

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.4064 of 2016

A.C.N.Sivasubramani

.. Petitioner

Vs.

1.K.Manimekalai
2.S.Siddharth

.. Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the docket order dated 23.09.2016 passed in O.S.Sr.No.2678 of 2016 passed by the District Munsif Court, Tambaram.

For Petitioner : Mr.J.R.K.Bhavanantham

ORDER

Civil Revision Petition is filed against the docket order dated 23.09.2016 passed in O.S.Sr.No.2678 of 2016 passed by the District Munsif Court, Tambaram.

2.The property originally belonged to the petitioner/plaintiff. His son/second defendant has obtained a power of attorney on 30.03.2016 by forcing the plaintiff to drink alcohol and made the plaintiff intoxicated. On that basis, a settlement deed dated 26.04.2016 was executed by the second defendant in favour of the first defendant. So the petitioner/plaintiff has filed the suit for the following reliefs:

“(i) to declare that the settlement deed in Doc.No.3706 of 2016, dated 20.04.2016 within the office of Sub-Registration District of Mettupalayam in respect of the plaint schedule property executed by the second defendant in favour of first defendant in respect of Item No.1 of the settlement deed is vitiated by fraud, duress and the same is sham, nominal and void and not binding on the plaintiff.

(ii) to declare that the power of attorney deed in Document

No.1787 of 2016, dated 31.03.2016 within the office of Sub-Registration District of Tambaram in respect of plaint schedule of property is vitiated by fraud, duress and the same is sham, nominal and void and not binding on the plaintiff.

(iii) to grant permanent injunction restraining the defendants or their agents, servants any person or persons claiming through them restraining them from interfering the plaintiff's possession in the plaint schedule property.

(iv) to grant permanent injunction restraining the defendants from collecting rents and getting attornment of tenancy from the tenants, mutating the revenue records, the property tax assessment, electricity service connection in respect of the plaint schedule property.

(v) to pay the cost of the suit. "

3. But the petitioner has valued the suit under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (hereinafter called as 'the Act') and for injunction, he has valued the suit under Section 27(c) of the Act. The trial Court has directed the petitioner/plaintiff to file the suit under Section 40 of the Act and on that ground, it was returned. The trial Court has returned

the plaint several times.

4.Learned counsel for the petitioner would submit that the trial Court ought to have considered the averment in the plaint, while deciding the matter and it ought to have numbered the suit. But without numbering, the said suit was returned for several times. He would further submit that the petitioner has disputed the execution of the power of attorney deed. So the second defendant is not a power agent. Hence, he prays this Court a direction may be given to the trial Court to number the suit as if the Court fee paid is correct. To substantiate his arguments, he has relied upon the decision reported in 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) and 2007 (1) CTC 300.

5.Heard the learned counsel for the petitioner and perused the typed set of papers.

6.The property originally belonged to the petitioner/plaintiff. In the plaint, he has stated that he was given alcohol and on that basis, power of attorney deed has been obtained by the second

defendant, who is none other than his son and first defendant is wife of the plaintiff. The alleged power of attorney deed was executed on 31.03.2016 and the settlement deed was executed on 26.04.2016. But the petitioner/plaintiff has not taken any steps to cancel the power of attorney, since it was got to be executed and registered on 31.03.2016. Furthermore, the petitioner is not an illiterate and he is a senior surveyor in ONGC.

7.At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the petitioner reported in **2007 (1) CTC 300**, in which, it was held that after revocation of power of attorney, the power agent executed the sale deed. Hence, the sale deed will not bind his principal, since he is not a party to the sale deed. Under such circumstance, it is not necessary that the suit to be valued under Section 40 of the Act. The above decision is relied upon by the petitioner before the trial Court. But that decision is not applicable to the facts of the present case.

8.As per the decision reported in **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 which, it was held that in the plaint, it was averred that since he is not a 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(d) of the Act. But it was held that as the petitioner is not a party to the proceeding, he cannot cancel the sale deed. The above decision is not applicable to the facts of the present case.

9.In the case on hand, the property is a residential property and its value is mentioned as Rs.1,000/- and it has been valued under Section 25(d) of the Act. As per Section 7 of the Act, if the land is ryotwari land, thirty times of kisth is assessed, otherwise, Court fee is assessed on the basis of the market value of the property. But I am unable to understand as to how the petitioner/plaintiff has valued the property for Rs.1,000/-. So it is clear that the petitioner with a malafide intention not to pay the Court fee, has under valued the suit.

10.The trial Court correctly held that even though the power of attorney deed dated 31.03.2016 was alleged to be obtained by fraud and undue influence, it can be set aside by the Court of law

or by way of cancellation. As per the power of attorney, the petitioner/plaintiff is a principal and the second defendant is the agent. So the petitioner/plaintiff has to file a suit for cancellation of power of attorney, therefore, he has to value the suit under Section 40 of the Act. Hence, I do not find any merits in the revision and accordingly, the Civil Revision Petition stands dismissed.

11. In the result, the Civil Revision Petition stands dismissed. If the petitioner wants to pursue further in the matter, he shall value the suit under Section 40 of the Act, pay the Court fee and represent the same in accordance with law. No costs.

09.01.2017

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To

The District Munsif Court, Tambaram.

R.MALA,J.

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