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C.R.P(MD)No.1668 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN  
THILAKAVADI**

C.R.P(MD)No.1668 of 2023

Sundhara Bai  
(A person of unsound mind  
rep. by her daughter and next  
friend Punitha Bai)

... Petitioners/Plaintiff

Vs.

John Christopher

... Respondent/Defendant

Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the learned Sub-Court, Padmanabhapuram to number the plaint in O.S.SR.No.412 of 2023 and proceed in accordance with law.

For Petitioners

:Mr.A.Balakrishnan

**ORDER**

The Civil Revision Petition is preferred by the petitioner/plaintiff for a direction to the learned Sub-Court, Padmanabhapuram to number the plaint in O.S.SR.No.412 of 2023 and proceed in accordance with law.



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2. According to the revision petitioner, the revision petitioner/plaintiff is the absolute owner of the suit schedule property, which is measuring to an extent of 8 cents in Re.Sy.No.136/5B of Attoor Village through a registered sale deed No.1406/1974 dated 05.03.1974 of Thiruvattar Sub Registrar Office. She purchased the same from one Moses. The petitioner/plaintiff has got a son and daughter. Since the petitioner/plaintiff is of unsound mind, she is represented by her daughter viz., Punitha Bai, who got married and settled at Pandaravilai, Marthandam in the year 1997. The revision petitioner's son is the defendant in the suit. Her daughter.

3. Recently, the daughter of the plaintiff came to know the suit property was alienated in favour of the defendant through Court proceedings based on the alleged unregistered sale consideration of Rs.2,50,000/-, which was said to have been received by the plaintiff, who is mentally unstable. Thereafter, the defendant/son filed a suit against his mother, who is mentally unstable in O.S.No.115 of 2012 before the Subordinate Court, Padmanabhapuram, for the relief of specific performance of contract based on unregistered sale agreement dated 13.02.2009. The said suit was decreed as ex-parte. The said ex-parte was obtained by the defendant/son fraudulently. Thereafter, he filed a petition in E.P.No.37 of 2017 for depositing a sum of Rs.50,000/-. On such deposit, the impugned sale deed



was executed by the Subordinate Judge, Padmanabhapuram in his favour.

The above facts came to the knowledge of the daughter only on 15.05.2023,

who is the next friend of the plaintiff. She thereafter filed the present suit for

the following reliefs:

*“(1)For cancellation of decree in O.S.No.115 of 2012 passed by the Subordinate Judge at Padmanabhapuram in favour of the defendant is null and void, non-est under law.*

*(2)For cancellation of Sale Deed No.2293/2018 executed by the Subordinate Judge at Padmanabhapuram in favour of the defendant is null and void non-est under law.*

*(3)Plaintiff be given a decree to realize the cost of the suit from the defendant.*

*(4)Such other reliefs as the Court deems fit and proper in the nature and circumstances of this case may be also granted in favour of the plaintiff.”*

4.However, the plaint was rejected for the following reasons:

*“1.Certified copy of document to be produced in Document NO.2*

*2.Plaintiff is unsound mind. Hence, medical certificate to be produced.*

*3.Plaintiff is a party in the sale deed No.2293/2018. In this regard, the Court fee to be valued under Section 40(1) of the Tamil Nadu Court Fees Act, for the 'B' relief.*

*4.Document No.1 is valued at Rs.24,39,536/-. Hence, to be filed before proper Court having jurisdiction.”*



5.Again the plaint was re-submitted with the following explanation:

□1.மாண்புமிகு பத்மனாபபுரம் சார்பு நீதிமன்றத்தில் இந்த வழக்கில் உள்ள பிரதிவாதி தாக்கல் செய்த O.S.No. 115/2012-ல் உள்ள கிரய ஒப்பந்த பத்திரத்தில் வாதி சுந்தரபாய் எந்தவிதமான கையெழுத்தும் போடவில்லை. ஜாண் கிறிஸ்டோபர் போலியாக இட்டு தாக்கல் செய்த கிரய ஒப்பந்த பத்திரம் அடிப்படையில் O.S.No.115/2012 உள்ள சம்மன்ஸ்-லும் சுந்தரபாய் கையெழுத்து போடவில்லை. மேற்படி வழக்கினை கோப்பில் எடுக்கும் பட்சத்தில் கைரேகை நிக்கார்டுக்கு அனுப்பி கைரேகையினை நிரூபிக்க தயராக இருப்பதாகும். மேலும் சுந்தரபாய் எந்தவிதமான கையெழுத்தும் கிரய ஒப்பந்த பத்திரத்திலோ அல்லது நீதிமன்ற சம்மன்ஸிலோ போடவில்லை என நிரூபிக்க வாதி தரப்பில் தயராக இருப்பதால், மேற்படி வழக்கினை கோப்பில் எடுக்க பணிந்து வேண்டுகிறேன்.

2.மாண்புமிகு பத்மனாபபுரம் சார்பு நீதிமன்ற O.S.No. 115/2012 வழக்கில் வாதி மற்றும் பிரதிவாதி விலாசம் ஒரே விலாசம் ஆகும். இதிலிருந்தே இந்த வழக்கில் உள்ள பிரதிவாதி தனது தாயாரை ஏமாற்ற வேண்டும் என்ற கெட்ட எண்ணத்தில் தாக்கல் செய்திருப்பதுமாகும்.

