

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1791 of 2012
& M.P.No.1 of 2012

N.Ramesh

.. Petitioner

Vs.

1.Faery Estates Pvt. Ltd.
No.70, Nagindas Master road Fort
Mumbai-400 023.
Represented by Anand Rao
S/o.Bhoema rao
No.40, Anna Nedunchalai
Kandanchavadi, Perungudi
Chennai-600 096.

2.N.Venkatesh

3.K.Aravind

4.N.Natarayan

5.K.Swamiappa gounder

6.M/S.Edison Enterprises Pvt. Ltd.,
Represented by its Director
Mr.J.Rajasekar, No.34, Kakani towers
Kader nawaz khan road
Nungambakkam, Chennai-6.

7.M/S.Subashree Realty Pvt. Ltd.
Rep. by its Director Mr.V.Anbazhagan

Registered office at No.86
EVR periyar high road
Chennai-600 007.

8.M/S.Fal Industries Ltd.
Represented by Managing Director
Mr.M.Singh, Registered office at
No.40, Anna Nedunchalai
Kandanchavadi, Perungudi
Chennai-600 091.

9.N.Kasi Viswanathan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India, to reject the suit in O.S.No.952 of 2010 on the
file of the Additional District Munsif Court, Alandur.

For Petitioner : Mr.Uma Shankar for
Mr.B.P.Vinoth

For R1 : Mr.Satish Parasaran
Senior Counsel for
Mr.R.Prem Kumar
(M/S.King and Partridge)

For RR4 to 7 : Mr.S.Natarajan

ORDER

This Civil Revision Petition has been filed for rejection of the
suit in O.S.No.952 of 2010 on the file of the Additional District
Munsif Court, Alandur.

2. The petitioner is the plaintiff, first respondent is the seventh defendant, respondents 2 to 7 are the defendants 1 to 6 and the respondents 8 & 9 are the defendants 8 & 9 in O.S.No.952 of 2010 on the file of the I Additional District Munsif Court, Alandur. The petitioner filed suit for declaration of three sale deeds dated 15.05.2005 (at the time of arguments, the date has been mentioned as 18.05.2005), 20.09.2005 and 20.09.2005, bearing document Nos.2972/2005, 5643/2005 and 5462/2005 respectively and for permanent injunction restraining the defendants 5 to 8/respondents 6 to 8 & 1 from alienating the properties purchased by them in any manner and mandatory injunction directing the fourth respondent/third defendant to render true and proper accounts in respect of the sale of the suit properties. According to the petitioner, the respondents 2 & 9 and petitioner are owners of the suit properties. At the instance of the second respondent, who is elder brother of the petitioner and 9th respondent, they executed power of attorney in favour of fourth respondent to deal with the suit properties. According to the petitioner, fourth respondent fraudulently in collusion with other defendants sold the properties by three sale deeds mentioned in the plaint and did not render true and proper accounts to the petitioner. Only recently, the petitioner

came to know about the alienation through three sale deeds. The said sale deeds are not binding on him and he filed suit for the relief as stated above by ignoring the said sale deeds.

3. First respondent/seventh defendant filed I.A.No.1811 of 2011 for rejection of plaint on the ground that the petitioner has not valued the suit properties properly and he has not paid the correct Court fee. First respondent stated that the petitioner ought to have valued the suit properties under Section 40 of Tamil Nadu Court Fees and Suit Valuation Act and the petitioner ought to have paid the Court fee on the value of property. The petitioner is not correct in valuing the suit and is paying Court fee under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act.

4. The petitioner filed counter affidavit denying all the averments in the said application and submitted that the sale deeds mentioned in the plaint are not binding on him, he is seeking declaration that the said sale deeds are null & void and for consequential injunction. In view of the relief sought for by the petitioner, he has properly valued the suit and paid correct Court fee under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation

Act. He is not seeking cancellation of the sale deeds and therefore, he is not liable to pay the Court fee as per Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act.

