

(2011) 01 MAD CK 0009

In the Madras High Court

Case No : CRP. NPD. No. 3256 of 2010 and M.P. No's. 2 and 3 of 2010

R. Kalavalli

APPELLANT

Vs

P. Sundaraj and S. Bhagya Rekha

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 21

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 40

Citation : (2011) 01 MAD CK 0009

Hon'ble Judges : S.Tamilvanan, J

Bench : Single Bench

Advocate : ARL. Sundaresan for M. Ravichandran, for the Appellant; R. Vijayaraghavan, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—Heard Mr. AR.L. Sundaresan, learned Senior counsel appearing for the Petitioner and Mr. R. Vijayaraghavan, learned

Counsel appearing for the Respondents.

2. Challenging the order dated 05.08.2009, made in I.A. No. 165 of 2009 in O.S. No. 9 of 2009 on the file of Subordinate Judge, Poonamallee,

this civil revision petition has been filed.

3. Learned Senior counsel appearing for the Petitioner drew the attention of this Court to the impugned order passed under Order VII Rule 11 (b)

of the CPC Code. It is seen that the court below has rejected the plaint on the ground that the valuation of the suit being Rs. 58,30,000/-, deficit

court fee of Rs. 4,26,000/-under Section 40 of the Tamil Nadu Court Fees Valuation Act was not paid.

4. Learned Senior counsel drew the attention of the court to Order VII Rule 11 of C.P.C, regarding rejection of plaint. As per this provision, plaint shall be rejected on the following cases:

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is undervalued, and the Plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) 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;

Learned Senior counsel argued that as contemplated under Order VII Rule 11 (b) of the Code of Civil Procedure, the trial court could have given

opportunity to the Petitioner/Plaintiff to pay the deficit court fee before the date fixed by the court below. If the conditional order is not complied

with the court can reject the plaint for the non-compliance of the order. In the instant case, the court below without providing opportunity to the

Petitioner has straight away rejected the plaint by the impugned order, which is erroneous and against the provisions of CPC and hence, the civil

revision petition is filed.

5. Mr. R. Vijayaraghavan, learned Counsel appearing for the Respondents has not disputed the fact that court below had not following the

procedure as contemplated under CPC and without providing opportunity to the Petitioner/Plaintiff to pay deficit court fee, the court below has

rejected the plaint. However, the learned Counsel contended that the remedy would be available to the Petitioner by way of appeal before the

Appellate court under Order 41 CPC and therefore, the revision preferred by the Petitioner/Plaintiff under Article 227 is not legally maintainable.

6. Per contra Mr. AR.L. Sundaresan, the learned Senior counsel appearing for the Petitioner submitted that the appeal is only an alternative

remedy, which is not a bar when the same is not an efficacious alternative remedy. According to the learned Senior counsel, it is an apparent error

of the court below on the face of the record as no opportunity was given to the Petitioner/Plaintiff to pay the deficit court fee. As there is a violation

of Order VII Rule 11 (b) C.P.C, in passing the impugned order by the trial court,

the impugned order is not legally sustainable and the Revision preferred under Article 227 is maintainable revision.

7. It is an admitted fact that no evidence was recorded and the Petitioner herein had filed the suit seeking relief of declaration of three sale deeds

relating to the suit property, obtained by the Defendants from the Plaintiff, in a fraudulent manner vide document Nos. 1617,1618 and 1619 of

2008 dated 18.07.2008 and registered the same before Sub Registrar - Poonamallee, as null and void and not binding on the Plaintiff and also for

consequential permanent injunction restraining the Defendants from interfering with the peaceful possession and enjoyment of the property and also

injunction from alienating or encumbering the suit property to any other person.

8. It is not in dispute that the issues involved in the suit cannot be decided by the Trial court without, adducing oral and documentary evidence.

Similarly as there are disputed facts, the Appellate Court also cannot decide the issues without evidence being adduced by the parties to the suit.

