

**IN THE COURT OF ADDITIONAL DISTRICT COURT (FAST
TRACK COURT)**

Present: Thiru.A.Saravanakumar, B.A.,B.L, .

**Additional District Judge,
Additional District Court, (FTC)
Kancheepuram.**

**Date: Saturday, the 6th day of July 2024
I.A.12/2023 O.S.No.215/2010**

1. Gokula Rao	
2. Shantha Kumari	
3. Karunya Devi	... Petitioners/6,5 & 7 th defendants
/VS/	
1. Prema kumari	
2. Shantha Kumari (deceased)	
3. Lakshmi	... 1 to 3 Respondents/Plaintiffs
4. Swadeshi Kumari	
5. Vasantha Priya	
6. Pappi	... 4 to 6 Respondents/2 to 4 defendants
7. Janardhanan	
8. Vijaya Samundeeswari	... 7 & 8 Respondent/4 & 5 th plaintiffs

This petition is came up on 01.07.2024 for final hearing before me in the presence of Tr.N.Gokula Rao (Party in Person) for the Petitioners and Tr.S.Rajendiran Advocate for the Respondents, and upon hearing the arguments on both sides and having stood over for consideration till this day, this court delivered the following:

ORDER

This application is filed by the petitioners to rectify the deficit court fee in accordance with the current market value of the suit schedule properties and to diligently contest the case within a stipulated time frame.

2. Petition in Brief:

The petitioner is the 6th defendant with a primary objective to highlights the fact that the plaintiff has not come up with clean hands in this matter and in another documents, deliberately and intentionally attempting to suppress and evade the

fraudulent and deceitful actions perpetrated by the plaintiff and her matrimonial family members against the petitioners/defendants with regards to the paternal properties, actions that transpired over a span of 30 years. The plaintiffs have attempted to mislead this court by suppressing material facts, making false allegations, and filing this suit more than three decades 30 years after the death of their father Ethirajulu Naidu on which the cause of action of the plaint claims. The plaintiffs have colluded with their matrimonial family members to pursue unlawful gains, including the seizure of properties rightfully owned by the defendants. It is hereby asserted that the plaintiff, with deliberate intent, has engaged in fraudulent activities to manipulate a blatant deception of this court. The plaintiff in an principal property in the suit schedule, specifically item number. From the outset, the outcome by deceitfully procuring a nil encumbrance certificate. This act of deception was executed with cunning precision as the plaintiff knowingly misrepresented the survey numbers as 1757/2, 1757 and 1767/1 submitting Ex.A7 instead of conducting a diligent search and accurately presenting the encumbrance search findings for the actual survey number of item number 1 property, which is 1767/1. The defendants 5 to 7 have been in lawful possession and ownership of the suit schedule properties, a fact that is unequivocally supported by an array of official records and documents that have been exhaustively submitted as evidence. The documentary evidence submitted meticulously traces the unbroken chain of possession and ownership by defendants 5 to 7. It is essential to bring to the court's attention that the plaintiff in an effort to fabricate a fictitious cause of action falsely represented relationship, property descriptions and other pertinent documents. The plaintiffs have concealed crucial facts, forged documents and manipulated records to advance their false claim. The ulterior motives are evident in their attempts to disrupt the peaceful possession of the defendants and hence allow this application.

3. Counter in brief:

The allegations stated in the petition are false. In the original suit the plaintiffs side evidence is completed and on the side of the defendants proof affidavit of P.W.1 along with Ex.B1 to B7 were marked. After cross examination of defendants side

witnesses the case is posted for arguments. Therefore the petition is not maintainable. Therefore the petition may be dismissed.

4. Additional Counter in brief:

Since the evidence of the plaintiff were already completed the 6th defendant has filed the petition with an intent to protract the trial. Hence the petition may be dismissed.

5. The Point for consideration is whether the petition is to be allowed as prayed for?

6. Answer to the Point.

The petitioners is the 5 to 7th defendants in the original suit. The 1st to 3rd respondents are the plaintiff therein. The original suit was laid for the relief of partition and separate possession of the suit schedule properties. After filing of written statement the issues were settled on 15.7.2013. Subsequently the plaintiffs/1 to 3 respondents let in their evidence and marked certain exhibits. On the side of the defendants D.W.1 and D.W.2 were examined and cross examined in part. Pending trial the present application is filed seeking direction of the court to insist the 1 to 3 respondents/plaintiffs to pay proper court fee.

