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Court : Chennai

Decided On : Jul-09-1999

Reported in : 1999(3)CTC88; (1999)3MLJ381

Judge : S.S. Subramani, J.

Acts : Tamil Nadu Court Fees and Suit Valuation Act, 1955 -- Sections 7, 12(3), 25 and 40

Appeal No. : C.R.P. No. 394 of 1999 and C.M.P. No. 2014 of 1999

Appellant : Raman

Respondent : Rahmathunnisa and Two Others

Advocate for Def. : Mr. G. Sridharan, Adv.

Advocate for Pet/Ap. : Mr. T. Ayyasamy, Adv.

Judgement :

ORDER

1. Plaintiff in O.S.No. 34 of 1996 on the file of Additional District Munsif, Pudukottai is the revision petitioner.
2. Suit filed by petitioner is one for declaration' of his title and for permanent prohibitory injunction restraining defendants from interfering in his possession.

3. At the time of when the suit was instituted, there was only three defendants. First defendant already filed his written statement on 22.9.1994. Thereafter, first defendant sold the property and the purchaser was impleaded as additional 4th defendant as per order in I.A. No.541 of 1996 dated 9.9.1997.

4. In the written statement filed by first defendant, he has not taken any objection regarding court-fee payable on the plaint. On the basis of purchase and after his impleadment, 4th defendant filed written statement, where he took objection regarding valuation of suit. Thereafter, he filed I.A. No.360 of 1997 to test the value of the suit property by a senior bailiff and basing his value with reference to the guideline of Registrar, maintained in the Joint Registrar's office and also the actual market value on the date of suit and collect deficit court fees if any and decide the jurisdiction.

5. I.A. No.360 of 1997 was seriously opposed by plaintiff, who contended that 4th defendant who is only a purchaser pending suit, is not entitled to put forward an objection regarding court-fee and at any rate the application is not maintainable even as per the provisions of Tamil Nadu Court-Fees and Suits Valuation Act.

6. By the impugned order, lower court held that since the property is situated in Pudukottai Junction, it must be very valuable and therefore, it is highly necessary that the property should be valued as prayed for by 4th defendant. The application was allowed by the trial court, which is challenged in this revision petition.

7. After hearing both sides, I feel that the impugned order is passed without understanding the legal provisions under Tamil Nadu Court-Fees and Suits Valuation Act and the same is perse illegal.

8. Section 12(3) of the Tamil Nadu Court-Fees and Suit Valuation Act reads thus.

'12(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, in 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).'

While narrating facts I said that first defendant has not taken any objection as to the valuation of the suit nor took contention that the Court fee paid is not sufficient.

9. An explanation has been added to sub-section (3) of section 12, which provides, that nothing in this sub-section shall apply to a defendant has been added as 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. By virtue of the explanation it is clear that only the successor of defendant or representation in interest of a defendant cannot object to the valuation if defendant already on record has not raised any objection. A person who has taken sale deed from defendant is an assignee and therefore cannot be considered as successor or representative in interest of defendant. Purchaser is not representing original defendant since he is representing his own interest. He is also not successor and interested in defendant since his right is based on the document executed by defendant. In that view of the matter, contention of learned counsel for petitioner that the explanation to Section 12(3) is a bar for filing the interlocutory application cannot be accepted.

11. But on merits I find that the lower Court has ignored the provisions of Tamil Nadu Court-Fees and Suits Valuation Act while passing the impugned order.

12. The suit has been valued under Section 25(b) of the Act, which says,

'In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 26.

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property, or on rupees three hundred, whichever is higher.'

13. How to assess the market value in a suit under Section 25(b)? We have to refer Section 7 of the Act. It is said thus,

(1) Save as otherwise provided where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2)The market value of land in suits falling under Sections 25(a), 25(b), 27(a), 29, 30, 37(1) 37(3), 38, 45 or 48 shall be deemed to be..'

Schedule property is 10 1/2 x 40 feet Jadiadi and building therein. Plaintiff claims to be in possession of the property. It is well settled that for the purpose of payment of court fee, allegations in the plaint alone will have to be considered.

14. Section 7 of the Act deals with how to assess the market value of the property in a suit under Section 25(b). It is based on the assessment of the land multiplied by 30 times. From a reading of Section 7, it is clear that the open market value to be considered for the purpose of court-fee, it is based on revenue assessment, which is multiplied by 30 times. In this case, lower court has directed a bailiff to be deputed to ascertain the market value after verifying the records of sub- registrar and file a report on the basis of guideline value available with it. There is no scope for assessing open market value in a suit under Section 25(b). From the Court-Fees Act, I find that the provision where open market value has relevance is only for a suit under Section 40 of that Act, which deals with setting aside a decree or instrument.

15. Before passing the impugned order. Lower Court also should have taken into consideration what was the contention raised in the writtenstatement. Para 7 only says that since plaintiff is not in possession of the suit property, the court-fee paid under Section 25(b) for half of the market value of the property is not correct. Regarding market value of the land in the written statement, he has not taken any contention. Written statement also accepts the market value as assessed under Section 7 and court-fee has been paid therein. The question whether plaintiff is in possession or not is no matter to be considered for deciding court-fee payable on the plaint. At the stage, Court is concerned only about the allegations in the plaint,

As I said earlier, plaintiff has asserted that he is in possession of the property and defendant is attempting to interference in his possession. On the basis of the averments in the plaint, suit can be filed only under Section 25(b) and not under section 25(a). Since there is no dispute regarding the market value of the property as assessed by plaintiff, there is no necessity to depute bailiff to ascertain open market value which has no relevance in a suit under Section 25(b).

16. In the result, I set aside the impugned order and hold that the Court fee paid is proper. I.A. No. 360 of 1997 in O.S.No. 34 of 1996 is dismissed. This revision petition is allowed. No costs. Consequently C.M.P.No. 2014 of 1999 is closed.

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