Learned Counsel for the Respondents submitted that in case of appeal being preferred against the impugned order the Appellate court may remit

the matter back to the trial court for the purpose of recording the evidence and deciding case and it may cause unreasonable delay. Hence the

appeal remedy available to the Petitioner/Plaintiff could not be an effective alternative remedy and therefore it is proper to invoke Article 227 of the

Constitution to avoid further delay hence the same is legally maintainable. According to the learned Counsel for the Respondents, the suit was also

dismissed by the Trial court and therefore, without challenging the order of dismissal the remedy sought in this revision could not be sustainable.

However as contended by the learned Senior counsel appearing for the Petitioner, when there is no efficacious alternative remedy, it is the duty of

this Court to interfere with the impugned order passed by the court below under the Superintending powers of the High court as per Article 227 of

the Constitution to prevent abuse of process of law or court and to meet the ends of justice. In this regard this Court is vested with the power, as

that of writ court exercising jurisdiction under Article 226, of the Constitution.

9. In the instant case, it is not disputed by the learned Counsel appearing for the Respondents that the order passed by the court below is not

legally sustainable, since no opportunity was given to the Petitioner to pay the

deficit court fee and the court below has straight away dismissed the suit. As per order VII Rule 11 (b) CPC, what the relief claimed in a suit is under valued and the Plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so, the plaint could be rejected. However, without providing time to pay the deficit court fee the court below could not have rejected the plaint. In such circumstances, the impugned order has to be set aside on the ground of violation of mandatory provision under order VII Rule 11 (b) of the code, to meet the ends of justice. Merely setting aside the order and directing the Appellate court to decide the appeal before recording evidence would certainly cause delay. As contended by the learned Senior Counsel had there been any appeal preferred, the Appellate court could have remitted the matter back to the Trial court which would certainly cause delay and it would not meet the ends of justice. It cannot be disputed that speedy justice is a fundamental right as enshrined under Article 21 of the Constitution.

10. Superintending powers under Article 227 of the Constitution this Court is only to prevent abuse of process of court, and to pass appropriate orders or directions to meet the ends of justice. When there is material irregularity in the impugned order passed by the court below leading to miscarriage of justice, Article 227 could be invoked to set right the error committed by the court below. Had the revision been preferred u/s 115 CPC the Respondent can raise a defence stating that without challenging the consequential order of dismissal the Petitioner cannot challenge the impugned order. When the order itself had been passed against the mandatory provision under order VII Rule 11 (b) by the court below, even without challenging the subsequent order of dismissal to prevent the abuse of process of law and to meet the ends of justice, this Court can suo moto exercise its superintending power under Article 227, so as to set right the material irregularity caused by the court below in order to render proper justice.

11. As the impugned order has to be set aside to meet the ends of justice the subsequent order of dismissal of the suit has to be construed as illegal and non-est in the eye of law as there is material irregularity and violation of mandatory provision in passing the earlier order which is under

challenge. Therefore, I am of the view that the civil revision petition filed under Article 227 is legally sustainable. The superintending powers is vested with this Court under Article 227 of the Constitution to set right the error leading to miscarriage of justice and when there is a error apparent on the very face of the record and the order passed is in violation of mandatory provision, it could be construed as an abuse of process of the court below and invoking Article 227 would be the proper remedy, as rightly contended by Mr. AR.L. Sundaresan, learned Counsel appearing for the revision petitioner.

12. In the result, this civil revision petition is allowed and the impugned order and the order of dismissal of the suit passed by the trial court are set aside and the Subordinate Judge, Poonamallee is directed to restore the suit in O.S. No. 9 of 2009 on the file of the court below and after providing reasonable opportunity to the Petitioner/Plaintiff to pay the deficit court fee within reasonable time to be fixed by the court below, dispose the same according to law. Connected miscellaneous petitions are closed. No order as to costs.