

Dravidamani and Another Vs. Muthukumarasamy and Others

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Court : Chennai

Decided On : Sep-21-2012

Judge : R.S.Ramanathan

Appeal No. : C.R.P.(PD)No. 3407 of 2012 and M.P.No. 1 of 2012

Appellant : Dravidamani and Another

Respondent : Muthukumarasamy and Others

Advocate for Pet/Ap. : For the Petitioners : S.K.Rakhunathan, Advocate. For the Respondents: -----

Judgement :

(Civil Revision Petition has been filed under Section 115 of the Code of Civil Procedure to allow the above Civil Revision Petition by setting aside the order dated 3.1.2012 passed in Check Slip No.19/XXVII/N Diary No.3 in O.S.No.211 of 2011 on the file of the District Munsif Cuddalore.)

The plaintiffs in O.S.No.211 of 2011 on the file of the District Munsif Court, Cuddalore, are the revision petitioners.

2. The plaintiffs filed the above suit for declaration of their title to the suit properties and for injunction and also for declaring the release deed dated 28.1.2011 as null and void. The plaintiffs valued the first item of suit property at Rs.1000/- and the second item of suit property at Rs.5000/- and paid the Court fee under Section

25(d) of the Tamil Nadu Court Fees and Suits Valuation Act. The Court Fee Examiner raised objection to the value given by the plaintiffs and stated that the proper Court fee is payable under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act and the value of the suit property cannot be fixed thirty times of kist and the market value of the property has to be ascertained. The Court Fee Examiner relied upon the release deed which is sought to be declared as null and void to arrive at the market value of the property and fixed the market value of the property at Rs.3,00,840/- and under Section 25 (b) of the Tamil Nadu Court Fees and Suits Valuation Act, the Court fee has to be paid on one half of the market value and that order was upheld by the Court below and aggrieved by the same, this revision is filed.

3. It is submitted by the learned counsel for the revision petitioners that though the Court Fee Examiner is right in stating that the Court fee payable is only under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, the Court Fee Examiner and the Court below erred in directing the plaintiffs to pay the Court fee on the market value and according to the plaintiffs the property is used for storing dump materials and thirty times of the revenue is to be construed as the market value and the value fixed in the plaint is more than thirty times of the revenue and therefore the Court below erred in directing the plaintiffs to pay the Court fee by fixing the market value at Rs.3,00,840/-. He further relied upon the Judgement reported in 1999 (III) CTC 88 (Raman Vs. Rahmathunnisa and two others) in support of his contention. He therefore submitted that the Court Fee Examiner and the Court below erred in demanding the Court fee on the value fixed in the release deed which is challenged by him as null and void and the plaintiffs are not bound by the value given in the release deed.

4. I am unable to accept the contention of the learned counsel for the revision petitioners. The learned counsel for the revision petitioners having rightly admitted that the Court fee payable is under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, has to pay the Court fee on the market value of the property. Section 7 of the Tamil Nadu Court Fees and Suits Valuation Act deals with determination of market value and as per Section 7(2) of the Act, 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- (a) Where the land is ryotwari land- thirty times the survey assessment on the land.

5. Section 7(2)(g) of the Tamil Nadu Court Fees and Suits Valuation Act is as follows:

"Where the land is a house-site whether assessed to full revenue or not, poramboke land or is land not falling within the foregoing description-its market value. "

Section 7(2)(b)(c)(d)(e) and (f) deal with the land situated in an estate as defined in the Tamil Nadu Estates Land Act- minor inam land. Therefore, a reading of Section 7 of the Act makes it clear that in respect of ryotwari land the market value shall be thirty times the survey assessment on the land. In any other case not falling under Section 7(2)(b)(c)(d)(e) and (f) the value is the market value and Court fee has to be paid on the market value. Admittedly, the suit properties are not ryotwari lands and it is adjacent to a house and therefore the provisions of Section 7(2)(g) of the Act will apply to the facts of the case and therefore the Court fee shall be paid on the market value. The market value has been ascertained by the Court Fee Examiner on the basis of the release deed dated 28.1.2011. The said document deals with Survey No.137/1 and the 1st item of suit property is also situate in Survey No.137/1. Therefore, the Court Fee Examiner calculated the market value of the property on the basis of the value given in the release deed and that was accepted by the Court below.

6. The contention of the learned counsel for the revision petitioner that the 2nd item of suit property is situate in Survey No.386/3 and therefore for that purpose the market value in respect of Survey No.137/1 as given in the release deed should not be taken into consideration. It is further contended that the release deed is not accepted and therefore the value given in the release deed should not be taken into consideration. The contention of the learned counsel for the revision petitioner cannot be accepted. In the absence of any proof adduced by the plaintiff about the market value of the suit property the Court has to rely upon the document filed by the parties and which is also available in the Court records. Admittedly, the release deed which is sought to be declared as null and void is

dated 28.1.2011 and the parties to the release deed valued the property as per the guideline and therefore that was rightly taken into consideration by the Court officials and approved by the Court below. Though there is no document in respect of Item No.2, in the absence of any document produced by the plaintiff, the Court below is justified in relying upon the valuation given in the release deed to arrive at the market value of the property in respect of Item No.2 also. Further, once the market value has to be ascertained in respect of the suit property as per Section 7(2)(g) of the Act it is for the plaintiff to produce sufficient materials to the satisfaction of the Court about the market value of the property and in the absence of production of such materials, the Court below can rely upon the documents to arrive at the market value and in this case that has been done and hence I do not find any infirmity in the order of the Court below.

7. As regards the contention of the learned counsel for the revision petitioner in relying upon the Judgement reported in 1999 (III) CTC 88 (Raman Vs. Rahmathunnisa and two others), with great respect I am unable to agree with the findings rendered in that Judgement. Though I am bound by the Judgement rendered by this Court, having regard to the facts of that case, that Judgement cannot be taken as a precedent for this case. In the reported case, the learned Judge did not advert to the provision of Section 7(2)(g) of the Act and the learned Judge proceeded on the basis that the property is a ryotwari land and therefore the market value is thirty times the survey assessment on the land. There is no materials available in that Judgement to the effect that the provision of Section 7(2)(g) of the Act was brought to the knowledge of the learned Judge while deciding the issue in that case. According to me, if that provision has been brought to the knowledge of the learned Judge, the learned Judge would not have come to that conclusion. According to me, where the suit property is not a ryotwari land and does not fall under Section 7(2)(b)(c)(d)(e) and (f), then it only falls under Section 7(2)(g) of the Act and in that case thirty times assessment cannot be taken as a market value and the Court has to give a finding regarding the market value and that has been done in this case. Hence, the Judgement relied upon by the learned counsel for the revision petitioner cannot be applied to the facts of the case. Hence, I do not find any infirmity in the order of the Court below and the revision is dismissed.

8. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

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