



C.R..P.(PD)(MD).No.1460 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.1460 of 2024

1. V.V.Preetha

2. J.P.Kanu Girik

... Petitioners/Appellants
/Plaintiffs 2 and 3

Vs.

1. Ayappan

2. Madhavan Pillai

3. The Sub Registrar,
Manavalakurichi Sub Registrar Office,
Manavalakurichi Village,
Manavalakurichi Post,
Kalkulam Taluk,
Kanyakumari District.

4. The Tahsildar,
Kalkulam Taluk,
Situated at Thuckalay,
Thucklay Post,
Kanyakumrai District.

5. Sugunabai

... Respondents/
Respondents/
Defendants 1 to 5



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PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order made in Unnumbered A.S in C.F.No.429 of 2024 on the file of the Principal District Judge (FAC) Kanniyakumari at Nagercoil, dated 26.04.2024 in O.S.No.29 of 2019 on the file of the Subordinate Judge, Eraniel, dated 30.06.2023.

For Petitioners : Mr.C.Sankar Prakash
For R1 and R2 : Mr.G.Aravinthan
For M/s.Aram Legal Consultancy
For R3 and R4 : Mr.S.P.Maharajan
Special Government Pleader
For R5 : Mr.N.S.Ramakrishnadass

ORDER

The appellants in unnumbered A.S in C.F.No.429 of 2024 on the file of the Principal District Court (FAC), Kanyakumari at Nagercoil, are the revision petitioners herein.

2. The revision petitioners as plaintiffs have filed the above said suit for the relief of declaration that the of Sale Deed No.1491 of 2011, dated 25.07.2011, as null and void and for a permanent injunction restraining the defendants 1 and 2 from alienating or encumbering the property. The plaintiffs have further prayed for mandatory injunction directing the third



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defendant to make necessary entries in the official records relating to the cancellation of the impugned sale deed and also to direct the fourth defendant to make necessary entries by deleting the name of the second defendant in the revenue records and insert the name of the plaintiff. A counter claim was filed by the first defendant seeking declaration that he is having life estate over the counter claim property.

3. The suit was dismissed and the counter claim was allowed. The life interest of the fifth defendant over the counter claim property was declared. Challenging the same, the plaintiffs have filed A.S in C.F.No.429 of 2024 before the learned Principal District Judge (FAC), Kanyakumari at Nagercoil. Under the impugned order, the memorandum of appeal was returned by the learned Principal District Judge on the ground that the plaintiffs/appellants have to pay Court fee as was paid before the trial Court and not as per the amended Act. This order is put to challenge in the present Civil Revision Petition.

4. The trial Court has relied upon a judgment reported in **2023 -3- LW Page.505, (V.Rajarathinam Vs.V.Sivasubramanian and others)**, which was



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delivered by a learned Single Judge of this Court. As per the said judgment, the amending Act would not apply to an appeal arising out of a suit instituted prior to the coming into force of the amendment and therefore, the Court fee that was paid before the trial Court has to be paid before the first Appellate Court also.

5. The learned counsel appearing for the revision petitioners has relied upon another judgment of the learned Single Judge of this Court reported in **2018 (2) MWN (Civil) 753 (Sivakami Vs.Nallathal)**, wherein it is held that the Court fee payable in an appeal shall be under the new Act and not under the old Act. The learned single Judge has further held that the Court-fee payable in an appeal would be the Court-fee payable in the Court of first instance and it would be based on the date on which the appeal is presented before the Court.

6. The learned counsel appearing for the revision petitioners has also relied upon the Division Bench of this Court in A.S(MD) SR.Nos.11388 and 6854 of 2018 and the said appeal arising out of a partition suit. The learned counsel appearing for the appellants had contended that the plaintiffs have



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paid a sum of Rs.750/- as Court-fee before the trial Court and therefore, the same Court-fee has to be paid by the appellants in the first Appellate Court. When the registry raised an objection to the said contention, the issue was placed before the Hon'ble Division Bench for deciding maintainability. The Hon'ble Division Bench of this Court by their judgment in paragraph Nos. 4 to 7 has held as follows:

“4. Section 52 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 contemplates only payment of the same Court fees that would be payable in the Court of first instance on the subject matter of the appeal.

5. The learned counsel for the appellants contended that as the Section 52 of the Act is not amended to clarify this issue, the Court fees payable would be Rs.750/- as that was paid at the time of filing of the suit.

6. We are unable to persuade ourselves to the above submission as Section 52 clearly indicates that the Court fees payable is the same as that “would be payable” in the Court of first instance and “not what is paid”. Therefore, there is no ambiguity in the language employed in Section 52 as it is very clear that the Court fees payable in the



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first instance, after the amended Act is Rs.5000/- and therefore, the appeal filed subsequent to the coming into force of the amended Act also should be only Rs.5000/-.

7. Though the right of appeal is a substantive right that vests in a litigant on the date of filing of the suit and cannot be taken away and the appeal being a continuation of the suit whether retrospective implementation can be made. The subsequent amendment in the payment of Court fees which has been enhanced does not take away the right of appeal and it cannot be set to impair or imperil the appellant's right in view of the enhanced Court fees. Hence, the objection raised by the Registry is sustained and the appellants are directed to pay a sum of Rs.5000/- as per the amended Act, within two weeks from the date of receipt of a copy of this order. On such payment, Registry is directed to number the appeals, if they are otherwise in order.”

7. As per the judgment of the Hon'ble Division Bench of this Court, the Court-fee has to be determined only on the basis of the date on which the appeal is presented. The Court fee that is prevailing on the date of



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presentation of the appeal has to be paid by the appellants. The appellants cannot rely upon the Court fee that was paid by the plaintiffs before the trial Court based upon the un-amended Act.

8. In view of the categorical decision of the Hon'ble Division Bench of this Court, the trial Court was not right in relying upon the judgment of the learned Single Judge reported in **2023 -3 LW Page.505, (V.Rajarithinam Vs.V.Sivasubramanian and others)**. The appellants in the above first appeal are directed to pay Court-fee only as per the Amended Act. The order impugned in the revision petition is set aside.

9. With the above said observations, this Civil Revision Petition stands allowed. There shall be no order as to costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

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Kanniyakumari at Nagercoil,
2. The Subordinate Judge,
Eraniel.
3. The Sub Registrar,
Manavalakurichi Sub Registrar Office,
Manavalakurichi Village,
Manavalakurichi Post,
Kalkulam Taluk,
Kanyakumari District.
4. The Tahsildar,
Kalkulam Taluk,
Situated at Thuckalay,
Thucklay Post,
Kanyakumrai District.
5. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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