

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.551 of 2016

Jones Jayakumar

... Petitioner

Vs

1.Karunanithi

2.Dhakshna Murthi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the dismissal of the fair order and decretal order dated 27.11.2015 in IA.No.1566 of 2015 in OS.No.201 of 2008 on the file of the District Munsif-cum-Judicial Magistrate Court at Sriperumbudur.

For Petitioner : Ms.C.Harini

ORDER

The 1st defendant in the Original Suit No.201 of 2008 pending on the file of the District Munsif-cum-Judicial Magistrate Court, Sriperumbudur is the petitioner in the present revision. The respondents 1 and 2 in the revision are plaintiffs in the said suit. The respondents 1 and 2/plaintiffs filed the said suit for a declaration that the sale deed dated 20.02.2006 executed by the revision petitioner/1st defendant in favour of the 2nd defendant in the original suit and the sale deeds executed by the 2nd defendant on 21.12.2006 and 23.12.2006 respectively, in favour of the defendants 3 and 4 are null and void. The first defendant alone is a party in the Civil Revision Petition as petitioner. Defendants 2 to 4 have not been made parties to the present

revision. The revision petitioner/1st defendant after filing written statement, filed an application in IA.No.1566 of 2015 to decide the correctness of the valuation of the relief and the sufficiency of the court fee paid as a preliminary issue. The learned trial Judge, after hearing both sides, chose to dismiss the said petition by an order dated 27.11.2015. The said order is challenged by the petitioner in the revision.

2. The submissions made by Ms.C.Harini, learned counsel for the petitioner are heard. The copy of the impugned order of the trial Court and the copies of other documents produced in the form of typed set of papers and also the grounds of revision are perused.

3. The respondents herein/plaintiffs have chosen to seek a declaration that the sale deed executed by the 1st defendant in favour of the 2nd defendant on 20.02.2006 is null and void on the premise that on the date of execution of the sale deed, the Power of Attorney given by the father of the plaintiffs to the 1st defendant was not in force, as the father of the 1st defendant died prior to the date of the said sale. The declaration sought for in respect of sale deeds executed by the 2nd defendant in favour of the defendants 3 and 4 is only consequential to the prayer for the declaration that the sale deed dated 20.02.2006 is null and void. The respondents herein/plaintiffs valued the reliefs nominally each at Rs.1,000/- and paid court fee. The basis of valuation and the court fee paid has been disputed by the petitioner/1st defendant. As the same has been raised as a plea of defence in the written statement, an issue regarding the same has also been framed by the trial

Court. Before the trial started, the petitioner herein/1st defendant wanted the said issue to be decided as a preliminary issue. The trial Court felt that deciding the said issue as the preliminary issue will involve consumption of more time and repetition of the exercise, in case the decision is not in favour of the petitioner herein. The learned trial Judge also held that the issue could be conveniently dealt with in the trial regarding all the issues framed in the suit.

4. This court, considering the facts and circumstances of the case, is of the view that the refusal by the trial Court to try the issue regarding valuation and court fee as a preliminary issue cannot be said to be either defective or infirm warranting interference by this Court in exercise of its power of superintendence over the subordinate Courts under Article 227 of the Constitution of India.

In the result, the revision fails and the same deserves to be dismissed. No costs.

23.02.2016

Index : Yes/No
Internar : Yes/No

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To
The District Munsif-cum-Judicial Magistrate,
Sriperumbudur.

P.R.SHIVAKUMAR, J.

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