

**IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE NO.01, KODAIKANAL, DINDIGUL DISTRICT**

Present: **Thiru. M.Selvam, B.A., B.L.,**
District Munsif Cum Judicial Magistrate No.01, Kodaikanal
Tuesday, this the 25th day of February 2025

I.A.No. 56 of 2014

in

O.S. No. 49 of 2013

(CNR No.TNDG11-000069-2013)

R. Ramsingh

...Petitioner/2nd Defendant

/versus/

1. Santha Soruban

2. Santha Satheesh

... Respondents 1 and 2/Plaintiffs

3. Santha Suresh

4. Santha

... Respondents 3 and
4/Defendants 1 and 3

This petition is heard in the presence of Mr. A. V. Armugavelan., B.Sc., B.L., the Learned counsel for the Petitioner/2nd Defendant and Mr. V. Manohanran., B.B.A., B.L, the Learned counsel for the Respondents 1 and 2/Plaintiffs. The respondents 3 and 4/defendants 1 and 3 were exonerated from this petition on 23.03.2017. Enquiry heard on both sides and having stood over for my consideration till this day, this court delivered the following,

ORDER

This petition has been filed by the petitioner/2nd defendant under Order 7 Rule 11 of CPC for rejection of plaint.

1. Brief facts in the petition is as follows:

1.1. The petitioner is the 2nd defendant in the original suit. The respondents 1 and 2/plaintiffs have jointly filed the suit as against the

petitioner and the respondents 3 and 4/defendants 1 and 3 seeking the relief of declaration (a) that the plaint schedule property absolutely belongs to the plaintiffs and the 1st defendant as per the registered will dated 01.03.2002 vide document no. 5/2002 on the file of Sub-Registrar, Kokaikanal executed by One Sunder Nadar and (b) declaring that the sale deed dated 16.04.2012 vide document no. 1506/2012 on the file of Sub-Registrar, Kodaikanal executed by the 1st defendant in favour of the petitioner/2nd defendant is null and void and (c) permanent injunction restraining the 1st defendant and the petitioner/ 2nd defendant from alienating the suit properties.

1.2. The suit is liable to be rejected in the legal aspect i.e) insufficient court fee. The plaintiffs have valued the suit for relief (a) at Rs. 1,000/- and paid a court fee of Rs. 75.50/- of Tamil Nadu Court Fees and Suit Valuation act. The value of the property as shown in the sale deed dated 16.04.2012 vide document no. 1506/2012 is Rs. 16 Lakhs. The plaintiffs, who have claimed that the plaint schedule property belongs to themselves by seeking the declaration that the sale deed dated 16.04.2012 as null and void, ought to have file the suit for recovery of possession and value the suit at Rs. 10,66,000/- and pay the court fee under section 25(b) of the act. Therefore, the valuation for prayer (a) is incorrect and the court fee paid is also incorrect and this court has no pecuniary jurisdiction to try this case.

1.3. The court cannot preclude from looking at the substance of the relief asked for because of the astuteness employed in drafting the plaint. The respondents 1 and 2/plaintiffs ought have to file the suit for recovery of possession and by seeking a different prayer, they cannot avoid payment of court fee by camouflaging the suit relief and notionally value the same for declaration. It is settled law that if on a meaningful or formal reading of the plaint, it is manifestedly vexatious

and meritless in the sense of not disclosing a clear right to sue, the court should exercise the powers under Order 7 Rule 11 of CPC taking care of the grounds therein are fulfilled. Hence, the plaint has to be rejected with compensatory cost.

2. Brief facts in the counter filed by the respondents 1 and 2/plaintiffs is as follows:

2.1. The respondents 1 and 2/plaintiffs denied the averments made by the petitioner in his petition. They had made certain prayers as to how they are entitled for 1/3rd share each as in the registered will vide document no. 5/2002. The claim of the petitioner is nothing but to drag on the suit for their own benefits for want of no reasons. It is very well decided that since the valuation is not a pure question of law and that all issues can be thrashed out only after trial. The issue of the court fee is a matter which is between the Government and a litigant, who is supposed to pay the correct court fee.