5. The learned Judge considering the averments made in the affidavit, counter affidavit, document No.2/power of attorney filed along with the plaint, which was executed by the petitioner, respondents 2 & 9 appointing fourth respondent as their power agent, the sale deeds were executed on their behalf by the power agent/fourth respondent, to the parties to the sale deeds, averments in the plaint reveal that the petitioner seeks cancellation of sale deeds and directed the petitioner to value the suit properties under Section 40 of Tamil Nadu Court Fees and Suit Valuation Act and pay the necessary Court fee, failing which, the petition would be allowed and if the petitioner pays the Court fee, the application filed under Order VII Rule 11 of C.P.C. would be dismissed.

6. Against the order dated 07.02.2012 made in I.A.No.1811 of 2011, the present civil revision petition is filed by the petitioner.

7. The learned counsel for the petitioner submitted that the learned Judge passed an impugned order without appreciating the scope of Sections 25 and 40 of the Tamil Nadu Court Fees and Suit Valuation Act. The petitioner came to know about the registration of the sale deeds by the power agent only recently and therefore, the sale deeds will not be binding on the petitioner. The petitioner did not execute the power of attorney in favour of the fourth respondent along with the respondents 2 and 9. The petitioner is not a party to the sale deeds. The learned Judge failed to consider the scope of the suit and the suit is nothing to do with the case of the first respondent/seventh defendant. The learned Judge failed to consider the judgments relied on by the counsel for the petitioner. In support of his contention, the learned counsel for the petitioner relied on the following judgments:

(i) **1964 (1) MLJ 152 (K.Sundaramoorthy Mudaliar v. Manickammal and another)**, in last para, it is held as follows:

"5. On reading the allegations in the plaint it is clear that plaintiff's intention is to get a declaration from the lower Court that the mortgage is not binding on him. The learned Counsel for the petitioner has cited before me the decisions in In re Thirupathicammal A.I.R. 1956 Mad. 179 in which

Ramaswami, J., held that a party can always pay the Court-fee under Section 25(d) if he is not a party to the document. Here the petitioner is not a party to the document created by the second defendant in favour of the first defendant. Applying the principle laid down by Ramaswami, J., I feel that the petitioner is entitled to pay Court-fee under Section 25(d) of the Act. It is also represented to me on behalf of the petitioner that he wants only a declaration that the equitable mortgage deed dated 20th May, 1953 is not binding on him. Therefore, it is enough if the petitioner pays Court-fee under Section 25(d)."

(ii) **2006 (5) CTC 255 (Siddha Construction (P) Ltd., represented by its Power Agent, Anjay Sharma, No.32, Guruswamy road, Chetpet, Chennai-600 031 v. M.Shanmugam and others)**, in para-13, it has been held as follows:

"13. The judgments relied on by the learned counsel for the revision petitioner is not helpful to them as the plaintiffs in O.S.No.13/02 are not signatories to the impugned sale deed and they have also not asked for cancellation of the same. Moreover the facts in the above judgments are different and easily distinguishable. Therefore the plaint cannot be rejected even before conducting a

trial on the issues arising out of the pleadings and counter pleadings as rightly held by the trial court.”

8. Per contra, the learned Senior Counsel appearing for the first respondent submitted that the petitioner and respondents 2 & 9 have executed document No.2/power of attorney appointing fourth respondent as their power agent to deal with the property including alienation and the power agent sold the property on their behalf. The dispute is between the petitioner and fourth respondent with regard to rendering of accounts. A reading of the plaint coupled with document No.2 clearly shows that the relief sought for by the petitioner is only for cancellation of three sale deeds mentioned in the plaint and the suit has to be valued as per Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act and not as per Section 25(d) of the Act. The learned Judge has properly appreciated the fact and law and rightly passed the impugned order by giving valid reason directing the petitioner to value the suit properly and pay the Court fee as per Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act. In support of his contention, he has relied on the following judgments:

(i) **2012 3 L.W. 573 (K.R.Premkumar v. K.V.Kanakammal)**, in para-10, it is held as follows:

"10. A mere running of the eye over those precedents would highlight and spotlight the fact that if the plaint averments disclose that the plaintiff signed the document and got it registered, mere pleading that such signature was put under the misconception or misrepresentation would not take away the case out of the purview of Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act. "

(ii) **2012 (6) CTC 188 (Sivagurunathan and another v. S.Shanmugaraja)**, in para-11 and 12, it is held as follows:

"11. To determine the Court-fee payable on a plaint, certainly it must be decided on the basis of allegations and the prayer made in the plaint. We have to look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for. If on a proper construction of the plaint, as a whole, the Court arrives at a conclusion that the suit is one for cancellation, Court-fee for cancellation must be paid.

