



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.847 of 2015 (PD)

and

M.P. (MD) .No.2 of 2015

1.J.Vasanthi
2.J.Rajaram
3.R.V.Rengaraj

.. Petitioners/Petitioners/
Defendants 3,4,5

Vs.

N.Ramani Kanthammal
(died on 15.01.2015)

...1st Respondent/sole plaintiff

1.N.Jothi Nageswaran
2.V.Janakiraman
3.R.Saravana Prabu
4.D.Gowri

...Respondents/Respondents 2to 5/
Defendants 1,2,6, and 7

5.Sugumar
6.Muralidharan
7.Chithra
8.Manorama
9.Janarthanan
10.sujithra
11.Saravanakumar
12.Sivakumar
13.M.R.Durairaj
14.R.Muthukrishnan

...Respondents/LRs of sole plaintiff

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 23.12.2014, made in I.A.No.94 of 2014 in O.S.No.20 of 2014 on the file of the Principal District Court, Dindigul.

For Petitioners : Mr.S.Doraisamy,
Senior Counsel,
for M/s.Muthumani Doraisami

For R4 : Mr.S.Viyanak

For R 11 : Mr.B.BrijeshKumar
for M/s.K.Kanimozhi

**ORDER**

This memorandum of Civil Revision Petition has been filed against the fair and decretal order dated 23.12.2014, made in I.A.No.94 of 2014 in O.S.No.20 of 2014 on the file of the Principal District Court, Dindigul.

2. The petitioners are defendants 3,4 and 5 in the Suit in O.S.No.20 of 2014. One N.Ramani Kanthammal filed the Suit in O.S.No.20 of 2014, for declaration that said Ramani Kanthammal and the seventh defendant in the Suit are the owners of the suit schedule property, for declaration that the sale deeds, in Doc.No.922/1991, dated 30.08.1991, Doc.No.805/1991, dated 07.08.1991, Doc No.330/1993, dated 23.03.1993, Doc No.2395/1994, dated 04.01.1994, Doc.No.1239/2002, dated 16.07.2002, Doc.No.2096/2002, dated 10.06.2002, Doc.No.2097/2002, dated 10.06.2002 and Doc.No.214/2004, dated 11.03.2004, as null and void and for permanent injunction. The petitioner filed I.A.No.94 of 2014 under Order 7 Rule 11 (b) r/w Section 151 C.P.C. to direct the plaintiff to pay the Court fees under Section 40 of Tamil Nadu Court Fees Act and if the plaintiff failed to pay the Court fee, then plaint has to be rejected, since the plaint is undervalued.

3. According to the petitioners, Court fee has been paid by the plaintiff under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. The plaintiff is seeking documents as null and void, which amounts to seeking a relief of cancellation of the said documents. Therefore, Court Fee is payable only under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and if the plaintiff failed to pay the Court Fee, then the plaint has to be rejected, since the plaint is undervalued.

4. The plaintiff filed counter affidavit and stated that she executed only an agreement of sale as security for Rs.50,000/- borrowed by her, from the second defendant and she did not execute any sale deed, in favour of any of the defendants. The documents are fabricated one, using blank signature taken from her by the second defendant. They also created a forged Will, as though her father Late Raja Chidambara Reddiyar executed a Will bequeathing to the first defendant, who is the son of the plaintiff. The plaintiff denied the execution of documents in question. Therefore, Court fee paid under Section 25(d) for declaration is correct and proper and prayed for dismissal of the application. The learned Judge considering the facts and materials on record, dismissed the application in I.A.No.94 of 2014 in O.S.No.20 of 2014. Against that order of dismissal, the present Civil Revision Petition is filed.

<https://hcservices.ecourts.gov.in/hcservices/>

5. The learned Senior counsel for the petitioners submitted that the learned Judge failed to see that,



"(1) by seeking declaration of the document in question as null and void, the plaintiff in fact seeking cancellation of said sale deeds;

(2) the plaintiff is liable to pay Court fee under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, as she is seeking declaration for cancellation of sale deed. The plaintiff is not only seeking declaration that sale deeds are null and void, but also declaration that she and her sister seventh defendant are absolute owners;

(3) the plaintiff paid Court fee under Section 25(d) of Tamil Nadu Court Fees and Suits Valuation Act, 1955, in order to overcome law of limitation as all the sale deeds are executed prior to 2004 and the suit is filed only in the year 2014;

(4) both plaintiff and first defendant have executed the document which are sought to be declared as null and void;

(5) the learned Judge erred in holding that judgment of this Court reported in **2006 (5) CTC 255** is not applicable to the facts of this case. The plaintiff and the first respondent/first defendant sold by registered sale deed. Therefore prayed for allowing this Civil Revision Petition."

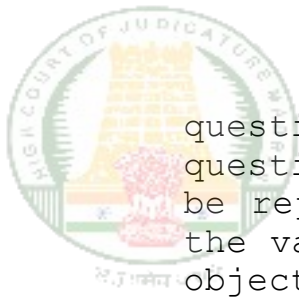
6. After the order in the above said interlocutory application, dated 23.12.2014, the plaintiff N.Ramanai Kanthammal died and her legal heirs are impleaded as respondents 5 to 14.

