
(1990) 10 MAD CK 0004
In the Madras High Court
Case No : C.R.P. No. 4257 of 1987

Smt. Suba Sri Mani

APPELLANT

Vs

Smt. S. Saraswathi

RESPONDENT

Date of Decision : 12-10-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102, 103, 55, 56
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 21(2), 24(2)(b)

Citation : (1990) 10 MAD CK 0004

Hon'ble Judges : Thanikkachalam, J

Bench : Single Bench

Advocate : V. Swaminathan, for the Appellant; G. Rajan, for the Respondent

Final Decision : Dismissed

Judgement

Thanikkachalam, J.—This revision petition arises out of the judgment and decree rendered in A.S. No. 38 of 1986, which in turn arose out

of the judgment and decree rendered in O.S. No. 911 of 1983. The defendant in the suit is the petitioner herein. O.S. No. 911 of 1983 was filed

by the respondent herein for return of documents of title deeds. The facts of this revision are briefly as follows:- The plaintiff/respondent herein is

the owner of the property situate at Teacher's Colony, comprised in R.S. No. 19/2 and T.S. Nos. 25, 29, 30 and 31 (parts) in block No. 21 at

Pallipattu, Adyar, Madras-20. The petitioner herein entered into an agreement of sale to purchase this property from the respondent. The sale

agreement was executed on 28-11-1981. The sale consideration was Rs. 1,63,000. A sum of Rs. 6,000 was paid by way of advance , on the

date of execution of the sale agreement. The sale transaction should be completed within 3 months from the date of agreement of sale. Soon after

the sale agreement was executed, the respondent herein, delivered the title deed to the petitioner herein which are set out in Schedule II in the

plaint. It was agreed between the parties that the petitioner herein should obtain the encumbrance certificate for 13 years. The petitioner herein also

applied for the same. Thereafter, the petitioner herein did not evince any interest in completing the sale transaction within the time stipulated.

Therefore the respondent herein requested the petitioner to extend the time for completing the sale transaction. The petitioner also paid a further

advance of Rs. 4,000. The time was extended by one month.

2. But even after the extension of time the petitioner was unable to complete the sale transaction. While the matter stood, thus the petitioner sent a

letter through her counsel dated 16-3-1982 stating that the sale could not be completed since the respondent herein failed to produce the

encumbrance certificate and the title deed. Immediately the respondent herein sent a reply and filed the suit for return of the documents. The trial

court dismissed the suit and the first appellate court on appeal reversed the judgment and decree of the trial court, allowed the appeal and decreed

the suit. It is against this judgment and decree, the present revision has been filed by the defendant in the suit.

3. Before this court, the learned counsel appearing for the defendant/petitioner herein submitted that the first appellate court was not correct in

decreeing the suit as prayed for. According to the learned counsel, because of the default committed by the respondent herein the sale could not be

completed within the stipulated time. The learned counsel submitted that the petitioner herein paid an advance of Rs. 10,000 and waiting for the

respondent to produce the encumbrance certificate and the title deeds and therefore the suit filed by the respondent herein is premature. The

learned counsel submitted that the petitioner herein never committed any breach of contract. Therefore, it was submitted that there is no cause of

action to file this suit. The learned counsel also submitted that the petitioner herein is ready and willing to perform her part of the contract.

According to the learned counsel, the respondent herein ought not to have filed the suit before the City Civil Court. The learned counsel submitted

that the respondent ought to have filed the suit and the appeal before the Small Causes Court, since the value of the suit is only Rs. 500. The

learned counsel pointed out that the first appellate court has no jurisdiction to entertain this appeal. Accordingly, it was pleaded that the judgment

and decree of the first appellate court are unsustainable and therefore they should be set aside.