12. The word "cancellation" implies that the person suing should be a party to the document. Strangers are not bound by the documents and are not obliged to sue for cancellation. When the party to the document is suing, challenging the document, he must first obtain cancellation before getting any further relief. Whether cancellation is prayed for or not or even if it is impliedly sought for in substance, the suit is one for cancellation. In the present case, since the Plaintiff attacks the sale deed as having been obtained under fraud and misrepresentation for ten acres instead of one acre, he cannot seek for any further relief without setting aside the sale deed. Though the prayer is couched in the form of seeking declaration that the document is valid only in respect of one acre of land and for consequential relief of permanent injunction restraining the Defendants from interfering with the possession and enjoyment of the Plaintiff in respect of the remaining nine acres of land, the relief in substance indirectly amounts to seeking for cancellation of the sale deed. The Trial Court was right in ordering payment of Court-fee by the Plaintiff under Section 40 of the Act. Therefore, this Civil Revision Petition has no merits and is bound to fail."

(iii) **C.R.P.(NPD)No.1399 of 2006, dated 08.01.2008**, in para-3 and 4, it has been held as follows:

"3. Under such circumstances, I am of the view that the plaintiffs have to pay the Court fee under Section 40 of the said Act since the plaintiffs have sought for cancellation of a document viz., sale deed said to have been executed by their power of attorney agent , after the cancellation of the power for a sum of Rs.30,00,000/-.

4. Mr.D.Shivakumaran, the learned counsel appearing for the respondents relying on a decision reported in Chellakannu-vs-Kolanji(AIR2005(5) CTC 190) would contend that in a case of similar facts, this Court has held at paragraph 15 as follows:

" The allegation on the plaint in substance amounts to cancellation of the document. Though the prayer is couched in the form of seeking declaration that the document is not valid and not binding, the relief in substance indirectly amounts to seeking for cancellation of the sale deed. Learned District Munsif is right in ordering payment of Court fee under Section 40 of the Act."

The above decision in all four corners will be applicable to the present facts of the case too."

9. The learned counsel for the respondents 4 to 7 adopted the arguments advanced by the learned Senior Counsel appearing for the first respondent.

10. Heard the learned counsel for the petitioner, learned Senior Counsel appearing for the first respondent, the learned counsel for the respondents 4 to 7 and perused the materials on record.

11. While considering the application under Order VII Rule 11 of C.P.C. for rejection of plaint, averments in the plaint and documents filed along with the plaint are only to be taken into consideration. The suit can be rejected, if only the ingredients of Order VII Rule 11(a) to (f) are satisfied. In the present case, first respondent has filed application to reject the plaint under Order VII Rule 11(b) of C.P.C. stating that the petitioner has not properly valued the suit and he has not paid proper Court fee. According to the petitioner, he is seeking declaration that the three sale deeds are null and void and not binding on the petitioner and he is not seeking cancellation of sale deeds.

12. A reading of the plaint, document No.2/power of attorney and documents 4 to 6/sale deeds filed along with the plaint reveals that the petitioner and respondents 2 & 9 appointed 4th respondent to deal with the property as their agent and fourth respondent executed the sale deeds on their behalf. It shows that the petitioner and respondents 2 & 9 have executed the sale deeds to other parties through their power agent and that the contention of the petitioner that he did not execute the sale deeds and he came to know about the sale deeds only recently is not acceptable. The petitioner is one of the vendors through his power agent. He being a party to the sale deeds, is not entitled to seek declaration that the sale deeds are null and void. He can seek the relief of cancellation only.

