
(2009) 10 MAD CK 0300

Madras High Court (Madurai Bench)

Case No: C.R.P. (NPD) MD. No. 1253 of 2009 and M.P. (MD) No. 1 of 2009

P. Arunachalam and 5
Others

APPELLANT

Vs

L. Thiagarajan and
Another

RESPONDENT

Date of Decision: Oct. 21, 2009

Citation: (2009) 5 CTC 818

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: R.A. Mohanram, for the Appellant; T.S. Mohamed Mohideen, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Ramanathan, J.

The defendants filed a Petition challenging the valuation of the Suit filed by the plaintiff, by filing I.A. No. 68(a) of 2009 in O.S. No. 162 of 2008 on the file Principle District Munsif, Sivagangai under Order 14, Rule 2 of C.P.C. to decide the additional issues regarding the Court-fee paid by the plaintiff as preliminary issues and that Application was dismissed by the District Munsif, as against that, the present Civil Revision Petition has been filed. The plaintiff filed a Suit for declaration that "A" schedule property belongs to the first plaintiff and "B" schedule property belongs to the second plaintiff and for consequential injunction restraining the defendants from enjoying the suit schedule property in a peaceful manner. While describing the "A" Schedule Property, It has been stated in the schedule that the property is Punja lands and Survey Numbers are 93/A2 and 93/3A3. The defendants have filed a written statement in paragraph "13" wherein they have stated that the Suit is not properly valued and accordingly the appropriate Court fee has not been paid. Thereafter, the defendants have filed I.A. No. 68(a) of 2009 in O.S. No. 162 of 2008 stating that the suit properties are house sites and the plaintiffs have treated them as Ryotwari Punja lands and they have paid Court fee u/s 7(1)(a) of Tamil Nadu Court Fees and Suits Valuation Act, 1955 and the plaintiff ought to have valued the Suit, according to

the market value of the suit property, which is a house site and if so valued the Court will not have jurisdiction to decide the issue and therefore, the additional issues framed, is as a settlement issue.

2. The plaintiffs filed a counter stating that the suit property has been classified as Ryotwari Punja lands and even the defendants have stated in the written statement that the Suit property is Solai Punjai and therefore, the suit property has been properly valued.

3. The learned District Munsif taking two additional issues, namely--

(i) Whether the suit properties are valued according to the market price and appropriate Court fees has been paid; and

(ii) Whether the Suit as framed is legally maintainable and after analysing the evidence adduced, came to the conclusion that the properties are Ryotwari Punja lands and the Plaint has been properly valued. Nevertheless, after holding that the Plaint has been properly valued, instead of dismissing the Application, the Lower Court has allowed the Application and held that two additional issues regarding the pecuniary jurisdiction of the Suit is decided in favour of the respondent/plaintiff. Hence, the Revision Petition has been filed by the plaintiff/defendants in I.A. No. 68(a) of 2009.

4. Mr. R.A. Mohanram, learned counsel for the Revision Petitioners submitted that the suit property is surrounded by the houses and it is unfit for cultivation and it has been treated as house site and not treated as Ryotwari Punja lands and the valuation of the plaintiff by considering the property as Ryotwari Punja lands is not correct and the plaintiff ought to have valued the suit property treating the same as house site and if they were valued as the house site, the Court will not have jurisdiction and the plaintiff has to pay more Court-fee. The learned counsel also relied upon the Valuation Certificate issued by the Village Administrative Officer which was marked as Ex. P6, wherein the Village Administrative Officer stated that the suit property is not fit for agriculture and it is suitable for house site and in and around the suit property, buildings are there. Therefore, the learned counsel for the petitioner submitted that even as per the Village Administrative Officer's certificate the suit property cannot be treated as Ryotwari Punja lands.

5. According to me, the village Administrative Officer's certificate does not support the case of the petitioners. The Village Administrative Officer has only stated the property is not fit for agriculture and it can be used only for house site. Admittedly, the property is agriculture punja property and it was originally classified as Ryotwari Punja. In course of time, building were constructed in and around the suit property and therefore, the learned counsel for the petitioners submitted that the property cannot be termed as Ryotwari Punja lands and it must be construed only as house site and therefore the valuation of the property as if Ryotwari Punja lands cannot be accepted. At this juncture, we will have to see the pleadings in this case. In the written statement, the defendants did not state anything about the nature of the property. In paragraph "12" of the written statement, he

has only stated that the suit property is not properly valued for the relief prayed for. The defendants have not stated that the suit property is a house site property and it is not Ryotwari Punja. It is only stated that having regard to the prayer, the Suit was not properly valued. In paragraph "4". It has been stated that the properties originally belong to the plaintiffs and defendants and it is described as Solai Punja in Survey No. 93/1. Therefore, from these averments, it can be presumed that the property was Ryotwari Punja lands. When it is admitted that the property is Ryotwari Punja lands the burden is heavenly on the defendants, when he alleges that the property is not Ryotwari Punja lands and it is a house site. According to me, except the Village Administrative Officer's certificate, no other material has been produced by the defendants to prove the property as a house site. Further, the certificate of VAO only reveals that the suit property is not fit for agriculture purpose, can be used as house site. Further, in this case, the extent of property is three acres and hence, it cannot be stated that the property must be treated as house site property.

6. The learned counsel for the petitioner relied upon the judgment in [Kamaleshwar Kishore Singh Vs. Paras Nath Singh and Others](#), , and in that Judgment in Paragraph "8" it has been held as follows:

It is well settled that the Court-fee has to be paid on the Plaint as framed and not on the Plaint as it ought to have been framed unless by astuteness employed in drafting the Plaint the plaintiff has attempted at evading payment of Court-fee or unless there be a provision of law requiring the plaintiff to value the Suit and pay the Court-fee in a manner other than the one adopted by the plaintiff. The Court shall begin with an assumption for the purpose of determining the Court-fees payable on the Plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of Court-fee and fixed for the purpose of conferring jurisdiction on some Court which it does not have, or depriving the Court of jurisdiction which it would otherwise have, can also be interfered with by the Court. It is the substance of the relief sought for and which will be determinative of the valuation and payment of Court-fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of Court-fee by the plaintiff.

7. Therefore, as per the said judgment, the Plaint allegations in this case is to be taken in to consideration. In the Plaint, it has been described as Punja property and plaintiff is entitled to value the same as such. Therefore, I do not find any reason to interfere with the findings of the Lower Court. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.