2.2. Deciding the value of the court fee payable by the plaintiff, the averments in the plaint alone are to be considered. The respondents 1 and 2/plaintiffs are not party to the sale deed and hence, they are required to pay the court fee under section 25(d) of the court fees act and not under section 40 of the act. Even assuming and not admitting that if at all we have not paid court fee correctly the appropriate order to be passed by a court of law is to call upon the plaintiffs to furnish the correct valuation. On the other hand, if a court of law holds that the relief prayed by the plaintiff is under valued and order to correct the same, the plaintiff has to amend the valuation at any time before an order rejecting the plaint is made.

2.3. Section 19 of the court fees act enumerates that if the court decides that the subject matter of the suit has not been properly

valued, the court shall appoint an advocate commissioner to ascertain the correct market value of the suit property. The court shall not reject the plaint for under valuation of properties. As per the registered will dated 01.03.2002 vide document no.5/2002, the respondents 1 and 2/plaintiffs and 1st defendant are entitled for 1/3rd share each in the suit property for which the court fee paid under section 25(d) of the act is correct. Hence, this petition is liable to be dismissed.

3. The respondents 3 and 4/defendants 1 and 3 herein were exonerated from this petition on 23.03.2017.

4. No oral evidence on either side. Ex.R1 marked on the side of the respondents 1 and 2/plaintiffs and no documents marked on the side of the petitioner/2nd defendant.

5. Points for Consideration:

(i) Whether this petition has to be allowed or not ?

6. Both side rival submissions heard with regard to their pleadings and perused the materials on record and the authorities produced on either side. The original suit is filed by the respondents 1 and 2/plaintiffs as against the petitioner/2nd defendant and respondents 3 and 4/defendants 1 and 3 for the relief of declaration (a) declaring that the plaint schedule property absolutely belongs to the plaintiffs and the 1st defendant as per the registered will dated 01.03.2002 vide document no. 5/2002 on the file of Sub-Registrar, Kodaikanal executed by One Sunder Nadar and (b) declaring that the sale deed dated 16.04.2012 vide document no. 1506/2012 on the file of Sub-Registrar, Kodaikanal executed by the 1st defendant in favour of the petitioner/2nd defendant is null and void and (c) permanent injunction restraining the

1st defendant and the petitioner/2nd defendant from alienating the suit properties.

7. The court fee for the prayer (a) was valued as Rs. 1,000/- and paid a sum of Rs. 75.50/- under section 25(d) of the Tamil Nadu Court Fee and Suit Valuation act, 1955 and for the prayer (b) was valued as Rs. 1,000/- and paid a sum of Rs. 75.50/- under section 25(d) of the act and for the prayer (c) was valued as Rs. 1,000/- and paid a sum of Rs. 75.50/- under section 27(c) of the act.

8. The petitioner/2nd defendant contended that the respondents 1 and 2/plaintiffs have claimed for the relief of declaration that the suit schedule property belongs to themselves and to declare the sale deed dated 16.04.2012 in document no. 1506/2012 as null and void and hence, they ought have file the suit for recovery of possession and value the suit at Rs. 10,66,000/- (2/3rd share of the plaintiffs) and has to pay the court fee on the above vaule under section 25(b) of the Tamil Nadu Court Fee and Suit Valuation act, 1955.

9. This court had gone through the plaint averments. There was no such averments in the plaint as such the possession of the suit property was within the defendants in the original suit. Further more, in the suit schedule the suit property is shown as a dry land. There was no such description in the suit schedule as such there was any building in the suit property. It is well settled proposition that as far as the vacant land is concerned the possession follows title, which indicates that the person who holds the title to a property is presumed to be in possession of it. Such being the position, as per the plaint averments, this court forms opinion, that it is needless for the respondent 1 and 2/plaintiffs to seek the relief of recovery of possession.