7. The learned counsel for the respondents submitted that the plaintiff is not seeking cancellation of sale deed. The specific case of the plaintiff is that she has not executed any sale deed and the documents mentioned in the plaint are fabricated one. In the circumstances, Court fee paid by the plaintiff under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, and the prayer sought for is correct and proper.

8. The learned counsel for eleventh respondent relied on the following judgments;

(1) In **P.Thillai Selvan vs. Shyna Paul and another** reported in **2014 (7) MLJ 732** wherein paragraph Nos. 9 and 13 it has been held as follows;

<https://hcservices.ecourts.gov.in/hcservices/> --- The valuation of the suit property and payment of Court fee thereon, are certainly not purely



question of law and on the other hand, it is a mixed question of law and fact. Therefore, the plaint cannot be rejected based on the objection raised in respect of the valuation of the suit property, especially when such objection is opposed and denied by the plaintiff.

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13. Insofar as the question of limitation is concerned, as rightly submitted by the learned counsel for the first respondent/plaintiff, it is purely a mixed question of law and fact, and therefore, based on such allegations, the plaint cannot be rejected even before trial is conducted to find out as to whether such allegations are true and sustainable in the eye of law.

"

(2) In ***Siddha Constructions (P) Ltd vs. M. Shanmugam and others*** reported in **2006(5) CTC 255** wherein paragraph No. 11 it has been held as follows;

"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 the 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."

(3) In ***G.seethadevi vs. R.Govindaraj and others*** reported in **2011(6) MLJ 399** wherein paragraph No.7 it has been held as follows;

"7. In the case on hand, it is to be seen that the case of the petitioner is that she has not executed power of Attorney in favour of one Bhaskaran so as to execute the sale deed in favour of third parties. That apart, it is contended that the said Bhaskaran is unknown to the first respondent in his petrol bunk. When such statement has been made in the plaint, the Court Fee that has to be



payable on the relief that has been sought for by the petitioner viz., for declaration that the sale deed dated 25.04.2008 is null and void and not binding on the petitioner, under Section 25(d) of the Act and not under Section 40 of the Act. The petitioner has not admitted the execution of Power of Attorney. The Court below is not justified in directing the petitioner to pay the Court fee under Section 40 of the Act. In the case relied on by the respondents, the Power of Attorney was admitted by the respondents/plaintiffs therein and hence, this Court in the said decision has directed the party to pay the Court Fee under Section 40 of the Act."

9. The above judgments applies to the facts of this case. Further valuation of the suit property is a mixed question of law and fact and the suit can not be rejected only based on the objection raised by the defendants. The judgment reported in **2014 (7)MLJ 372** has categorically held that plaint can not be rejected on the objection of the defendants.

10. Heard the learned counsel for both the parties and perused the materials available on record.

11. The plaintiff had prayed for two declaration in the Suit. The first declaration is that the plaintiff and seventh defendant are absolute owners of the property in question. She has valued the property at Rs.20,00,000/- and for her share of Rs.10,00,000/-, she paid Rs.75,000/- as Court fee as per Section 27(b) of Tamil Nadu Court Fees and Suits Valuation Act, 1955. As far as the second declaration is for sale deeds, in Doc.No.922/1991, dated 30.08.1991, Doc.No.805/1991 dated 07.08.1991, Doc No.330/1993 dated 23.03.1993, Doc No.2395/1994 dated 04.01.1994, Doc.No.1239/2002 dated 16.07.2002, Doc.No.2096/2002 dated 10.06.2002, Doc.No.2097/2002, dated 10.06.2002 and Doc.No.214/2004 dated 11.03.2004, as null and void. She has paid Court fee under Section 25(d) of the said Act. The contention of the learned senior counsel for the petitioners is that the declaration sought for amounts to cancellation of sale deed. Therefore, the plaintiff is liable to pay Court fee under Section 40 of the Act, not under Section 25(d) of the Act. The learned senior counsel further submitted that this Court in number of cases have held that when a person is party to the sale deed, for cancellation of the said sale deed, the court fee has to be paid under Section 40 of the Act only.

12. A reading of the plaint shows that the plaintiff has denied the execution of sale deeds. In an earlier occasion, this Court on a similar issue has held that Court fee payable is only under Section 25(d) and not under Section 40 of the Act. The



judgments relied on by the learned counsel for the respondent are squarely applicable to the facts of the present case.

13. Further the valuation of the property and Court Fee are not purely question of law. It is a mixed question of fact and law. This can be decided only, based on the evidence let in by the parties. Till that time, the averments made in the plaint has to be taken as correct, with regard to the valuation and payment of Court Fee. In the circumstances, the Court below has rightly dismissed the application. This Court does not find any irregularity or illegality in the said order, warranting interference by this Court.

14. In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To
The Principal District Judge,
Dindigul.

+1cc to Mr.K.Kanimozhy, Advocate in SR.No.14832
+1cc to Mr.Muthumani, Doraisami, Advocate in SR.No.14908

SDR/NGM-MP/13.06.2016/6P/4C

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and
M.P.(MD).No.2 of 2015
16.03.2016