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Court : Chennai

Decided On : Feb-15-1995

Reported in : 1995(1)CTC521; (1995)IIMLJ357

Judge : Raju, J.

Acts : Tamil Nadu Court Fees and Suit Valuation Act, 1955 - Sections 25 and 53(2)

Appeal No. : C.R.P. No. 3364 of 1994 and C.M.P. No. 17357 of 1994

Appellant : Johan Devadoss

Respondent : Ruth Moris

Advocate for Def. : R. Munusamy, Adv.

Advocate for Pet/Ap. : S. Krishnasamy, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Raju, J.

1. Having regard to the nature and scope of the consideration required for the Civil Miscellaneous. Petitions and the Main revision, the main case itself has been

directed to be posted for hearing along with the miscellaneous petitions and has been heard together.

2. The revision petitioner has been filed challenging the order of the learned Subordinate Judge. Thiruvallur dated 20-9-1994 in I.A.No. 702 of 1994 in O.S. No. 71 of 1994 whereunder in the application filed by the petitioner/plaintiff in the Court below it has chosen to order the return of the plaint as also the application for impleading for being presented to the Court of District Munsif at Ponneri for further course of action before the said Court. The plaintiff filed O.S. No. 71 of 1994 on the file of the Sub Court Thiruvallur praying for a declaration of the plaintiff's title to the suit property and for consequential permanent injunction. The suit has been valued at Rs. 25,000/- for the purpose of Court fees and jurisdiction and it is stated that a sum of Rs. 1,875.50 has been paid as Court-fee. Subsequently, the petitioner has filed I.A.No. 702 of 1994 for amendment of the plaint averments in paragraph 10 of the plaint to substitute therein the averments that the plaintiff valued the suit for Rs. 75,516.00 being the market value of the suit property and half of the market value being Rs. 37,758.00 for the purpose of court fees and jurisdiction and that a Court fee of Rs. 2,831.85 is paid under Section 25(b) of Tamilnadu Court-Fees and Suits Valuation Act. The plaintiff has stated in the affidavit filed in support of the said application in the court below that originally the Village Administrative Officer gave a certificate that the suit property measuring about 58 cents in Survey No. 544/6 of Gummidipoondi village was worth Rs. 25,000/- and the very next day an affidavit was filed for the amendment of the suit value as Rs. 30,500/- and an additional Court fee was also deposited in I.A. No. 397 of 1994 and that the Court below ordered notice to the respondent and that a counter-affidavit was also filed. Thereupon, it appears that the court below ordered for test by Amin and the Amin from Ponneri District Munsif's Court in the presence, of the local people and the Village Administrative Officer noted the value of the suit property to be about eight lakhs. It is further stated that again steps were taken to have the valuation certificate and the village Administrative Officer gave a certificate stating that the present value of the suit property was Rs. 1,302/- per cent keeping into account the guideline value available with the Sub-Registrar. Gummidipoondi. It is in such circumstances, it has been claimed in the affidavit that the amendment in question was necessitated warranting the filing of I.A.No.

702 of 1994. The application was opposed by the respondent herein by contesting the claim that the value of the suit item is only Rs. 75,916/- and it is stated that the correct value of the suit item is Rs. 531,048/- excluding the building and that to avoid payment of court fee on the same the application came to be filed.

3. The Court below thereupon heard the matter and held that inasmuch as the plaintiff has chosen to give the value of the property in the plaint as Rs. 25,000/- and paid Court fee only on half of the said amount namely Rs. 12,500/- the same being below Rs. 15,000/- the Sub-Court, Thiruvallur cannot entertain the suit or applications filed therein for amendment and therefore ordered the return of the plaint as well as the applications for being presented before the District Munsif, Ponneri. Hence the above revision.