10. At the same time, in the paragraph 9 of the plaint averments, it was averred by the respondents 1 and 2/plaintiffs as follows,

“Hence it is necessary to the plaintiffs to come forward with this for declaration and consequential relief of permanent injunction directing the defendants 1 and 2 not to alienate the suit property and for other reliefs”

Therefore, it is clear that the respondents 1 and 2/plaintiffs had filed the suit for the relief of declaration and consequential relief of injunction. Though the plaint was averred with separate prayer for the relief of declaration as such the suit property belongs to themselves and the 1st defendant as prayer (a) and for the relief of permanent injunction restraining the defendants 1 and 2 from alienating the suit properties as prayer (c), could not entitle the plaintiffs to pay the court fee under section 25(d) of Tamil Nadu Court Fee and Suit Valuation act, 1955. This suit is presented on 28.02.2013. Since, the respondents 1 and 2/plaintiffs had sought for the relief of declaration and consequential relief of injunction, then the court fee has to be paid by them only under section 25(b) read with section 7 of the Tamil Nadu Court Fee and Suit Valuation act, 1955, which is before substitution of the said provision by the Tamil Nadu Court Fees and Suit Valuation (Amendment) act, 2017, which reads as follows,

Section 25 (b) of the act : where the prayer is for a declaration and for consequential injunction and the relief is sought is with reference to any immovable property, fee shall be computed on the market value of the property or on rupees one thousand whichever is higher

Section 7. Determination of market value:

(1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint.

(2) 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:

Provided that, where the land forms part of a survey field and is not separately assessed to revenue, the value of such part shall be deemed to be thirty times such proportion of the survey assessment as the part bears to the entire survey field.

Explanation. - Lands in the areas in which the Malabar Tenancy Act, 1929 ([Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Act XIV of 1930), is in force shall be regarded as ryotwari lands.

(b) where the land is situated in an estate as defined in sub-section (2) of section 3 of the [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Estates Land Act, 1908 ([Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Act I of 1908), not being a land of the description mentioned in sub-clause (g) and such estate has been taken over by the Government under the [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Estates (Abolition and Conversion into Ryotwari) Act, 1948 ([Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Act XXVI of 1948)-thirty times the land revenue payable on the land under section 23 of that Act; but if a ryotwari settlement has since been effected in pursuance of section 22 of that Act, in respect of such land, thirty times the assessment as so fixed;

(c) where the land is situated in an estate which became an estate under the [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Estates Land (Third Amendment) Act, 1936 ([Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Act XVIII of 1936)-thirty times the rent payable for the land fixed under the Tamil Nadu Estates Land (Reduction of Rent) Act, 1947 (Tamil Nadu Act XXX of 1947);

(d) where the land is an 'estate' as defined in the [Tamil Nadu] Estates Land Act, 1908 ([Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Act I of 1908)-
 (i) where separate peishkush is recorded in the Collector's register as payable for the estate-thirty times such peishkush;(ii) in any other case-thirty times the annual melvaram realizable from that estate;

(e) where the land is a minor inam held under inam title deed-thirty times the assessment as noted in the village 'B' Register;

(f) where the land is in an inam village which, is not an 'estate' as defined in sub-section (2) of section 3 of the [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Estates Land Act, 1908 ([Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969 as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Act I of 1908) - thirty times the rent payable in respect of it;

(g) 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.

11. The learned counsel for the petitioner/2nd defendant had relied on the observations of **Our Hon'ble Madras High Court** in the case of

(i) M. Radhakrishnan vs M. Nanda kumar reported in **2002 (3) CTC 154.**

In the above case, the plaintiff therein had claimed that he is entitled to the southern half of the share and the defendant is entitled to northern half of the share in the suit property and sought for the relief of declaration and consequential injunction and therein, it was observed by their Lordship that the court fee has only to be paid under section 25(b) of the act and not under section 25(d) of the act. It was further observed that the courts in deciding the question of court fee, should look into the allegations in the plaint to see as to what is the substantive relief that is asked for.

