

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

**PRESENT: Tmt. V. Vannamalar, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.**

Thursday, the 26th day of September 2024.

IA No. 3 OF 2023
IN
O.S. NO.4 OF 2013

1. S.R.Mohan
2. U.Hemalatha

.....Petitioners/Defendants 8 & 9

Versus

1. P.Kumar
2. P.Kannan
3. K.Krishnamurthy @ Radhakrishan
4. Ravi
5. Panneer
6. G.Baskar
7. G.Govindaraj
8. G.Duraibabu
9. G.Nanthini
10. Jeyanthi
11. Padamavathi
12. S.Thirumalai
13. S.Sanathanam
14. S.Kannian
15. S.Vijayalakshmi
16. Rajesh Kanna
17. S.Sushila

.....Respondents 1 to 10/Plaintiffs

.....Respondents 11 to 17/defendants 1 to 7

This petition came up before me on 04.09.2024 for final hearing in the presence of Mr.N.R.Rangarajan, learned counsel for the petitioners/Defendants 8 and 9 and Mr.T.Kumar, learned counsel for the Respondents 1 to 10/plaintiffs and Mr.Chitarasu, learned counsel for the Respondents 13 to 15 and 17. Respondents 11, 12 and 16 were set exparte in the suit and hence notice to them in this petition is dispensed with. Upon hearing the arguments made by the learned counsels for the peti-

tioners and the respondents and on perusal of the material case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This application is filed under Order XIV Rule 2 Section 151 of CPC to try the issue regarding under valuation of the suit properties and the pecuniary jurisdiction of this court as preliminary issues.

2. Brief averments of the affidavit filed by the petitioners are as follows:

2.1. The 2nd petitioner who is the 9th defendant in this suit, files this affidavit on his behalf and on behalf of the other petitioner who is his father. The petitioners submit that they have filed a detailed written statement in the suit and in para 19 of the written statement of the Defendants 8 and 9, they have taken a plea that the suit properties have been grossly under valued to evade payment of court fee and that the suit properties were of the value of more than Rs.20,000/- per cent on the date of suit and that if the suit is properly valued, this case will be beyond this court's jurisdiction.

2.2. The petitioners further submit that the issue that whether this court will have jurisdiction to try this suit should be tried as preliminary issue to save the valuable court's time. Hence this petition.

3. Brief averments of the counter filed by the respondents 1 to 10 are as follows:

3.1. The 9th respondent / 9th plaintiff submits this counter on her behalf and on behalf of other plaintiffs. The 9th respondent submits that the plaintiffs have filed the above suit on 21.12.2012, praying for partition and separate possession as against the defendants 1 to 9 and paid court fees under section 37(2) of the then Tamil Nadu Court Fee and Suit Valuation Act, 1955.

3.2. The 9th respondent submits that the petitioners have tried to mislead the court by alleging that the suit for the purpose of court fee ought to have been valued under section 37(2) of court fees Act on the basis of actual Market value of the suit properties on the date of the suit. The petitioners' contention that the value of the suit is to be ascertained is with respect to market value of the property is not correct. To protract the suit proceedings, this petition has been filed without any basis. In this case, the plaintiffs have valued the suit under section 37(2) and have paid the court fee as per the rate specified in the said section. The 9th respondent further states that the question of market value of the suit properties does not arise when suit has been filed for partition based on joint possession of the properties. Further, trial has already commenced in the suit and in this circumstances, this petition has been filed without any basis. Hence this petition is liable to be dismissed.

4. Brief averments of the counter filed by the respondents 13 to 15 and 17 are as follows:

The Thirteenth respondent submits his counter on his behalf and on behalf of respondents 14, 15 and 17. The 13th respondent has reiterated the same facts and contentions as stated by the respondents 1 to 10 in their counter and prays to dismiss the petition.

5. The Respondents 11, 12 and 16 were set exparte in the suit and hence notice to them in this petition is dispensed with.

6. Neither the petitioners nor the respondents have placed any oral or documentary evidence before this court. Now, it is the paramount duty of the court to decide whether this petition is to be allowed or not.

7. Heard both sides. Records Perused.

8. The plaintiffs have filed this suit for partition of the suit properties, which are agricultural land based on joint possession of the same and for allotment of 3/4th share in the same to them and have valued the suit on the market value of the suit property at Rs.500/- per cent under section 37(2) of the TN Court Fees Act. When the suit is pending for cross examination of PW1, this petition has been filed by the petitioners, who are defendants 8 and 9 in the suit stating that on the date of suit, the suit properties are of the market value of Rs.20,000/- per cent and total market value of the suit properties comes to Rs.30,60,000/- and that the suit has been under valued and thus the issue relating to pecuniary jurisdiction of this court is to be taken up and tried as preliminary issue in the suit. But the petitioners have not submitted any evidence to substantiate their averments.

9. On the other hand, the respondents submit that they have valued the suit properly and that this petition has been filed only to protract the suit proceedings.

10. On careful analysis of the above, this court finds that in the schedule of properties in the plaint kist value is given for the suit properties. For the S.No. 526/2A, the kist value is given as Rs.4.06 paise and for the S.No. 526/2B, the kist value is given as Rs.2.00 paise. The suit has been valued for 3/4th share of the plaintiffs in the suit properties at Rs. 57,375/- under section 37(2) of the TN CF and SV Act by keeping the value for 1 cent at Rs.500/-. On the date of filing of the suit i.e., in the year 2013, under section 7 of the Court Fees Act, if the suit properties are assessed to land revenue, 30 times the kist value of the suit properties can be taken as the value of the suit. Based on the kist value given in the plaint, if we calculate the value of the suit, the same comes much lesser to the current valuation of the suit. The correctness of the kist value of the suit properties given in the plaint can be determined only after detailed evaluation of evidence. The Issues in this suit was framed in the year 2019. Immediately, this petition has not been filed. After commencement of trial, in the middle of cross examination of PW1, this petition has been filed. The Issues to be determined preliminary should exclusively and purely be on point of law, independent

of facts. But here to determine whether valuation of the suit properties as stated by the plaintiffs is correct or not is a mixed question of fact and law. A factual issue requiring trial and leading evidence for decision cannot said to be a preliminary issue. In the above stated scenario, this court considers that the contentions raised by the petitioners cannot be decided as preliminary issue and the same has to be decided only upon conducting a full trial in the suit.

11. In the above circumstances, this court is not inclined to allow this petition and considering the facts and circumstances of the case, this court is of the considered view that the parties shall bear their own costs.

12. In the result, this Petition is dismissed. No costs.

Dictated to the steno-typist, typed directly by her in the desktop, corrected and pronounced by me in the open Court on this the 26th day of September 2024.

DISTRICT MUNSIF,
PONNERI.

Both sides documents and witnesses: Nil

DISTRICT MUNSIF,
PONNERI.

Fair/ Draft Order
I.A.No.3/2023
O.S.No.04/2013
Date:26.09.2024
DMC,PNI