

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.697 of 2011

M.P.No.1 of 2011

R.Deepa Devi
Rep by its Authorised Agent,
Mrs.Chenthamarai .. Petitioner

Vs.

T.Varadharajan (Deceased)
2.V.Sarojini
3.V.Narguna Rajan
4.V.Ezhil Arasan
5.V.Arul Arasan
6.R.Chenthamarai .. Respondent

RR2 to 6 brought on records as legal heirs
of the deceased sole respondent vide order
of Court dated 06.09.2017, by VMVJ, made
in C.M.P.Nos.14230 to 14323/2017 in
C.R.P.No.697 of 2011.

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India against the fair and decretal order dated
07.12.2009 made in Checkslip No.1270/XXVI/N Diary No.79 in
O.S.No.3240 of 2008 by the Hon'ble VIII Assistant City Civil Judge,
Chennai.

For Petitioner : Mr.V.Anil Kumar
for Mr.S.R.Rajagopal

For R1 : No appearance

For R2 to R6 : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 07.12.2009 made in Checkslip No.1270/XXVI/N Diary No.79 in O.S.No.3240 of 2008 by the Hon'ble VIII Assistant City Civil Judge, Chennai.

2. The petitioner is the plaintiff and deceased first respondent is the defendant in the O.S.No.3240 of 2008 on the file of the VIII City Civil Court, Chennai. The petitioner filed the said suit against the deceased first respondent for declaring that the cancellation of settlement deed dated 07.02.2007 executed by the first respondent as null and void and for consequential injunction. The first respondent filed written statement in the month of November 2008 and stated that the petitioner has not properly valued the relief of declaration and has not paid proper Court fee. The learned Judge, referred the matter to the Court fee examiner. The Court fee

examiner issued a checkslip bearing No.1270/XXVI/N and Diary No.79, stating that the petitioner is a party in both the Settlement deed and cancellation of Settlement deed. Therefore, the petitioner can seek only cancellation of cancellation of Settlement deed and not for declaration. The petitioner must pay the Court fee on the market value of the property.

3. The petitioner filed objection dated 21.09.2009 to the checkslip stating that the petitioner is not a signatory in both the Settlement deed and cancellation of Settlement deed. The relief sought for by the petitioner is proper relief and Court fee paid as per Section 25(d) of the Tamilnadu Court Fee and Suit Valuation Act, 1955 (herein after referred to as 'the Act') is correct.

4. The learned Judge, considering the checkslip, objection of the petitioner, the Settlement deed and cancellation of Settlement deed, held that the petitioner is a party to both the documents and she has to pay the Court fee on the market value of the property in respect of relief (a) and directed the petitioner to pay the deficit Court fee of Rs.74,925/- on the market value of the property under Section 40 the Act, in respect of the relief (a).

5. Against the said order dated 07.12.2009 made in Checkslip No.1270/XXVI/N, Diary No.79 in O.S.No.3240 of 2008, the petitioner has come up with the present Civil Revision Petition.

6. The learned counsel appearing for the petitioner reiterated the averments made in the objection filed in checkslip before the Trial Court and referred to Settlement deed and cancellation of Settlement deed. The contention of the learned counsel appearing for the petitioner is that the petitioner is not a party to both the documents and petitioner need not seek for cancellation of cancellation of Settlement deed. The relief of declaration, as claimed by the petitioner is a proper relief and Court fee paid by the petitioner as per Section 25(d) of the Act is proper and correct.

7. The first respondent died on 10.04.2011. The legal heirs of first respondent were impleaded as respondents 2 to 6, as per the order dated 06.09.2017, made in C.M.P.Nos.14230 to 14323/2017 in C.R.P.No.697 of 2011. Though notices were served on the respondents 2 to 6 and their names are printed in the cause list, there is no representation for the respondents 2 to 6 either in person or through counsel.

8. Heard Mr.V.Anil kumar, the learned counsel representing Mr.S.R.Rajagopal, the learned counsel appearing for the petitioner.

