

(2012) 09 MAD CK 0225
In the Madras High Court
Case No : C.R.P.(PD)(MD) No. 1940 of 2012

J. Thomas Joseph Prakash

APPELLANT

Vs

Thara W/o. John Louis

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Citation : (2013) 1 MadWN(Civil) 274

Hon'ble Judges : S. Palanivelu, J.

Bench : Single Bench

Advocate : C. Vakeeswaran, Advocate, for the Petitioners; No appearance, for the Respondents

Final Decision : Disposed Off

Judgement

S. Palanivelu, J.—The Petitioners are Plaintiffs in O.S. No. 956 of 2012 on the file of the I Additional District Munsif Court, Trichy. They have also filed an Application in I.A. No. 637 of 2012 praying for temporary injunction.

2. The Suit is for declaration that the will executed by Arumairaj dated 27.10.2004 in favour of the Plaintiffs is bad in the eye of law and also for a permanent injunction. The Suit was taken on file and when the Plaintiffs moved for interim injunction, the learned I Additional District Munsif raised a question with regard to the payment of Court-fee. In his opinion, the Plaintiffs paid the Court fee under Section 25(d) of the Court Fees Act and not under Section 25(b), as mentioned in the Plaint. He has recorded his opinion in the order that the contention of the Petitioner's Counsel that there is no value mentioned in the Will, and the relief sought for in the Plaint, viz., "Suit for declaration of Will is valid on the eye of law" cannot be valued at all and that the value under Section 25(d) of the Act is untenable and the Suit should have been valued under Section 25(d) of the Court Fees Act on the market value of the suit property.

3. The learned Counsel for the Petitioners, Mr. C. Vakeeswaran, would contend that inasmuch as the value for the subject matter of the Suit for which a

declaration is sought for with regard to right is intangible because in the will, there is no valuation of the properties and the valuation by the Plaintiffs under Section 25(d), is proper.

4. He has also stated that once the Plaint was admitted by the Court on final verification, it has no power to review its own decision, and it is for the Defendants to question or it is for the superior Court to question under Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act 1955, which reads as follows:

"12(2) Any Defendant may, by his Written Statement filed before the first hearing of the Suit or before evidence is recorded on the merits of the claim, but, subject to the next succeeding sub-section, not later, plead that the subject matter of the Suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such Defendant, on the merits of the claim. If the Court decides that the subject matter of the Suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the Plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the Plaint be not amended or if the deficit fee be not paid within the time allowed, the Plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the Suit."

5. The learned Counsel for the Petitioner has placed reliance upon two decisions of this Court: one in the case of *Palaniswami v. Subbaraya Gounder*, AIR 1975 (Mad) 398, wherein the learned Judge has held as follows:

In the first instance, the Court in which the Suit is instituted has to decide the proper Court-fee payable on the Plaint on the materials and allegations contained in the Plaint and on the materials contained the statement, if any, filed under Section 10 of the Act, before ordering the Plaint to be registered. But, this, decision is subject to review, further review and correction in the manner specified in sub-sections (2), (3), (4) & (5) of that Section. The order could be reviewed at the instance of a Defendant or at the instance of a Defendant who is added later on, at any time after the Written Statement is filed, or before evidence is recorded on the merits of the claim. The order could be further reviewed under Section 18, at the instance of the Court fee examiner. The order of the Court could be corrected by a Court of Appeal or a Revisional Court when the matter comes up before that Court in Appeal or in Revision. It would thus be seen that once a Defendant has raised an objection as to the valuation of the Suit or the proper Court-fee payable and a decision has been given after such enquiry, as the Court deemed fit thereafter there was no power for the Court to go into the question of valuation of the Suit or of payment of proper Court-fee thereon at the instance of a Defendant. The Court could have dealt with the matter only on a point raised by the Court-fee examiner under Section 18. Even here once that was considered and decided by the Court, the order thereafter made under Section 18(2), becomes final so far as the Trial Court is concerned

and the Trial Court could not review the order. The only remedy thereafter is for the Appellate Court or the Revisional Court to correct the error under Section 12(4). This was also the view expressed by this Court in *Janakiammal v. Rangachari*, 1960 (2) Mad LJ 527. the had note in that decision which brings out the ratio correctly may be usefully quoted here:

"Ordinarily there are three stages at which a Court can enquire into the question whether a Plaint or Appeal has been properly valued. They are (a) before the registration of the Plaint or Appeal. In such cases, it will be open to the Court to review, correct and further review its decision in the manner specified in Section 12(1) of the Madras Court Fees Act; (b) After the Suit or Appeal has been registered an issue on the question of Court-fee can be raised by the Defendant or Respondent and the Court should decide the matter. In such cases, the decision will be binding on the Court that rendered it unless a fresh decision is asked for by the Court fee examiner; (c) on the objection of Court-fee examiners under Section 18 of the Act, when a decision has been given on the report of the Court-fee examiner no further review or reconsideration is possible except by an Appellate Court under Section 12(4) of the Act. A decision given under Section 18(2) of the Madras Court Fees and Suits valuation Act 1955, will be final so far as that Court is concerned. In the absence of a statutory provision expressly enabling the Court to review its decision, a decision on the question of Court-fee once given will be binding on the Court which gave the decision at all subsequent stages."

6. It has been vividly stated in the above said decisions that on three grounds, the payment of Court-fee and the Suit valuation can be questioned. Firstly, at the instance of the Defendant, to agitate the valuation in his Written Statement and on the evidence adduced by him, the Court has to decide the matter. Secondly, the Court-fee examiner is to check the correctness of the payment of Court fee under proper provisions. Thirdly, the order of the Court regarding Court fee can be considered by Court of Appeal or Revisional Court when the matter is being carried on Appeal or Revision.

7. In view of the above, it is clear that the Court which admitted the Suit is impliedly precluded from reviewing its decision subsequently.

8. He has also relied on another decision of this Court reported in the case of *T.S. Sridharan v. M.F. Simon*, STP (LE-Civil) 14874 Mad : 2005 (2) CTC 92 : AIR 2005 Mad 291.

9. In this case, the learned Judge has elaborately dealt with the fact citing various Authorities. Following the decision of the Supreme Court in *Lakshmi Ammal v. K.M. Madhavakrishnan*, AIR 1978 SC 1607, the learned Judge has held that the right claimed by the Plaintiffs in the Plaint is an intangible one, relating to administration of the property and once in a Suit, the prayer for declaration or any other consequential relief, is sought for in respect of intangible right, it will be governed by clause (d) and it does not attract Clause (a) or (b) or (c) of

Section 25.

10. In *Lakshmi Ammal v. K.M. Madhavakrishnan*, AIR 1978 SC 1607, the operative portion of the judgment is as follows:

"2. It is unfortunate that long years have been spent by the Courts below on a combat between two parties on the question of Court-fee, leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to grapple with the real issues and not spend their energies on peripheral ones. Secondly, Court-fee, if it seriously restricts the rights of a person to seek his remedies in Courts of justice, should be strictly construed. After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable of course, the benefit must go to him who says that the lesser Court-fee alone be paid. In the above case, the Honourable Supreme Court held that access to justice is the basis of the legal system. Where there is a doubt, if it is reasonable, the benefit must go to him who says that the lesser Court-fee alone be paid."

11. In the light of the above said judicial pronouncements, I am of the considered view that since the relief prayed for is with respect to intangible right of the Plaintiffs, payment of Court-fee under Section 25(d) of the Court fee Act is proper and under Section 12(2) of the Act; the Court has verified the Court fee, it cannot subsequently review its own view and it is within the domain of the Court Fees Examiner and it is for the Defendants in the Suit to object to the valuation of the Suit. In such view of the matter, the order challenged before this Court is liable to be set aside and is accordingly set aside.

12. In fine, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.