

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2017

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3147 of 2016

and

C.M.P.No.15970 of 2016

G.Selvaraj .. Petitioner

Vs

K.Jayalakshmi .. Respondent

Petition filed under Article 227 of the Constitution of India, to set aside the docket order in Counter Claim in O.S.No.74 of 2011 dated 07.09.2015 by the District Munsif, Tambaram, Kancheepuram District.

For Petitioner : Mr.R.C.Manoharan

For Respondent : Mr.A.Rajesh Kanna

ORDER

This Criminal Original Petition has been filed to set aside the docket order in Counter Claim in O.S.No.74 of 2011 dated 07.09.2015 by the District Munsif, Tambaram, Kancheepuram District.

2.The petitioner is the defendant and the respondent is the plaintiff in the suit filed in O.S.No.74 of 2011 on the file of the District Munsif, Tambaram, Kancheepuram District. The

respondent/plaintiff filed the suit for permanent injunction restraining the petitioner/ defendant, his men, agents, servants, legal heirs and administrators in any manner, from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The petitioner herein filed written statement and also counter claim, in which he had stated that the properties were partitioned between his father and his elder brother late Ganapathy Naicker while they were alive, by way of Koor Chit as early as on 17.07.1938. Thereafter, the petitioner inherited the property by way of partition. He has dealt with the property by alienating the same. In view of the partition so entered, the petitioner filed the counter claim and sought for the following reliefs:

“(a)To declare the petitioner and the other legal heirs of Gopal Naicker who succeeded the schedule property have right to deal with the property left by deceased Gopal Naicker as per Koor Chit dated 17.07.1938.

(b)To declare that the Settlement Deed in favour of the respondent / plaintiff in Document No.6801 of 2007 dated 11.06.2007 as null and void and not binding on the plaintiff and the other legal heirs of the deceased Gopal Naicker.

(c)Consequential injunction restraining the respondent / plaintiff, her men or agents or any men authorised by her or thugs or henchmen in any way disturbing the peaceful possession and enjoyment in any

manner or whatsoever of the Petition Schedule Property.”

3. Seeking the above reliefs, the petitioner paid the court fee under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act (“Act” in short). The respondent filed her objections to the counter claim stating that the petitioner has to pay the court fee only as per Section 25(b) of the Act and not under Section 25(d) of the Act, for which the petitioner contended that to prove his position, he filed kist receipts, which subsequently were found missing. The learned Judge, after considering all the materials available on record, and also the averments made in the affidavit and the counter affidavit, held that with regard to the nature of relief sought for by the petitioner, he has to pay the court fee only as per Section 25(b) of the Act and hence directed the petitioner to pay the court fee accordingly. Hence the present Civil Revision Petition.

4. The learned counsel for the petitioner submitted that the learned Judge, without considering the kist receipts filed by the petitioner and without properly considering the materials on record, directed the petitioner to pay the court fee under Section 25(b) of the Act based on the objection made by the respondent. Stating so, the learned counsel relied on a decision of this Court in **Ganga Krishnan v. Bajaj Enterprises, reported in 2011(1) MWN (Civil) 258**, and

submitted that to decide the status of any property, only Section 25(d) of the Act is applicable.

5. Heard the learned counsel for the petitioner as well as the respondent.

6. The contention of the petitioner that Section 25(d) of the Act is applicable only to decide the status of any property, has no force. It is seen from the counter claim made by the petitioner that he sought declaration with regard to title of immovable property for declaration based on the Koor Chit dated 17.07.1938 and to declare the settlement deed in favour of the respondent in Doc.No.6801 of 2007 as null and void and also for a consequential injunction. Section 25(b) of the Act reads as follows:

25. Suits for declaration

In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 26 -

(a)... .. ;

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees one thousand, whichever is higher;

(c) ;

(d) ;

7.A mere reading of the above shows that the relief of declaration and consequential injunction as sought for, with regard to immovable property, the court fee shall be computed on one-half of the market value of the property or on rupees one thousand, whichever is higher. Section 25(d) will apply only when the relief sought for does not fall under Sections 25(a), (b) or (c). In the present case, the relief sought for by the petitioner squarely falls under Section 25(b) of the Act. Under the circumstances, the judgment of this Court in **Ganga Krishnan v. Bajaj Enterprises, reported in 2011(1) MWN (Civil) 258**, relied upon by the learned counsel for the petitioner, will not apply to the facts and circumstances of the case on hand. The learned trial Judge has rightly appreciated the materials and the relief sought for by the petitioner in the counter claim and directed the petitioner to remit the court fee under Section 25(b) of the Act. There is no illegality or irregularity in the docket order passed in Counter Claim in O.S.No.74 of 2011 dated 07.09.2015 made by the District Munsif, Tambaram, Kancheepuram District, warranting interference by this Court.

8.In the result, the Civil Revision Petition is dismissed. No costs. However, it is open to the petitioner to file documents before the Trial Court, with regard to the value of the property. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No

20.04.2017

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To

The District Munsif, Tambaram, Kancheepuram District.

V.M.VELUMANI, J.

KM

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