

(2008) 02 MAD CK 0060

In the Madras High Court

Case No : Review Application No. 29 of 2008 in C.R.P. (NPD) . No. 1399 of 2006

S.R. Jeyaraman and J. Nagarathinam

APPELLANT

Vs

G. Jothirlingam and Others, all are represented by their
General Power of Attorney J. Revathy

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 9
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 25, 40

Citation : (2008) 4 MLJ 86

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : D. Shivakumaran, for the Appellant;

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—Heard the learned counsel Mr. D. Sivakumaran, who extensively made his objection regarding the

order passed in CRP.(NPD). No. 1399 of 2006. The grievance of the learned counsel is that under Order 7 Rule 11 CPC the trial Court is

perfectly correct in observing in I.A. No. 1981 of 2005 in O.S. No. 1138 of 2005 that if the deficit Court fee for the value of Rs. 30,00,000/- is

not paid, the plaint will be rejected. Order 7 Rule 11 of CPC runs as follows:

Rejection of plaint. The plaint shall be rejected in the following cases:

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

(b) where the relief claimed is undervalued, and the plaint, 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;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless

the Court, for reason to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation

or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause

grave injustice to the plaintiff.

HIGH COURT AMENDMENT (MADRAS), For Clause (c) substitute the following:

(c) where the relief claimed is properly valued, but the plaint is written on paper insufficiently stamped, and the plaintiff does not make good the

deficiency within the time, if any, granted by the Court.

2. Relying on Order 7 Rule 11(b) of CPC, the learned counsel appearing for the review petitioners Mr. D. Sivakumaran would contend that since

the Court below has come to the conclusion that the Court fee paid on the plaint is insufficient, the learned trial Judge has directed the plaintiff to

pay the additional Court fee for the value of Rs. 30,00,000/- giving two months time for the same with an observation that in case of failure to

comply with the order of payment of additional Court fee within the time stipulated, the plaint shall stand rejected.

3. The plaintiff has paid the Court fee u/s 25(d) of the Tamil Nadu Court fees and Suits Valuation Act, 1955. There is no dispute that the plaintiff

ought to have valued the plaint u/s 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, for the value of the subject matter of the suit,

which is admittedly Rs. 30,00,000/-. The learned counsel for the review petitioners would contend that after the payment of additional Court fee

for Rs. 30,00,000/- before the Trial Court, the trial Court can return the plaint to the plaintiff for representation before the appropriate forum and in

case, if the plaintiff fails to pay the additional Court fee for the value of Rs. 30,00,000/- then the trial Court itself can reject the plaint.

4. Admittedly the District Munsif has no jurisdiction to try the suit, in which the property scheduled values Rs. 30,00,000/-. The District

Munsif/trial Court has no jurisdiction to try the plaint in O.S. No. 1138 of 2005. Under such circumstance, I am of the view that even if the plaintiff

pays the additional Courts fee before the District Munsif, he cannot entertain the plaint and cannot pass any orders except to return the plaint for

representation before the appropriate forum. Just like that, even if the plaintiff fails to pay the additional Court fee for the value of Rs. 30,00,000/-,

the Court below (District Munsif) cannot also reject the plaint. Only in that view of the matter, this Court has passed the order directing the Court

below/District Munsif to return the plaint for representing the same after paying necessary court fee for the suit value of Rs. 30,00,000/- u/s 40 of

the Tamil Nadu Court Fees and Suits Valuation Act before the appropriate forum. The same view has been taken in Ganesh v. Taty A 1927 B

257; Kandasami v. Subbai Sup; Bethasami v. Nagarammal A 1931 M 69 as follows:

if upon proper valuation the Court would not have jurisdiction to try it, the plaint should be returned and it is for he other Court to reject it if the

necessary court fee is not paid.

(Please refer Sarkar - CPC - 11th Edition 2006 - at page 1165 last line). Under such circumstances, I do not find any reason to entertain this

Review Application.

5. In fine, the Review Application is dismissed.