

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2015

C O R A M

THE HONOURABLE **Mr.JUSTICE K.KALYANASUNDARAM**

CRP.PD.No.877 of 2015

and

M.P.No.1 of 2015

1.N.K.Kannan (Died)

2.N.K.Kuppuraj

...

Petitioners

Vs.

1.G.Banumathi

2.B.Revathi

3.N.B.Stalin @ Sridharan

4.S.Sumithra

5.Suchithra

6.N.Balaji

7.Niranjana Devi

8.Saraswathi

...

Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decree dated 20.01.2015 made in I.A.No.891 of 2010 in O.S.No.221 of 2010 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur.

For Petitioners : Mr.D.Rajagopal

For Respondents : Mr.V.Manoharan

O R D E R

The civil revision petition is directed against the order dated 20.01.2015 passed by the District Munsif cum Judicial Magistrate, Sriperumbudur in I.A.No.891 of 2010 in O.S.No.221 of 2010.

2. The defendants 1 & 2 in O.S.No.221 of 2010 on the file of the District Munsif, Sriperumbandur, are the petitioners in this civil revision petition. The respondents 1 to 6 have filed the suit against the petitioners and the respondents 7 & 8 for declaration declaring that the settlement deed dated 25.07.2007 executed by the first defendant in favour of the second defendant is not valid and not binding on the plaintiffs.

3. The petitioners filed an application in I.A.No.891 of 2010 under Order 7 Rule 11 C.P.C to strike of the plaint contending that there is no cause of action against the petitioners and the suit was not properly valued by the plaintiffs.

4. According to the petitioners, the plaintiffs ought to have valued the suit under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act and the suit was valued under Section 25 (d) of the Act, is not correct. The application was opposed by the plaintiffs. The learned District Munsif, Sriperumbudur, dismissed the application holding that the plaintiffs are not parties to the documents and hence, the suit valued under Section 25(d) is correct. Challenging the said order, the present civil revision petition is filed.

5. Heard Mr.D.Rajagopal, learned counsel for the petitioners and Mr.V.Manoharan, learned counsel for the respondents and perused the materials on record.

6. Admittedly, the plaintiffs are not parties to the settlement deed dated 25.07.2007. This Court in an unreported judgment in **C.R.P.(PD) No.322 of 2005 (M/s.Siddha Construction (P) Ltd., rep. by its Power Agent Anjay Sharma v. M.Shanmugam and others)**, following the judgment of this Court reported in **1971 (II) MLJ 205 (Andalammal v. B.Kanniah)** held as follows:-

9. In 1959(I)M.L.J.353(supra), this court has held as follows:

"Where a plaintiff's case is that a document is sham and nominal, it need not be set aside, and the suit for relief on that footing is not one for cancellation, so as to attract the application of section 40 of the Madras Court-fees and Suits Valuation Act, 1955. But even in such a case, if the plaintiff sues for cancellation he would have to pay Court-fee on that relief, whether it is necessary to have the deed cancelled or not."

10. In 1971 (II) M.L.J. 205 (supra), this court observed as under:

"Section 40 of the Act refers to "the amount or value of the property for which the documents was executed". The legislative intent is clear that the basis for the purpose of valuation shall be the amount or value mentioned in the document sought to be cancelled. There is no warrant for ignoring the plain language of the section and holding that the value shall be the market value of the property."

11. For deciding the value of the Court Fee payable by the plaintiff the averments in the plaint alone are to be considered. In O.S.No.13/2002, the prayer sought for is to declare the sale deed executed by the 1st defendant (the 5th respondent herein) in favour of the 3rd defendant (Revision Petitioner) as null and void and not binding on them. It is averred at para 10 of the plaint that since they are not party to the sale deed dated 31.10.2001, which is to be declared

as null and void, the plaintiff valued the suit for the purpose of the Court Fee under Sec.25(d) of the Tamil Nadu Court Fees Act. It is also further averred in para 7 of the plaint that the plaintiffs did not execute the sale deed and they did not receive any sale consideration. It is further case of the revision petitioner that they did not make any alienation to and in favour of any one till today in respect of the suit schedule property.

12. In the light of averments made in the plaint, the trial court is right in coming to the conclusion that the suit has been rightly valued and the trial court has pecuniary jurisdiction to try the suit.

In the light of the above said Judgment of this Court, I do not find any reason to interfere with the order of the trial Court.

In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

K.KALYANASUNDARAM,J.

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The trial Court has found that the plaint discloses the cause of action against the defendants. Considering the fact, the trial Court shall dispose of the suit on merits and in accordance with law, as expeditiously as possible, preferably on or before 31.07.2015.

17.03.2015

Index : Yes/No
Internet : Yes/No
sms

To
The District Munsif cum Judicial Magistrate,
Sriperumbudur.

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