

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-01-2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P.PD.No.3703 OF 2015

1.S.Suresh		
2.D.Rajkumar	...	Petitioners
	-vs-	
Robert Denson	...	Respondent

Revision against the order, dated 19.03.2015, passed in I.A.No.134 of 2014 in O.S.No.121 of 2013, on the file of District Munsif Court, Tambaram.

For petitioners : Mr.K.Sukumaran

For respondent : Mr.V.Vijayakumar

ORDER

Challenging the order, dated 19.03.2015, passed in I.A.No.134 of 2014 in O.S.No.121 of 2013, on the file of District Munsif Court, Tambaram, dismissing the application filed under Order 7 Rule 11 of C.P.C., for rejection of the plaint, this revision petition has been filed.

2. Learned counsel for the petitioners would submit, that the respondent,

as plaintiff, has filed the suit for a declaration, declaring the sale agreement, dated 19.02.2013, entered into between the defendants 1 and 2, as null and void, and not binding on the plaintiff.

3. Petitioners/Defendants 1 and 2 have filed I.A.No.134 of 2014 on the file of District Munsif Court, under Order 7 Rule 11 of C.P.C., stating that the suit has not been properly valued and the Court Fee paid by the plaintiff is defective; on the basis of the Power of Attorney Deed, dated 04.09.2012, executed by the respondent/plaintiff in favour of the first petitioner/defendant, the first petitioner executed a sale agreement in favour of the second petitioner/defendant on 19.02.2013; the Power of Attorney Deed, dated 04.09.2012, executed by the respondent/plaintiff, has been cancelled only on 01.04.2013; on the date of entering into sale agreement on 19.02.2013, the first petitioner/defendant, as the Power of Attorney, on behalf of the respondent/plaintiff, executed the sale agreement; and, in such circumstances, the act done by the agent is binding on the principal, and, therefore, the principal, who is the respondent/plaintiff, ought to have paid the Court fees under Section 40 of the Tamil Nadu Court Fee and Suit Valuation Act, 1955, in short, "the Act", for cancellation of sale agreement; he valued the suit property only for Rs.4,000/- and paid the meagre court fee of Rs.302/-; thereafter, he filed the application before the Court below, which is not acceptable in the eye of law.

4. The trial Court, after considering the arguments of both sides,

dismissed the said application, stating that the sale agreement has been executed against the will and wish of the respondent/plaintiff, and that too, when the respondent has orally intimated the first petitioner on 15.02.2013, not to deal with the property.

5. Drawing the attention of this Court to Order 7 Rule 11 (b) of C.P.C., learned counsel for the petitioners would submit that the suit has not been properly valued. Even though the respondent/plaintiff had sought for the relief of declaration of the sale agreement as null and void, he had valued the suit under Section 25(d) of the Act. But he ought to have valued the suit under Section 40 of the Act for the relief of cancellation of the sale agreement. The learned counsel would further submit that the sale agreement has been entered into by his Power Agent on behalf of the principal and, therefore, the act done by the Power Agent is binding on the principal, and he ought to have paid the fee under Section 40 of the Act, on the basis of face value of the instrument, and that factum has not been considered by the trial Court. Thus, the learned counsel for the revision petitioner prayed for setting aside the impugned order.

6. Resisting the same, the learned counsel for the respondent would submit that the suit is one for declaration declaring the sale deed dated 19.02.2013 entered into between the defendants 1 and 2, as null and void, and not binding on the plaintiff. He has not filed the suit for cancellation of the sale agreement. So, there is

no necessity to value the suit under Section 40 of the Act. He would also submit that in the plaint averments in paragraph 8, the respondent/plaintiff has stated that he has intimated the first petitioner/defendant not to do any transaction in the capacity of Agent. Furthermore, whether there was an oral cancellation of the sale agreement has to be decided only after the trial. Thus, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition.

7. Considered the rival submissions made by both sides and perused the typed set of papers.

8. The revision petitioners/defendants have filed the application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the relief claimed is under valued. So, it is appropriate to incorporate the provision Order 7 Rule 11 CPC.

"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 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;*

(d) xxxx

(e) xxxx

(f) xxxx"

9. A perusal of the clause (b) and (c) would reveal that the provision under Order 7 Rule 11 CPC shall not be invoked and the revision petitioners/defendants ought to have filed an application under Order 14 CPC r/w Section 12 of the Act to decide whether the suit has been properly valued as a preliminary issue. If the Court comes to the conclusion that additional Court fee has to be paid within a stipulated time and the respondent/plaintiff fails to pay the additional Court fee, the revision petitioners/defendants can invoke Order 7 Rule 11 CPC. However, without doing so, the revision petitioners/defendants have come forward with the application to reject the plaint on the ground that the relief claimed is undervalued and that the suit ought to have been valued under Section 40 of the Act and not under Section 25(d) of the Act, which is unsustainable.

10. In these circumstances, I am of the view that the Trial Court has rightly considered all the aspects in proper perspective and the order of the Trial Court does not warrant interference by this Court. Accordingly, this Civil Revision Petition is dismissed as devoid of merits. However, it is left open to the petitioners/defendants to file an appropriate application before the trial Court to decide whether the suit has been properly valued or the correct Court Fee has been paid, in which event, the trial Court shall decide the same as the preliminary issue,

before deciding the suit. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

Index : Yes/No

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Internet : Yes/No

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To

The District Munsif Court,
Tambaram.

R.MALA, J.

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