

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD)No. 4659 of 2017

Chamundeeswari

.. Petitioner

Vs

1. Yasodhammal
2. R.Chandrasekar
3. R.Mathiazhagan @ Mathivanan
4. R.Anbarasan
5. R.Jayagopi
6. Kamatchi
7. Sathisbabu
8. Karthika
9. Vanaja
10. Poongodi
11. M/s.Saukhyada Infra Pvt, Ltd,
Represented by its Director
Mr.Bisani Malleswara Rao
12. N.Shubakari Infra
Represented by its Partner,
Mr.N.Pandu
13. M/s.Sreekari Developers
Represented by its Partner,
Malgari Janardhan Reddy.
14. The Joint Sub-Registrar -II,
Kancheepuram.

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the order dated 22.11.2017 passed in O.S.S.R.No.6184 of 2017 by the Principal District Judge-II, Kancheepuram.

For Petitioner :Mr.C.Umashankar

ORDER

This Civil Revision Petition is filed against the order dated 22.11.2017 passed in O.S.S.R.No.6184 of 2017 by the learned Principal District Judge-II, Kancheepuram.

2. The learned counsel for the petitioner would submit that the revision petitioner/plaintiff has filed the suit for partition, declaration and other reliefs. According to the petitioner, the Court below has returned the plaint stating that the petitioner has not complied with Section 25 (d) of the Tamil Nadu Court Fee and Suit Valuation Act, 1955. The learned Principal District Judge, Kancheepuram has returned the plaint on 19.09.2017 for the following defects:

- “1.How the 2nd prayer is maintainable when the plaintiff is party to the document to be stated.
2. How the suit prayer No.II is in time to be stated.
3. Prayer III to VI to be property valued and correct court fee to be paid.

4. Corrections to be attested.
5. Counsel for the plaintiff to be filled up in the plaint.
6. A fresh docket sheet to be attested.
Time 4 weeks.”

3. The petitioner re-submitted the plaint after rectifying the defects on 21.09.2017. Again twice it was returned and the petitioner represented without properly rectifying the defects. Again on 22.11.2017, the learned Principal District Judge-II, Kancheepuram, returned the papers stating that the Court fees paid by the revision petitioner/plaintiff under Section 25 (d) is not correct. The plaintiff being a party to the partition deed dated 09.09.1998 ought to have paid Court Fees under Section of 40 of TNCF Act. Challenging the above said order, the petitioner has filed the present Civil Revision Petition before this Court.

4. The revision petitioner relies upon the order of this Court passed in the case of ***Siddha Construction (P) Ltd., rep. By its Power Agent Anjay Sharma, Chennai, Vs. M.Shanmugam and others, reported in 2006 CTC 255*** wherein this Court has observed 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 of 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 Petition) 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 Section 25) 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 anyone till today in respect of the suit schedule property.”

an other decision of this Court ***in the case of P.Rajkumar and others Vs. Mary Saroja and others*** reported in ***2013 2 MWN Civil 89***, also relied by the petitioner. In the light of the aforesaid judgement, return of plaint on the aforesaid ground is liable to be set aside.

5.In view of the above facts and submissions made by the learned counsel for the revision petitioner and in the light of the decisions cited

supra, the learned counsel for the revision petitioner is permitted to re-present the plaint in OS SR No.6184 of 2017 within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the Court below shall consider the explanation submitted by petitioner, in the light of the decisions cited supra passed by this Court, number the suit, if it is otherwise in order, the question of maintainability in respect of Court Fee to be decided at the later stage.

6. The Civil Revision Petition is disposed of with the above direction. No Cost.

18.12.2017

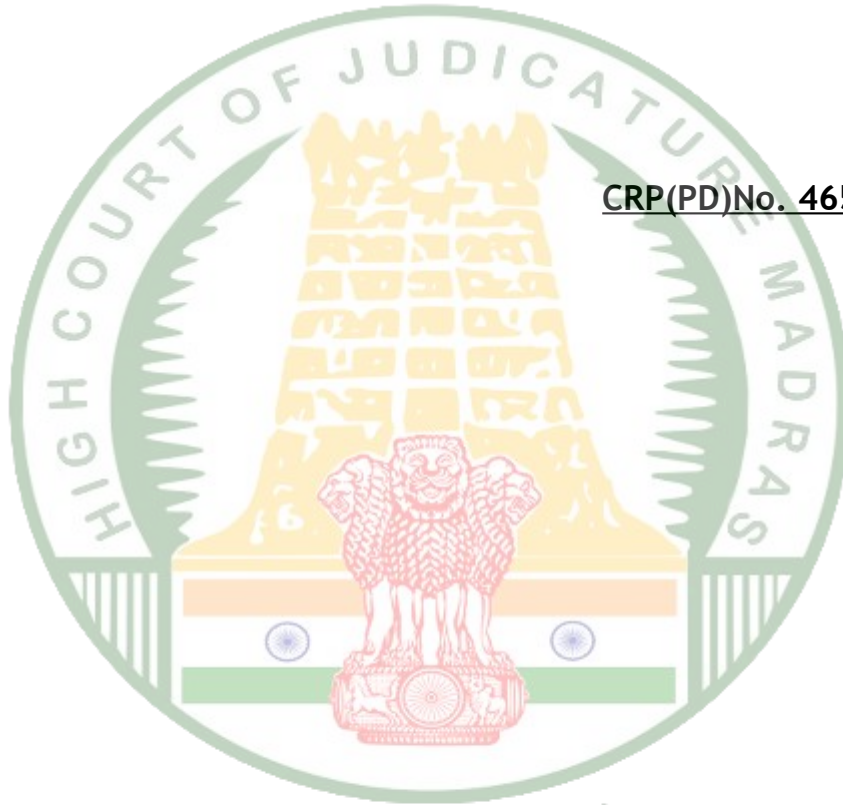
Index: Yes/ No
Internet: Yes/No
Speaking Order/Non Speaking Order
RKP

To
The II Principal District Judge,
Kancheepuram.

Note: Registry is directed to return the original plaint after obtaining a copy of the same.

D. KRISHNAKUMAR J.,

RKP



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