

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam.**

**Friday, this 20th day of June 2025
I.A.No. 1/2024
in
A.S.No. 10/2020
(CNR.No.TNCG13 – 000123-2020)**

1. Kuppusamy
2. Ponnusamy
3. Balakrishnan
4. Dhavamani
5. Balaji
6. Sakthivel

...Petitioners/Respondents /Defendants

..Vs..

Durai

...Respondent/Appellant/Plaintiff

This petition coming up for final hearing on 29.04.2025 in the presence of Mr.S.Rajendran, Counsel for petitioners/respondents/defendants, Mr.S.Senthilkumaran, Counsel for the respondent/appellant/plaintiff, and having heard the arguments on both sides and having perused the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioners under Order VII rule 11(b) and (c) r/w section 7 and 52 of Tamil Nadu Court Fees and Suit Valuation Act 1955 as amended by Tamil Act 6 of 2017 and section 151 of Civil Procedure Code to order to payment of deficit court fees towards memorandum of appeal within the time fixed by this court failing which the memorandum of appeal be rejected.

2. Petition in brief:

Petitioners are respondents in the appeal. Respondent is the appellant and the plaintiff in the trial court. Petitioners are the respondents in the above appeal and were the defendants in the trial court. Suit in O.S. No. 195 of 2016, filed for declaration and permanent injunction by the respondent, was dismissed on 19.12.2019 by the trial court. The respondent preferred the above appeal. Court Fees Act was amended under Tamil Nadu Act 6 of 2017, which came into force on 01.03.2017, long prior to the filing of the above appeal. Hence, the court fees towards the appeal memorandum must be paid as per the provisions of the amended Court Fees Act.

Respondent valued the appeal as per the court fee paid in the trial court and filed the above appeal. This is against law. Appeal is a continuation of the suit. As per the amended Court Fees Act, the court fee must be paid on the market value of the suit property by paying ad valorem court fees. The market (guideline) value of the suit property was Rs. 7,500/- per cent on the date of preferring the appeal. The total market value for 62 cents works out to Rs. 4,65,000/-. The ad valorem court fee payable at 3% as per the amended Act works out to Rs. 13,950.00. Hence, the deficit court fee has to be paid accordingly towards the above appeal. Respondent must be directed to pay the deficit court fees within the time fixed by this Court, failing which the memorandum of appeal may be rejected. Hence this petition files this petition for payment of deficit court fees towards memorandum of appeal within the time fixed by this court failing which the memorandum of appeal be rejected.

3.Counter of respondent in brief:

The respondent denies the allegations set out in the plaint. Respondent has filed a suit against the Petitioner for declaration and permanent injunction and the same is numbered as O.S. No. 195/2016 before the District Munsiff Court at Madurantakam.

In the trial court, the Respondent assessed the suit property on the basis of Kist value and paid court fee of Rs. 75.50/- under Section 25(b) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. After trial, the suit was dismissed on 19.12.2019. So, the Respondent preferred the appeal before this Court. In the memorandum of appeal, the Respondent paid court fee under Sections 25(b) and 52 of the Tamil Nadu Court Fees Act. However, the Tamil Nadu Court Fees Act was amended on 01.03.2017. Respondent has no need to pay court fee for the further instance. Hence, the Respondent paid court fee of Rs. 75.50/- in the memorandum of appeal, the same as paid in the trial court.

Petitioner filed a vexatious petition against the Respondent. The amended provisions of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, enhancing court fee vide the Amended Act, would not apply to an appeal arising out of a suit instituted prior to the amendment, i.e., prior to 01.03.2017. The memorandum of appeal is required to be valued in terms of the same court fee as was paid on the plaint at the time when the suit was instituted before the court of first instance. Hence this petition is liable to be dismissed with cost.

4. Point:

“Whether this application can be allowed?”

This petition is filed by the petitioners, who are respondents in the appeal, under Order VII Rule 11(b) and (c) of the Code of Civil Procedure, read with Sections 7 and 52 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 as amended by Tamil Nadu Act 6 of 2017, and Section 151 CPC, seeking a direction to

the respondent to pay the deficit court fees on the memorandum of appeal, failing which the appeal be rejected.

