

In the Court of Principal District Judge, Kanyakumari District
at Nagercoil.

Present : Thiru B. Karthikeyan, B.L.,
Principal District Judge.

Monday the 28th day of April, 2025.

I.A. No. 2/2023 & I.A.No. 3/2024
in
O.S. No. 331/2022

I.A.No. 2/2023 :-

R. Balakrishnan

.. Petitioner/Defendant

/Vs./

1. Athimamunivar Samuthaya Trust,
represented by its Trustees
plaintiffs 2 and 3

2. P. Annadurai

3. S. Govindaswamy

.. Respondents/Plaintiffs

I.A.No. 3/2024 :-

1. Athimamunivar Samudhaya Trust,
represented by its Trustees/
plaintiffs 2 and 3

2. P. Annadurai

3. S. Govindaswamy

.. Petitioners/Plaintiffs

/Vs./

R. Balakrishnan

.. Respondent/Defendant

These two petitions are coming on 25.11.2024 for final hearing before me in the presence of the petitioner in IA No.2/2023 and respondent in IA No.3/2024 who appeared in person and Thiru S. Ramachandran, Advocate for the respondents in IA No.2/2023 and petitioners in IA No.3/2024 and upon hearing the respondents side argument and upon perusing the written notes of argument filed by the petitioner in IA No.3/2024 and upon perusing the materials available on record and having stood over for consideration, this court delivered the following :-

COMMON ORDER

This suit has been filed by the respondents/plaintiffs claiming that the 1st respondent is the Trust and the respondents 2 and 3 are its trustees against the petitioner/defendant herein seeking for declaration that the plaintiffs' right, title etc., over the plaint schedule property and for recovery of possession of the same after demolishing the building if any, besides for declaration that the impugned sale deed No.4052/1991, dated: 12.08.1991 as null and void and not binding on the 1st plaintiff Trust and for

mesne profits. The plaintiffs had valued the suit for the purpose of jurisdiction and court fee are as follows :-

For A relief i.e for declaration and for recovery of possession at Rs.26,26,310/- and had stated that the court fee of Rs.78,789/- ought to have been paid u/s 25(a) of the Tamil Nadu Court Fees and Suits Valuation act, 1951, but as per the reduction of court fees in respect of suits by religious trust to recover possession under the said Act vide G.O.Ms. No.363 Home (Courts-VIA) dated 09.04.2010 and Section 73 of the said Act a fixed court fee of Rs.100/- is being paid.

For B relief i.e for declaration, the plaintiffs have valued the suit at Rs.5,000/- and has paid a fixed court fee of Rs.150/- u/s 25(d) of the Tamil Nadu Court Fees and Suits Valuation act, 1951.

For C relief i.e mesne profit, the plaintiffs have valued the suit at Rs.17,280/- and had paid a court fee of Rs.518/- u/s 44(1) of of the Tamil Nadu Court Fees and Suits Valuation act, 1951.

2. The petitioner/defendant had filed an application under Order VII Rule 11 of CPC stating that G.O.Ms. No. 363 Home (Courts VIA) is applicable only for temples under the control of Hindu Religious and

Charitable Endowments Department. However, there is no allegation in the plaint that the plaint Trust is a temple or it is under the control of Hindu Religious and Charitable Endowments Department. It has also been claimed that no document has been produced along with the plaint to show that the Trust is a temple or that it is under the control of the Hindu Religious and Charitable Endowments Department. It would also be stated that the name of the 1st plaintiff does not find place in Schedule I and schedule II of Hindu Religious and Charitable Endowments Act, 1959. Therefore, according to the petitioner, unless the plaintiffs pay the advo term court fee of Rs.78,789/- under Section 25(a) of the Tamil Nadu Court Fees and Suits Valuation act, 1955, the plaint is liable to be rejected.

3. The petitioner, in the affidavit, has also reproduced the contents said to have been found in the Gazette Notification in respect of G.O.Ms. No. 363 referred above in his affidavit.