4. On the other hand, the learned counsel for the respondent pointed out that the revision filed against the judgment and decree of the first appellate

court is not maintainable. Learned counsel further submitted that the petitioner herein failed to perform her part of the contract within the time

stipulated and therefore the petitioner is liable to return the documents. The learned counsel submitted that according to the agreement, the

petitioner herein should obtain the encumbrance certificate which he did not do. The learned counsel pointed out that the suit was valued in

accordance with S.24(2)(b) of the Tamil Nadu Court Fees and Suit valuation Act 14 of 1955. The learned counsel further submitted that the

petitioner did not raise the plea of jurisdiction before the City Civil Court. According to the learned counsel the point of jurisdiction ought to have

been raised before the trial court and hence it cannot be raised at this stage. The learned counsel also pointed out that since the time to execute the

sale transaction came to an end long prior, there is no justification on the part of the petitioner herein in refusing to return the documents.

5. I have heard the rival submissions made by the parties. The fact remains that the respondent herein filed a suit for return of documents in the City

Civil Court. The petitioner herein filed a written statement and contested the suit. The suit was dismissed. On appeal, the first appellate court

reversed the judgment and decree of the trial court and decreed the suit. The contract for sale was entered into between the petitioner and

respondent on 28-11-1981. A sum of Rs. 10,000 was paid by way of advance by the petitioner herein to the respondent. The sale consideration

was fixed at Rs. 1,63,000. The time granted in the sale agreement expired long back. The petitioner herein did not evince any interest in purchasing

the property. Therefore, the respondent herein filed the suit for return of document. It is significant to note that from the date of agreement to sell

and the date of filing the suit, two years have elapsed. The petitioner herein has also not filed any suit for specific performance of the contract.

Under such circumstances, the appellate court came to the conclusion that the defendant had no legitimate right to retain the title deeds with her.

Hence, it decreed the suit. I consider, under these circumstances that the first appellate court was perfectly justified in coming to its conclusion.

6. The suit was valued under S.24(2)(b) of the Tamil Nadu Court Fees and Suits Valuation Act 14 of 1955. The defendant submitted to the

jurisdiction and contested the suit. The defendant did not raise any plea with regard to the jurisdiction in the trial court. The question of jurisdiction

can be raised only in the initial stage. That was not done by the defendant. S.21(2), C.P.C., provides as to when the question of jurisdiction ought

to have been taken. According to S.21(2), C.P.C., only in the trial court the question of jurisdiction can be raised. But the defendant did not do so.

On these aspects, the following decisions were brought to my notice

1. (Gadadhar Das Vs. Jatindranath Das and Others,

2. V.M. Mathew Vs. Cicity John and Others,

Muneappa ILR 1943 Mad 903.)

I have gone through those decisions, which support the plea put forward by the learned counsel for the respondent herein.

7. According to the learned counsel for the defendant/petitioner the valuation of the suit is only Rs. 500 and therefore the suit ought not to have

been filed before the Small Causes Court. According to the learned counsel only the Small Causes Court is having jurisdiction in the matter. In

order to support his contention, the learned counsel relied upon various provisions contained in the CPC like Ss.55, 56, 102 and 103 etc. So also,

the learned counsel relied on the provisions contained in Ss 18 and 19 of the Small Causes Court's Act. A careful consideration of the above said

provisions would go to show that there is no substance in this line of argument advanced by the learned counsel for the petitioner. Therefore, I

reject this line of argument advanced by the learned counsel for the petitioner. Further, it is not understandable as to how this civil revision was

entertained by the office of this court, as against the judgment and decree rendered in a first appeal by the first appellate court.

8. On facts it was shown that the respondent herein after the expiry of the agreement period clearly stated that she is not willing to sell the suit

property. This can be seen from Exs.A5 dated 8-3-1982 and A8 dated 27-3-1982. Even, the petitioner herself agreed to return the documents as

per Ex.A10. Till now the petitioner has not taken any steps to purchase the

property. Therefore the first appellate court was correct in decreeing the suit as prayed for. For all these reasons, I am unable to interfere with the judgment and decree rendered by the first appellate court. In the result, the civil revision petition is dismissed with costs.