9. I have carefully perused the Settlement deed dated 06.06.2006 and deed of cancellation of Settlement deed dated 07.02.2007. In both the deeds, even though the petitioner is shown as settlee, she is not a signatory to both the documents. The first respondent alone is the signatory in both the documents and he alone is the executant of both the documents. The Court fee examiner and the learned Judge are not correct in holding that the petitioner is a party to both the documents. The learned Judge failed to appreciate the fact that the petitioner is not a signatory to both the documents and hence, she is not a party to the document. The petitioner has rightly sought for declaration that cancellation of Settlement Deed is null and void. The valuation of the said relief under Section 25(d) of the Act is valid. The petitioner is not seeking a tangible right in an immovable property but is seeking intangible right with regard to the cancellation of Settlement deed. The learned Judge has committed an irregularity in accepting the checkslip issued by the Court fee examiner and directing the

petitioner to value the relief of declaration on the market value of the property and pay the deficit Court fee of Rs.74,925/- under Section 40 of the Act. For the above reason, the impugned order of the learned Judge dated 07.12.2009 is liable to be set aside and is hereby set aside.

10. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
gsa

To

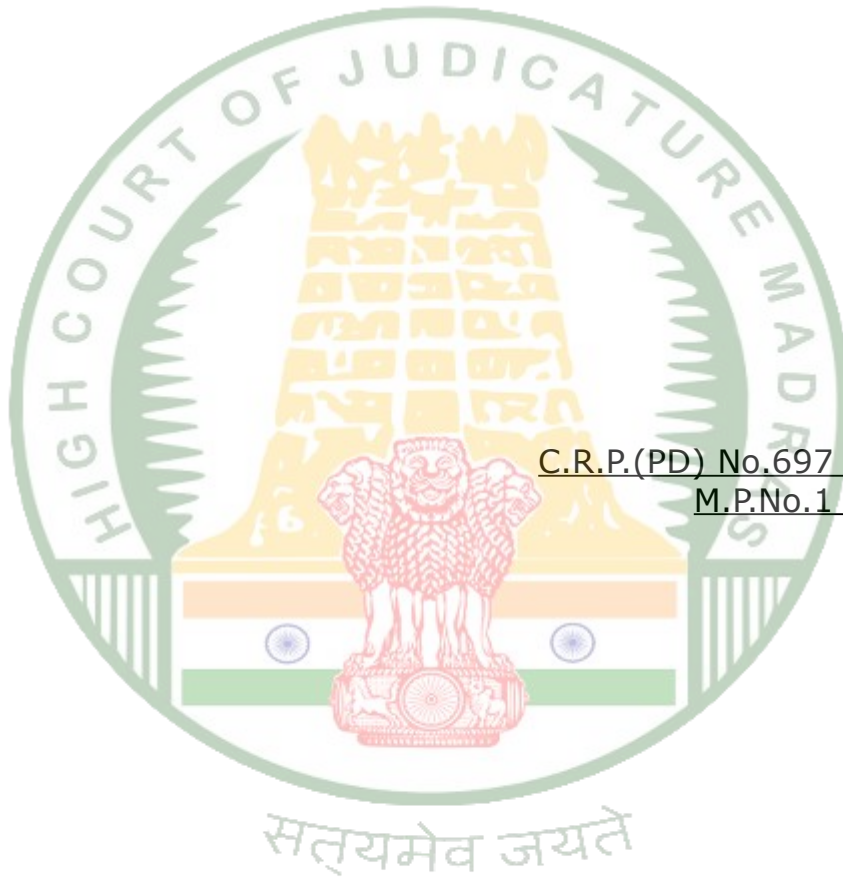
The VIII Assistant City Civil Judge,
City Civil Court, Chennai.

13.09.2017

WEB COPY

V.M.VELUMANI,J.

gsa



C.R.P.(PD) No.697 of 2011
M.P.No.1 of 2011

WEB COPY

13.09.2017