3.வழக்குடன் தாக்கல் செய்துள்ள ஆவண எண்.2 வழக்கு விசாரணையின் போது வாதி சான்றிட்ட நகல் தாக்கல் செய்யும் விபரம் இதன் மூலம் தெரிவித்து கொள்வதாகும்.

4.மேற்படி கிரய ஒப்பந்த பத்திரத்தினை O.S.No. 115/2012 வழக்கிலோ எந்த விதமான சம்மன்ஸ் வாதி வாங்காத பட்சத்தில் வாதி இந்த வழக்கில் 2-வது பரிகாரம்



25(d)-ன் கீழ் தாக்கல் செய்திருப்பதாகும்.

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5.மேற்படி O.S.No.115/2012 வழக்கில் உள்ள சம்மன்ஸ் கையெழுத்தோ மேற்படி கிரய ஒப்பந்த பத்திர தேதியாக குறிப்பிடும் தேதியான 18.02.2009-ல் சுந்தரபாய் கையெழுத்திட்டாத காரணத்தினால் மேற்படி ஆவணத்தில் கையெழுத்திட்டாதது கருதி மாண்புமிகு நீதிமன்றம் மேற்படி வழக்கை கோப்பில் எடுக்க பணிந்து வேண்டுகிறேன்.

6.மேலும் வாதிக்கு மனநிலை சரியில்லாதது சம்மந்தமாக தனது மகள் மற்றும் மகளின் மகள் சத்திய பிரமாண வாக்கு மூலம் தாக்கல் செய்திருப்பதாகும்.

மாண்புமிகு நீதிமன்றம் கருணை கூர்ந்து வழக்கினை கோப்பில் எடுக்க பணிந்து வேண்டுகிறேன்.□

6.However, the trial Court returned the plaint without considering the explanation by stating that the previous defects 1& 4 were not explained by the plaintiff.

7.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

8.The learned counsel appearing for the petitioner would submit that since the first relief sought for cancellation of decree in O.S.No.115 of 2012



passed by the Sub-Court, Padmanabhapuram, the suit was valued at Rs. 2,50,000/- and for that value the petitioner has paid the Court fee of Rs. 7,500/- under Section 40(1) of Tamil Nadu Court Fees Act, which is in order. Since the second relief is for cancellation of sale deed to which the plaintiff is not a party. Hence, the Court fees for the second relief was paid by the petitioner under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act. The trial Court without considering the explanation given by the petitioner/plaintiff has returned the plaint mechanically.

9.The present suit is filed for cancellation of decree passed in O.S.No. 115 of 2013 on the ground that the same has been obtained by fraud, and the second relief sought for in the above suit is to cancel the sale deed executed in favour of the defendants in pursuant to the decree passed in O.S.No.115 of 2012. Hence, the suit in O.S.No.115 of 2012 was valued at Rs.2,50,000/-, for which, the petitioner has paid a sum of Rs.7,500/- under Section 40(1) of Tamil Nadu Court Fees Act, which is in order. The second relief is for cancellation of sale deed, to which the plaintiff is a party. Though the plaintiff is a party in the sale Deed No.2293/2018, the contention of the petitioner is that the decree was obtained in O.S.No.115 of 2012 by applying fraud upon the plaintiff, who is in unsound mind. The specific averments in the plaint is that in the suit in O.S.No.115 of 2012 filed by the defendant/son



against his mother, who is the plaintiff in the present suit, a decree was obtained based on an unregistered sale agreement alleged to have been executed by the plaintiff herein, who is mentally unstable. Hence, the plaintiff through the next friend filed the above suit for cancellation of decree passed in O.S.No.115 of 2012 and also for cancellation of sale deed executed by the Sub-Court, Padmanabhapuram, in favour of the defendants in pursuant to the decree in O.S.No.115 of 2012. Though the plaintiff was a party in the above sale deed, it has to be elucidated whether the sale agreement was executed by the plaintiff in a fit state of mind only at the time of trial. Even otherwise if it is found that the plaintiff has executed the above sale agreement in a fit state of mind and the sale deed executed by the Subordinate Court, Padmanabhapuram is found to be in accordance with law, the trial Court can collect the deficit Court fee at the time of passing the decree. Therefore, at this juncture, the trial Court cannot insist to pay the Court fee under Section 40(1) of the Tamil Nadu Court Fees Act for the second relief.

10.Considering the facts and circumstances of the case, this Court directs the learned Subordinate Judge, Padmanabhapura, to consider the explanations given by the petitioner/plaintiff, while representing the plaint and number the same if it is in order and proceed to dispose the suit in



accordance with law.

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11.With the above direction, this Civil Revision Petition is disposed  
of. No costs.

14.07.2023

NCC:Yes/No  
Index:Yes/No  
Internet:Yes/No  
Ns  
To

- 1.The Sub-Court,  
Padmanabhapuram.
- 2.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.GOVINDARAJAN THILAKAVADI, J.**

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