It is the specific case of the petitioners that the suit in O.S. No. 195 of 2016, filed by the respondent for declaration and permanent injunction, was dismissed by the trial court on 19.12.2019. The respondent thereafter filed the above appeal before this Court. The petitioners contend that the Tamil Nadu Court Fees Act was amended by Tamil Nadu Act 6 of 2017, which came into force on 01.03.2017, much prior to the filing of the appeal, and therefore, the court fee for the memorandum of appeal should be calculated based on the market value of the suit property, attracting ad valorem fees under the amended provisions. Hence the petitioner files this application.

In response, the respondent submits that the court fee paid in the appeal is in accordance with the fee paid in the trial court, under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and that the amended provisions would not apply to the appeal as the suit itself was instituted prior to 01.03.2017, as the court fee structure applicable at the time of filing the suit should govern the appeal as well.

The key issue that arises for consideration is whether the amended provisions of the Tamil Nadu Court Fees Act, 1955, which came into effect on 01.03.2017, would be applicable to the appeal arising out of a suit instituted prior to the amendment.

It is a well-settled principle that an appeal is a continuation of the suit. In this case, though the original suit was filed before the amendment, the appeal was admittedly filed after 01.03.2017, the date on which the amended Act came into force. Therefore, the amended provisions regarding payment of court fees are not applicable to the memorandum of appeal. But the learned counsel for the petitioners vehemently argued by relying the decision of our Hon'ble High Court in ***Sivakami Vs Nallathal***, where it is held that the court fee payable in an appeal would be the

court fee payable in the court of first instance and it would be based on the date on which the appeal is presented before the court. In support of the same the learned counsel argued that the respondent ought to have fix the value of the suit property and pay court fees as per amended act.

Learned counsel in reply argued by citing a recent decision of our Hon'ble High Court in ***V.Rajarithnam vs V.Sivasubramanian on 19 June, 2023***, where it is held that,

*“From a conspectus of the aforesaid decisions, it is clear that the provisions of Act 6 of 2017 enhancing Court fees would not apply to an appeal arising out of a suit instituted prior to the coming into force of the amendment and these category of appeals are governed by the pre-amendment Act. This necessarily implies that this conclusion is apparently at variance with the decision of the coordinate Bench in **Sivakami Vs Nallathal [2018 (2) MWN (Civil) 753]**.”*

So, as per this decision there is no doubt that the contentions of the petitioner cannot be accepted as the suit was instituted prior to amendment. Now the core question arise is that which decision should this court to be taken for consideration as there is conflicting view. Answer for the same was also held by Hon'ble High Court in the decision stated supra, where in para 15 and 16,

*“The next point is, should this Court request for a reference to a larger Bench to settle the issue? This Court considers that it is spared of the need for it, since the binding decisions of the Supreme Court in **State of Bombay Vs. Supreme General Films Exchange Ltd., [AIR 1960 SC 980]** and **K. Raveendranathan Nair Vs. CIT, [(2017) 9 SCC 355]** as well as the decision of the Division Bench of this Court in **R.M Seshadri Vs The Province of Madras [AIR 1954 Mad 543]**, were not considered in **Sivakami Vs Nallathal [2018 (2) MWN (Civil) 753]** as they were apparently not brought to the notice of the learned Single Judge.*

16. The conclusion is to state the obvious: The amended provisions of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 enhancing the Court fees Vide the Amended Act would not apply to an appeal arising out of a suit instituted prior to the amendment ie., prior to 01.03.2017. Consequently, the memorandum of second appeal is required to be valued in terms of the same Court fee as was paid on the plaint at the time when the suit was instituted before the court of first instance. The objections raised by the Registry that enhanced court fee must be paid in terms of the Amended Act stands overruled.”

As per the decision stated supra it can be safely arrive at a conclusion that the appeal is required to be valued in terms of the same court fee as was paid on the plaint at the time of presenting in trial court.

In summation of above said discussions there is no doubt that the case of the petitioners will not attract both grounds under Order VII Rule 11 (a) and (d) of CPC and that the petitioner is not entitled to the relief of rejection order. Hence this point is decided accordingly.

5. Result:

In the result, this application is dismissed as devoid of merits. No costs.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 20th day of June 2025.

Subordinate Judge,
Madurantakam.

I. Petitioner side evidence and Exhibits : Nil

II. Respondents side Evidence and Exhibits : Nil

Subordinate Judge,
Madurantakam.

**Fair / Draft order
IA No.1/2024
in
AS No. 10/2020
D.D: 20.06.2025,
Subcourt, MKM**