4. The respondents/plaintiffs have filed a counter statement in which they had defended the payment of court fee invoking the said G.O. However, when the petition was pending for the respondents side arguments,

they came up with IA No.3/2024 seeking amendment of the plaint. The plaintiffs namely the petitioners therein, had virtually admitted the claim of the defendant made in IA No.2/2023 that the said G.O. is not applicable to the present plaintiffs. However, they would contend that they ought to have valued the suit u/s 28 of the of the Tamil Nadu Court Fees and Suits Valuation Act, 1951 claiming that the same is applicable for Trusts. In this regard, they would bring in their support, a Check Slip purportedly issued by Principal Subordinate Judge, Nagercoil in a similar case bearing O.S.No.305/2021 before the Subordinate Court, Nagercoil, wherein the plaintiffs have directed to value the suit u/s 28 of the of the Tamil Nadu Court Fees and Suits Valuation Act, 1951 and to pay the appropriate court fee. The plaintiffs would claim in their petition that by virtue of Section 28 of the said Act, they are liable to pay court fee of Rs.1,000/- as against Rs.100/- that they have already paid invoking Section 25(a) of the Tamil Nadu Court Fees and Suits Valuation Act. It would also be stated that they have paid balance court fee of Rs.900/- along with the petition.

5. The respondent filed a counter statement wherein it would be contended that the Section 28 of the of the Tamil Nadu Court Fees

and Suits Valuation Act is applicable only in a case between Trustees and rival trustees, or among trustees and not against a third person who is not a trustee or Ex-Trustee. They would reiterate the petition contentions that Rs.78,789/- u/s 25(a) of the Tamil Nadu Court Fees and Suits Valuation Act is to be paid, failing which the plaint should be rejected.

6. Heard both. Perused the materials on record.

7. **The Points for consideration that arise in the present petitions are :-**

(i) Whether IA No.2/2023 deserves to be allowed ?

(ii) Whether IA No.3/2024 deserves to be allowed ?

8. **Points for consideration :-**

The plaintiffs have not claimed themselves as a temple governed by Hindu Religious and Charitable Endowments Department. The petitioner/defendant has also produced the copy of the Government order issued by Tamil Nadu Government, a perusal of which shows that the exemption given thereunder is only in respect of the suit filed by religious institutions under the control of Hindu Religious and Charitable

Endowments Department. In such circumstances, the benefit of the said G.O. cannot be availed by the present plaintiffs who does not claim to be a religious institution under the control of Hindu Religious and Charitable Endowments Department. Infact, the plaintiffs had admitted the same by filing IA No.3/2024 seeking the amendment of the plaint.

9. In so far as IA No.3/2024 is concerned, their claim that they are entitled to invoke Section 28 of the Tamil Nadu Court Fees and Suits Valuation Act and pay a court fee of Rs.1,000/- cannot be accepted for the reason that the said provision, as rightly pointed out by the learned counsel for the defendant, is applicable only in a suit between Trustees or among rival trustees between the trustees who ceased to be a Trustee. It is not available in a suit against a third party. In such circumstances, this court agrees with the contentions of the defendant that the suit is to be valued u/s 25(a) of the Tamil Nadu Court Fees and Suits Valuation Act and the plaintiffs shall pay a court fee that is to be computed on the market value of the property. However, for the said reasons, the plaint need not be rejected at the threshold.

10. Order VII Rule 11(c) CPC provides that where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so, the plaint can be rejected.

11. Therefore, it is incumbent on this court to give sufficient time for the plaintiff to pay the appropriate court fee. As already pointed out, the suit has been valued properly and there is no dispute about this fact. The plaintiffs have also calculated advo term court fee to be paid at Rs.78,789/-. There is no dispute about this fact also. As the plaintiffs have now paid a sum of Rs.1000/- as court fee (Rs.100/- at the time of filing along with the plaint and Rs.900/- along with IA No.3/2024), the plaintiffs are required to pay the balance court fee of Rs. 77,789/- (Rs.78,789 – Rs.1,000).

12. **I.A.No. 2/2023** :-

In the result, this petition is partly allowed directing the plaintiffs/respondents to pay a court fee of Rs.77,789/- within a period of 30 days from the date of order.

I.A.No.3/2024 :-

In the result, this petition is dismissed.

Dictated to the Steno-typist, transcribed and typed by her,
corrected and pronounced by me in open court, this the 28th day of April,
2025.

Sd/-B.Karthikeyan
Principal District Judge,
Kanniyakumari at Nagercoil.

Principal District Court,
Nagercoil.
Fair Common Order in
I.A. Nos.2/2023 and 3/2024 in
O.S. No. 331/2022
Dt.: 28.04.2025.