(ii) Sangeetha vs K. Meenatchisundaram and others reported in **2012(3) MWN (Civil) 820**, wherein it was observed by their Lordship that if the plaintiff having prayed for the relief of declaration of title in respect of immovable property, the plaint ought have to be valued under section 25(a) of the act and they cannot value the same under section 25(d) of the act.

(iii) M.Shahul Hameed vs Kanda Iyer and another reported in **1967 (2) MLJ 536**, wherein it was held by their Lordships that it has been repeatedly held by our courts that section 25(a) and 25(b) dealt with rights in immovable property or tangible rights where substantial questions as to the title of immovable property is involved and section 25(d) on the other hand would apply where no investigation is necessary regarding the title of the property but the adjudication relates to intangible rights concerning such property.

The above relied judgments are squarely applicable to the present case on hand. In this case on hand, the respondents 1 and 2/plaintiffs had claimed the substantive relief of declaration of title in respect of immovable property and consequential relief of injunction as per a will executed in their favour. Therefore, the respondents 1 and 2/plaintiffs has to pay the court fee only under section 25(b) of the act and not under section 25(d) of the act.

12. The Learned counsel for the respondents 1 and 2/plaintiffs had relied on the judgment of **Our Hon'ble Madras High Court** in the case of **Suseela and others vs A.S.L. Rajan** reported in **CDJ 1999 MHC 252**, wherein it was held by their Lordships that when the suit property is classified in the revenue records as agricultural land and it is assessed to revenue kist, the market value of the property of any land which is assessed to the revenue records will be reckoned only

under section 7(2)(a) of the court fees and suit valuation act. This court had gone through the above judgment. Though in the plaint schedule, the description of the suit property was shown as dry land, there was no averments in the plaint or in the column of valuation of the court fee particulars, as such describing the assessment of land value of the suit property by revenue authorities or as such, the court fee is paid thirty times of it's value. Therefore, the above relied judgment is not applicable to the present case on hand. The other judgments relied by the learned counsel for the respondents 1 and 2/plaintiffs, though enlightened this court in several aspects in respect of the issue with regard to the valuation and the court fee paid in the plaint, the same would not establish anything contrary to the above conclusion arrived by this court.

13i. As per Order 7 Rule 11 of CPC, if the plaint is undervalued, the court has to fix a time to correct the valuation in the plaint and if the plaintiffs had failed to do so, the plaint has to be rejected. In this present case, the respondents 1 and 2/plaintiffs had not paid incorrect court fee and hence as provided under Order 7 Rule 11 of CPC, this court is inclined to grant time to correct the valuation in the plaint.

Therefore, from the overhaul discussion and since the suit is presented on 28.02.2013, this court comes to the conclusion that the respondents 1 and 2/plaintiffs herein has to value the plaint for the relief of prayer (a) declaration and prayer (c) consequential injunction as per section 25(b) read with section 7 of the Tamil Nadu Court Fee and Suit Valuation act, 1955 and has to pay the court fees in this regard.

In the result, this petition is doth allowed and ordered as follows:

(i) The respondents 1 and 2/plaintiffs are hereby directed to produce the documents with regard to the market value of the suit properties as on the date of presentation of the plaint.

(ii) The respondents 1 and 2/plaintiffs are hereby directed to value the plaint for the relief of declaration and consequential injunction under section 25(b) of the Tamil Nadu Court Fee and Suit Valuation act, 1955 and pay necessary court fee within a period of 15 days from the date of this order.

(iii) Considering the facts and circumstance of this case, there is no order as to costs.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 25th day of February 2025.

**District Munsif Cum
Judicial Magistrate No.01,
Kodaikanal.**

Petitioner side witnesses and documents: Nil

Respondent side witnesses: Nil

Respondent side documents:

Ex.R1 - Official Memorandum of Our Hon'ble Madras High Court in R.O.C.No. 16381/2017/F1 dated 02.03.2017 along with the copy of Government Order and Government Gazette Publication with reference to the Tamil Nadu Court Fees and Suit Valuation (Amendment) act, 2017

**District Munsif Cum
Judicial Magistrate No.01,
Kodaikanal.**