7. The petitioners in their supporting affidavit in para 1 to 4, para 7 have elaborately detailed about their defences taken in the written statement. However it is the specific contention of the petitioners in para 6 that the plaintiffs knowingly misrepresented the survey numbers as 1757/2, 1757 and 1767/1 instead of survey number 1762/1. It is their submission that D5 to D6 have been in possession and ownership of the suit schedule property and the plaintiffs/1 to 3 respondents are not in possession and enjoyment over the suit property. The petitioners further submitted in para 8 of the petition that the 1 to 3 respondents/plaintiffs, in an effort to fabricate in a fictitious cause of action, falsely represented relationship, property descriptions and other pertinent documents. Therefore the 1 to 3 respondents perpetrated manipulation, fraudulent actions. In para 6 of the supporting affidavit the petitioners further contended that the 1 to 3 respondents/plaintiffs have concealed crucial facts and forged documents and manipulated records to advance their false claim. In the

prayer column they have submitted that the plaintiffs may be directed to rectify the deficit court fee in accordance with current market value of the suit schedule properties.

8. Per contra the 1 to 3 respondent have filed counter as well as additional counter. They have submitted, inter alia, that the present petition is filed to protract the trial proceedings as the evidence of the respective parties are over and case is posted for arguments. It is also submitted that the allegations stated in the petition are false.

9. This court has considered the submissions of the respective sides. Upon the perusal of the supporting affidavit and the petition filed by the petitioners it is noticed that the petitioners have not mentioned the section of law and the Act under which they have filed the present petition. Therefore, the supporting affidavit is not drafted with legal acumen. Be that it may, the averments in the supporting affidavit shows that the plaintiffs/1 to 3 respondents have fabricated fictitious cause of action manipulated relationship, property description and also forged the documents. This court is unable to understand whether for these reasons, the court can direct the 1st to 3 respondents to pay the deficit court fee. However it is further noted that in para 7 of the supporting affidavit, the petitioners averred that they have been in lawful possession and ownership of the suit schedule properties. Since such a plea is taken, this court infers that since they have claimed possession over the property, the 1 to 3 respondents/plaintiffs may be out of possession and the petitioners attempted to say that since plaintiffs are excluded from possession they must pay necessary court fee. To set up a plea of exclusion of the plaintiffs/1st respondent, the petitioners have not made necessary averments in the written statement itself or in the supporting affidavit. It is not a specific case of the petitioners that the 1 to 3 respondents/plaintiffs are excluded from possession and the court fee must be paid properly. Whereas in the plaint, the plaintiffs/1st to 3rd respondents have pleaded joint possession and properties are not yet divided.

10. However it is also pertinent to see that section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act deals about "filing a separate application to decide

the payment of proper court fee. A reading of the above said section would make it very clear that the defendant may by his written statement plead that the subject matter of the suit has not been properly valued or that the fees paid are insufficient. Based on the averments, he can file a separate application u/s. 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act. But at the same time such an application must be filed before the commencement of examination of witnesses. Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act makes it very clear that objection as to court fee shall be heard and decided before evidence is recorded on the merits of the case. In the case on hand, it is noticed from the case records that after the settlement of issues both parties have let in evidence and exhibited a series of documents. Now the case is posted for further cross examination of DW1, at this stage the petition is filed. Therefore this court is of the view that the petition itself is not maintainable.

11. In this context the Hon'ble Division Bench of the Madras High Court, in the case of **S.N.S.Sukumaran /VS/ Thangamuthu 2012 (5) CTC 705** has considered the ambit and scope of section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act 1955 and settled the law. The Hon'ble High Court has also given a slew of directions to the trial court to follow while dealing an application u/s. 12(2) of the Tamil Nadu Court Fees and Suit Valuation. The Hon'ble Division Bench of Madraas High Court has observed as follows:

" 31. After giving our anxious consideration to the matter and having regard to the law discussed herein above, the reference is answered as under :-

(1) The Tamil Nadu Court Fees and Suits Valuation Act, 1955 (Section 12) enacted by the State Legislature on a subject covered by the Concurrent List, albeit inconsistent with the provisions of the Code of Civil Procedure (Order XIV, Rule 2) and being in compliance with the requirement of Article 254 of the Constitution of India, having been given assent by the President of India, shall prevail over the provisions of the Code of Civil Procedure.

(2) When a defendant comes forward with a case pleaded in the written statement questioning the correctness of the valuation of the suit property and payment of court fee and asks the Court, by an application, to decide it first before deciding the suit on merits, then a duty is cast upon the Court under Section 12(2) of the State Act to first decide the objection before deciding the suit on merits.