13. Further in the grounds of civil revision petition, the petitioner has stated that he has not executed power of attorney, whereas in the plaint, he has admitted the execution of power of attorney at instance of the second respondent, who is his elder brother. The petitioner also sought for mandatory injunction directing the fourth respondent to render true and proper accounts. Even though the petitioner has sought for declaration that the sale

deeds are null and void and not binding on him, a reading of the plaint as a whole with the documents filed along with plaint clearly shows that the petitioner is seeking cancellation of sale deeds. In the circumstances, the judgments relied on by the learned counsel for the petitioner are not applicable to the facts of the present case. But the judgments relied on by the learned counsel for the respondents are squarely applicable to the facts of the present case.

14. The contention of the learned counsel for the petitioner that the learned Judge has not properly appreciated the scope of Sections 25(d) and 40 of Tamil Nadu Court Fees and Suit valuation Act, has no force. In the impugned order, the learned Judge has dealt with these aspects and directed the petitioner to value the property properly and pay the Court fee as per Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act. The learned Judge made it clear that if the petitioner pays Court fee, I.A.No.1811 of 2011 filed by the first respondent will be dismissed and if the petitioner fails to pay the Court fee, I.A.No.1811 of 2011 will be allowed. In the impugned order, the learned Judge has given cogent and valid reasons. There is no irregularity or illegality in the order of

the learned Judge dated 07.02.2012 warranting interference by this Court.

15. The learned counsel for the petitioner seeks time to pay the Court fee as per the order of the learned Judge. Considering the submissions made by the learned counsel for the petitioner, the petitioner is granted four weeks time to pay the Court fee from the date of receipt of a copy of this order, failing which, the plaint will be rejected.

16. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.07.2017

Index : Yes/No

Speaking/Non speaking order: Yes/No

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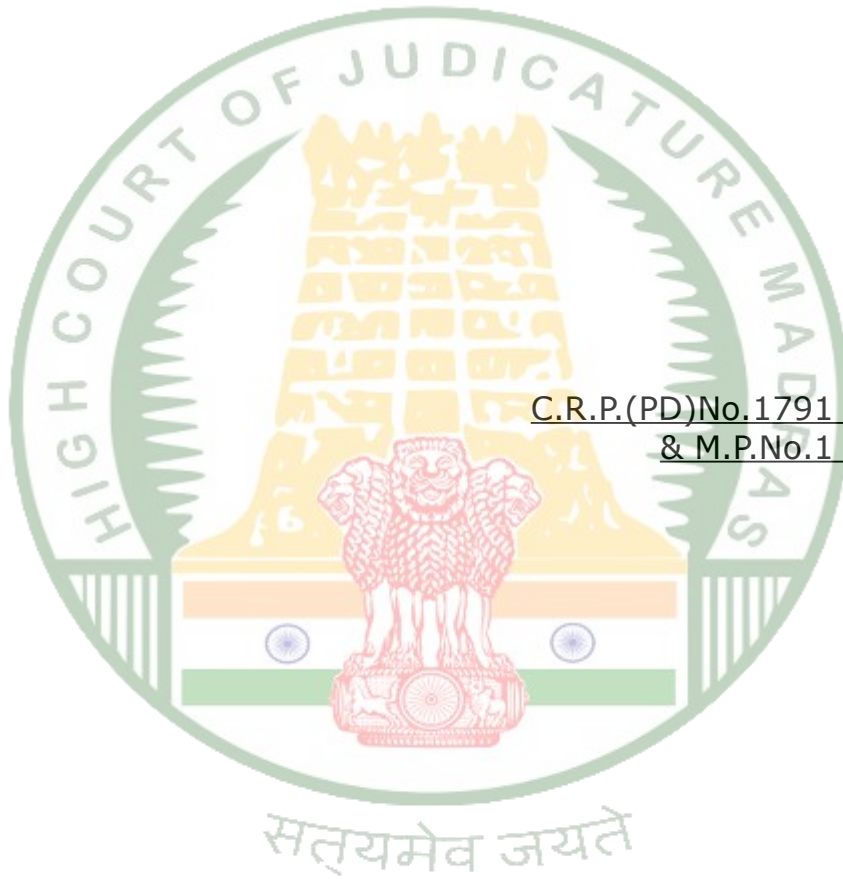
To

The Additional District Munsif, Alandur.

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V.M.VELUMANI, J.

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C.R.P.(PD)No.1791 of 2012
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