

(2009) 10 MAD CK 0292

Madras High Court

Case No: CRP (PD) No. 1097 of 2009 in MP. No. 1 of 2009

Aathi Chettiar

APPELLANT

Vs

P. Vaikuntavalli and Others

RESPONDENT

Date of Decision: Oct. 1, 2009

Acts Referred:

- Tamil Nadu Court Fees and Suits Valuation Act, 1955 - Section 30, 7, 7(2)

Citation: (2010) 1 LW 158

Hon'ble Judges: Aruna Jagadeesan, J

Bench: Single Bench

Advocate: G.R. Swaminathan, for the Appellant; M. Vallinayagam, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Aruna Jagadeesan, J.

This Civil Revision Petition is filed by the Defendant against the fair and decreetal order dated 3.7.2009 passed in IA. No. 203/2009 in OS. No. 50/2008 by the I Additional District Munsif, Tirunelveli.

2. The brief facts that are essential for the disposal of this Civil Revision Petition are given below:

The Respondents/Plaintiffs have filed the above said suit for recovery of possession of the suit property from the Petitioner. In the Written Statement, the Petitioner has pleaded that the plaint has not been properly valued. He has filed an application in IA. No. 203/2009 praying for a preliminary enquiry into the aspect of valuation and consequently the pecuniary jurisdiction of the trial court to take up the matter. During enquiry in the said application, the Petitioner has marked the sale deed dated 21.5.2008 as Ex.A1 executed by the Respondents in favour of one Balan Nadar for sale consideration of Rs. 4 lakhs and the same had been admitted by the 2nd

Respondent while he was confronted with the said sale deed. On the other hand, Exs.B7, B8 and B12 were filed on the side of the Respondents to show that the suit lands were described in the revenue records only as punja lands and Ex.B13 to B15 are the patta pass book for the suit lands and the kist receipts are Ex.B 16. The trial court after considering the materials placed on both sides dismissed the said application. Aggrieved by the same, this Civil Revision Petition has been filed by the Defendant.

3. Prior to this proceedings, the Petitioner had filed a suit in OS. No. 61/1986 for specific performance of the agreement dated 26.1.1983 and the same was dismissed by the judgment and Decree dated 31.7.1992. The Petitioner filed an appeal in AS. No. 128/1992 and the same was allowed, as against which second appeal was filed by the predecessor of the Respondents in SA. No. 1683/1995. Pending the appeal, before an order of stay could be granted by the court, the sale deed was executed and pursuant to the decree, patta was transferred in the name of the Defendants and the Defendants made improvements by putting up two houses, dug a well and planted trees. In the mean while SA. No. 1683/1995 was transferred to the Madurai Bench and was allowed by the judgment dated 21.11.2007. Hence, the Respondents/Plaintiffs have filed the present suit for recovery of possession of the suit lands assessing the value on the basis of 30 times of gist paid to the nanja lands.

4. The Petitioner has filed an application in IA. No. 1122/2008 questioning the valuation made by the Plaintiff and the court fee paid thereon, praying for appointment of Advocate Commissioner to note down the physical features and the location of the property for the purpose of determining the value of the property and the same has been dismissed by the trial court by order dated 4.2.2009 as against which an appeal has been filed.

5. Mr. G.R. Swaminathan, the learned Counsel for the Petitioner assailed the order passed by the trial court contending that the market value of the suit property should be assessed taking into consideration the existing features as on the date of filing of the suit and considering the fact that the suit property comprised of buildings, trees and well and accordingly the value has to be determined together with the superstructure thereon and therefore, the Plaintiff should be compelled to pay the court fee.

6. The learned Counsel for the Petitioner drew the attention of this Court to the decision of this Court rendered in the case of J.B. Joe Vilwarayar, President, Singikulam Barathakula Ikkiya Santhai, Valliyoor and two Ors. v. Loordhu Ammal and Ors. 2008 (2) LW 781. That is a case where the suit was filed for the relief of declaration and recovery of vacant possession after demolishing the superstructure put up thereon. To assess the superstructure a Commissioner was appointed, who assessed the value of the additional buildings to a tune of Rs. 46 lakhs over and above a sum of Rs. 50 lakhs which was assessed relating to the site and as such, it

was contended that the District Munsif had no pecuniary jurisdiction over the suit. This Court has held in paragraph 14 of the said judgment thus:

14. The court on two occasions on perusal of the Commissioner's report clearly held that virtually the said suit land was converted into a big plot area and several buildings cropped up. I am of the considered opinion that the Plaintiffs having kept quiet, when the land was converted into plot area and the buildings have been constructed by the Defendants, cannot now veer round and contend ignoring of all those developments that the Plaintiffs want only the erstwhile ryotwari land and that they could value as Agricultural land and could pay court fee on kist value of such land.

