Halim

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 04.07.2023 passed in I.A.No.15 of 2023 in O.S.No. 130 of 2011 on the file of the Sub Court, Padmanabhapuram, Kanyakumari District by allowing this Civil Revision Petition.



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2. The suit in O.S.No.130 of 2011 was filed by the revision petitioner herein seeking the relief of partition and separate possession in respect of his 1/3 share. He valued the property for the purpose of Court fee and fixed as Rs.5,00,000/-. Therefore paid Rs.750/- as Stamp duty as per Section 37(2) of the Tamil Nadu Court fees and Suit Valuation Act. The defendants appeared and filed the statement. Trial commenced and at that time, I.A.No.15 of 2023 was taken out by the respondent herein with the following averments:

2(i).The valuation mentioned in the plaint is not proper. The valuation was not made item wise. The market value is mentioned as Rs. 5 Lakhs. On what basis, the market value is calculated is not mentioned. Apart from that it is also stated that some other properties were sold by them. The purchasers were not added as parties. The valuation of the property sold was not mentioned. If a proper valuation is made then it will exceeds the pecuniary jurisdiction of the trial Court. The valuation has been made at his own, which is not proper.



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3. That was resisted by the revision petitioner stating that the suit properties are in joint possession, valuation has been properly made, no proper issue can be raised or framed with regard to the valuation. After hearing both sides, the trial Court was of the view that eventhough P.W.1 was examined in chief, the trial is not concluded. Apart from that it is also stated that no proper valuation is mentioned in the plaint. So a primary issue was framed as to whether the suit property is properly valued and proper Court fee is paid. The trial Court ordered the parties to get along with the trial on the primary issue. Against which this revision petition has been preferred.

4. Learned counsel for the petitioner would submit that a petition under Section 12(2) of the Tamil Nadu Court fees and Stamp Valuation Act can be taken up only before the commencement of the trial but here, already trial commenced and so the order passed by the trial Court is not valid and direction may be issued to the trial Court to take up this issue along with main issue. In short, the arguments of the revision petitioner is that taking up the primary issue after the examination of P.W.1 is not proper.



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5. We can make a reference to the judgment of the Hon'ble Full Bench of this Court made in **S.N.S.Sukumaran and Others Vs. C.Thangamuthu and Others**, reported in **2012(5) CTC 705**, has answered in the following manner:

"30.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



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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.

(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



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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."

6. Perusal of the records shows that in pursuance of the order passed in I.A.No.15 of 2023, the commissioner was appointed to assess the value of the property. The commissioner also calculated the valuation and filed the report. Enquiry in the primary issue also commenced on 01.08.2023. The defendant entered into the witness box and cross examined by this revision petitioner. Totally three witnesses were examined so far, before the trial Court. P.W.3 was examined on 17.08.2023. This revision was presented on 23.08.2023. Having participated in the primary enquiry, now this revision has been preferred against the original order.

7. Now the question which arises for consideration is whether at this stage, any interference is called for. Reading of the evidence adduced on the side of the defendants on this aspect shows that the valuation made by the Commissioner is also disputed. The contention of



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the revision petitioner during the cross examination was also supported by the first defendant. An official from the Sub Registrar, Manavalakurichi, was examined and he stated that the Commissioner has valued the property as on 2011 at the rate of Rs.75,000/- for cent. The total valuation of the land in the year 2011 was fixed at Rs. 45,00,619.20/-. Perusal of the records shows that there is some dispute with regard to the correct valuation. Another factor is that the defendants 2 to 4 filed I.A.No.1 of 2021 to struck off the plaint. That was dismissed by the trial Court against which a Civil Revision Petition was preferred in C.R.P(MD)No.1009 of 2023. That came to be dismissed by this Court on 17.04.2023.

8. The I.A.No.15 of 2023 was filed by the defendants 7 to 9 and 12, on 12.06.2023. It appears that they were not parties in the original plaint. Later only, they came on record. Naturally, as indicated by the Hon'ble Full Bench of this Court, whether the valuation issue was raised by the defendants 7 to 9 and 12, to drag on the proceedings, is a serious matter which weights much upon this Court, as to the real intention.



9. Section 12(3) of Tamil Nadu Court fees and Suits Valuation

Act, 1955 reads as under:

"12.Decision as to proper fee in other Courts.-

(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."

10. From the records it is seen that the original defendants had the opportunity to dispute the same. But they did not. Now the defendants



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7, 8, 9 and 12 have filed this petition. So the explanation clearly bars this petition under Section 12 of the Tamil Nadu Court fees and Suits Valuation Act, 1955. But this has not been taken into account by the trial Court.

11. The suit is filed in the year 2011, now we are in 2024. If the preliminary point is ordered to be decided, then no one knows how long years it will take to see that the trial be completed. At the length of this time, it may not be proper on the part of the trial Court to order the preliminary issue to be tried. It ought to have been taken it along with the main issues.

12. The reason for my observation is that, the trial Court is empowered to direct the plaintiff to pay proper Court fee after taking into account, the valuation. This Court is of the considered view that deciding the preliminary issue, may not be proper, not only in the interest of the parties, but also considering the oldness of the matter. On that account, the order passed by the trial Court is required to be interfered. Eventhough, issue is in part heard stage, let it be taken up along with the main issues.



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13. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

19.03.2024

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

1. The Sub Court, Padmanabhapuram, Kanyakumari District.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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