4. Mr. S. Krishnasamy, learned counsel appearing for the petitioner contended that the Court below committed an error in coming to the conclusion that the value for the purpose of jurisdiction so far as the plaint filed in concerned as only Rs. 12,500/- and that being below Rs. 15,000/- the Court below has no jurisdiction to entertain the suit or deal with any application filed therein. According to the learned Counsel, the provisions of Section 25 deals with suits for declaration and wherever a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 26 is sought for and where the prayer is only for declaration and for consequential injunction and relief sought is with reference to any immovable property fee shall be computed on one-half of the marked value of the property or on rupees three hundred, whichever is higher and having regard to Section 53(2) in a suit where fee is payable under the Act at a fixed rate, the value for the purpose of determining the jurisdiction of Courts shall be the market value or where it is not possible to estimate it at a money value as stated in the plaint and inasmuch as the money value of the property has been stated to be Rs. 25,000/- notwithstanding the fact that the Court-fee has been paid in terms of Section 25(b) of the Act on half of the market value, for the purpose of determining the pecuniary jurisdiction of court it has to be considered with reference to the value of the property as such namely to Rs. 25,000/- and thus viewed the suit filed in the Sub-Court is quite in accordance with law and the conclusion of the Court below that the same is not entertainable in the sub-Court is liable to be set aside.

5. On the other hand, the learned counsel for the respondent contended that relying upon the decisions in *Govindaraja Naicker v. Kassim Sahib* AIR 1928 Mad 384, *Zohra Khatoon v. Mohamed Jane Alam* : AIR1978 Cal133 . *Ratan Chand v. Mahentra Kama* : AIR1979 Cal55 , *Rudranath v. Shed Shankar* : AIR1983 Pat53 and *Sathappa Chettiar v. Ramanathan Chettiar* : [1958]1SCR1021 that when a suit was wrongly filed in a court having no jurisdiction to try the same and when the said mistake was discovered subsequently, there is no scope for amending the plaint so as to bring the suit within the jurisdiction of the Court below in which it was initially wrongly instituted and consequently the action of the Court below in declining to consider the application for amendment and returning the plaint is quite in order.

6. No doubt, the various decisions relied upon by the learned counsel for the respondent categorically lay down the proposition that when a plaint is filed before the court having no pecuniary or territorial jurisdiction to entertain the same, it is not permissible or competent for the said Court itself to entertain an application for amendment of the plaint so as to alter or amend the averments to bring the suit within its jurisdiction. In my view, the said principle has no application to the fact situation on hand and the learned Subordinate Judge has committed an error in applying the ratio of those decisions to the case on hand. Obviously such a mistake has been committed by the learned Subordinate Judge on the assumption that half of the market value of the property as originally given namely Rs. 12,500/- on which Court - fee has been paid would be decisive of the question of the pecuniary jurisdiction of the Court and that therefore the Sub-Court which can entertain only suits in excess of the claims of more than Rs. 15,000/- of value could not entertain the suit as such. The plaint averments would go to show that Court-fee computed on one-half of the market value of the property namely Rs. 12,500/- came to be paid in this case on the basis of the valuation given before the Court below that the market value of the property was Rs. 2,000/- for purpose of an under Section 25(b) of the Tamilnadu court-fees and suits Valuation Act. 1955. If that be the factual position and there can be no serious controversy over the said factual position, having regard to Section 53(2) of the Act the market value of the property given only shall be the basis for determining the pecuniary jurisdiction of the Court and not the value adopted for the purpose of payment of Court-fee by

virtue of specific mandate contained Section 25(b) of the Act.

7. In view of the above, the learned Subordinate Judge ought to have seen that for purpose of determining the pecuniary jurisdiction of the Court in respect of the plaint filed in this suit, it is the market value of the property as given namely Rs. 25.000/- that should be the guiding factor or the basis. Thus viewed, the suit filed will be within the pecuniary jurisdiction of the Sub-Court, Thiruvallur. The conclusion arrived at is contrary to law and cannot be countenanced by this Court. Hence, the order of the Court below is set aside and the learned Subordinate Judge is directed to restore proceedings to his file and dispose of I.A. No. 702 of 1994 on merits, and in accordance with law before proceeding with the matter further. The order passed in this revision by setting aside the order of the learned Subordinate Judge is not to be construed as an expression of opinion on the actual value of the property, since as against the claim of the plaintiff the same to be of less than a lakh, the claim of the respondent is that it is more than the said amount. The learned Subordinate Judge will be at liberty to independently assess the market value of the property for purpose of Court-fee also even considering that the liability- to pay Court-fee arises under Section 24(b) of the Act.

8. The revision is allowed with consequential directions as noticed supra. No costs. Consequently, CM.P. Nos. 17134 of 1994 and 17357 of 1994 are dismissed as requiring no further or separate orders.

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