7. From the above extract, it is seen that the land was converted into a big plot area and several buildings had cropped up and the Plaintiffs in the said suit kept quiet when the land was converted into plot area and the buildings constructed by the Defendants and on such facts, this Court held that the Plaintiff cannot ignore all those developments and insist that it should be assessed only as ryotwari lands and pay the court fee on kist value.

8. The facts in this case are quite different and distinct. In this case, admittedly the lands are still Agricultural lands and Agricultural operations are carried out in the said lands. Hence, the observations made in the said decision cannot be applied to the facts of this case.

9. That apart, this Court in the case of [Suseela and Others Vs. A.S.L. Rajan](#), referring to the classification of suit property in revenue records as Agricultural land, held that so long as there is no modification or variation in the classification of the suit lands from nanja into "house sites" and in the absence of any material produced by the Defendants for establishing the same, the court fee has to be paid only as kist paying lands. It is held thus:

The fact that the lands in the neighbouring area have been converted into house sites has already been considered by this Court in CRP. No. 2017/1982 wherein it was held that the suit properties shall be treated as lands. The trial court, having found from the kist receipts produced by the Plaintiffs that the lands continued to be the ryotwari lands cannot hold that the suit has not been properly valued merely on the ground that the neighbouring lands have been converted into house sites. This question has to be necessarily decided only on the basis of the revenue records. The kist receipts produced by the Plaintiffs, the Petitioners herein, would clearly show that the suit properties are still treated as lands. Without taking into consideration these kist receipts and the earlier order of this Court the trial court has jumped to the conclusion on the hypothetical assumption that the situation prevailing at the time when this Court passed an order would have been different at present. There is no basis to arrive at such a conclusion.

10. A combined reading of Section 7 and Section 30 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, it is apparent that Section 30 enacts that suits for possession of immovable property not otherwise provided for must be valued at the market value of the property which shall be computed in the manner prescribed by Sub-Section 2(a) of Section 7 of the said Act i.e. on the basis of multiple of revenue for the land. That being so, ryotwari land should be valued u/s 7(2)(a) and the court should not conjecture upon the nature of such land by taking into consideration the probabilities of its user in future or its potentialities.

11. It is held in the case of *Sorna Pandi Nadr v. Sivasubramania Nadar* 1976 TNLJ 69 that in the description in the revenue records is the key note for ascertainment of the market value of the classified or described land in Section 7 and it is not open to the court to treat it differently as it is the duty of the Government to classify a particular land and as there are tribunals to decide as to how and in what manner the land has to be classified (such as ryotwari, poramboke, grama natham, house site, etc. It is further held that where the suit land is shown in the revenue records as ryotwari lands, the court fee is payable at a multiple of revenue though the land is used as a salt pan and such user is irrelevant for the purpose of determining the court fee.

12. In the case of *Jugaraj and Ors. v. Corborundam Universal Limited* 1981 LW 502, it is held that in a suit for possession and other incidental reliefs, the valuation at 30 times the kist as ryotwari land is permissible and the prospective use is immaterial.

13. In the case of *Kamaleshwar Kishore Singh v. Paras Nath Singh and Ors.* 2001 (4) CTC 764, it is held that the court fee has to be paid on plaint as framed and not as it ought to have been framed, unless while drafting the plaint the Plaintiff had attempted at evading payment of court fee by his astuteness in drafting. It is held that it is substance of relief and not form which will be determinative of valuation and payment of court fee.

14. In the instant case, after the verdict in SA. No. 1693/1995, dismissing the suit filed by the Defendant for specific performance of the agreement, the Respondents had sought for recovery of possession of the suit land in S. No. 69/2 without any reference to the features and improvements made thereon. As such, since those lands are classified as ryotwari land, the court fee paid by the Plaintiffs determining the value u/s 7(2) of the Tamil Nadu Court Fee and Suit Valuation Act is correct and there is no reason to interfere with the well considered order of the court below.

15. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.