(3) However, before proceeding to decide the objection with regard to valuation and court fee as provided under Section 12(2) of the State Act, the Court shall *prima facie* satisfy itself, on perusal of the pleadings of the parties and the materials brought on record, that the objection raised by the defendant has substance.

(4) Such objection with regard to improper valuation of the suit and insufficiency of court fee shall be entertained by the Court only before the hearing of the suit on merits commences and witnesses are examined. Section 12(2) of the State Act makes it clear that such objection shall be heard and decided before evidence is recorded on the merits of the case.

(5) Exercise of right by the defendant as contained in Section 12(2) of the Act must be *bona fide* and not with an ulterior motive of dragging the suit on this issue. Hence, the Court shall not grant unnecessary adjournments in hearing of such application, and in the event the Court finds that the defendant is not diligent or co-operating with the Court in the disposal of such objection expeditiously, then the Court shall proceed with the hearing of the suit on merits and decide all issues, including the one relating to the valuation of the suit and the adequacy or otherwise of court fee, together.

32. In the light of the law discussed herein above, we are answering the reference as above. Consequently, the contrary view taken by the learned single Judges cannot stand as good law. Hence, the decisions rendered in *E. Pushpalatha vs. C. Shanmughasundaram*, 2003 (1) C.T.C. 87 and *A. Chinnaraj vs. Saroja Ammal*, 2008 (1) M.L.J. 75 stand overruled. Further, the decision rendered in *Solaiammal vs.*

Rajarathinam, 2003 (4) C.T.C. 268 stands partly overruled. The decisions rendered in Laljivora vs. Srividya, 2001 (2) C.T.C. 411 and V.R. Gopalakrishnan vs. Andiammal, 2002 (2) C.T.C. 513 are affirmed."

12. A reading of the above said judgment would make it very clear that objection as to improper valuation of the suit and insufficiency of court fee shall be entertained by the court before examining the witnesses. While so this court is of the view that the petition cannot be entertained. However the learned counsel for the petitioners has submitted that a detailed written arguments wherein he has elaborately discussed the merits of the claim. Though he has taken best efforts to argue the case on merits, which does not require any detailed discussion in an interlocutory application. More over the learned counsel for the petitioners has also relied upon the following judgments in order to canvas a point that the 1 to 3 respondents/plaintiffs have undervalued the property and paid improper court fee and they may be directed accordingly.

1. The Hon'ble Supreme Court of India laid the citation 1976 AIR 109, 1976 SCR (2) 164, 1976 SCC (3) 142 Surjit Lal Chhabda /VS/Commissioner of Income Tax Bombay

2. The Hon'ble High Court of Madras in CRP.PD.No.3686/2016 and CMP.No.18699/2016 S.N.Balapattabi /VS/Balangalakshmi.

3. The Hon'ble High Court Madras 2003 (4) CTC 268 (2003)3 MLJ 632 Solaiammal (died) and another /VS/ Rajarathinam and Five others.

4. The Hon'ble High Court of Madras in O.S.A.380/2012 and M.P.No.1/2012 T.R.Pachamuthu /VS/ E.Babu (died) and others

5. The Hon'ble High Court of Madras in Appeal Suit NO.251/2011 Punniyavathi /VS/ Pachaiaammal and others.

This court has deeply read the above judgments and is of the considered view that it is not applicable to the factual matrix of this case.

13. Before parting, this court has really worried of the fact that the case was of the year 2010. It has been pending for the past 14 years. The case has reached almost finality and the next stage of case is arguments. At this stage the present petition is

filed. Therefore there is an attempt on the part of the petitioners to drag on the proceedings without understanding the law established by the Hon'ble Division Bench of the Madras High Court and also understanding the provisions of section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act. Therefore, it is appropriate to issue directions to both the parties, more particularly to the petitioners to co-operate with this court for the speedy disposal of the original suit.

14. Keeping in view of the above said discussions, this court is inclined to dismiss the application.

In the result the petition is dismissed. No costs. Both the parties are directed to co-operate with the court for the speedy disposal of this suit within 6 weeks.

Dictated to Steno-typist directly typed by her in computer, corrected and pronounced by me in open court this the 6th day of July 2024.

Sd/-A.Saravanakumar

**Additional District Judge,
ADC, (FTC)
KANCHIPURAM.**

Petitioners side Exhibits: NIL

Respondent side Exhibits: NIL

Sd/-A.Saravanakumar

**Additional District Judge,
ADC, (FTC)
KANCHIPURAM.**

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