IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.3269 of 2012
and M.P.No.1 of 2012

R.Santhosh .. Petitioner

Vs.

1.V.Radhakrishnan
2.R.Vimala
3.Savithri Naidu
4.Vikram Naidu

5.State of Tamil Nadu
Represented by Secretary to Government
Commercial Taxes and Religious Endowments Department
Fort. St. George
Chennai-9. .. Respondents

(R5 impleaded as party respondent vide order
dated 13.09.2012 made in memo in
C.R.P.(NPD)No.3269 of 2012)

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., against the order dated 04.07.2012 made in check slip in O.S.No.24 of 2008 on the file of the V Additional District Judge, Coimbatore.

For Petitioner	:	Mr.V.Lakshmi Narayanan
For RR1 and 2	:	Notice dispensed with
For RR3 and 4	:	Mr.Nithyaesh and Vaibhav
For R5	:	Service awaited

ORDER

This Civil Revision Petition has been filed against the order dated 04.07.2012 made in check slip in O.S.No.24 of 2008 on the file of the V Additional District Judge, Coimbatore.

2. The petitioner is the plaintiff and the respondents 1 to 4 are the defendants in O.S.No.24 of 2008. The petitioner filed suit for declaration and permanent injunction. The Court fee examiner has issued a check slip dated 11.02.2008 to the petitioner stating that valuation for the relief (E) sought for in the plaint by the petitioner is not properly valued and the Court fee paid under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, is not correct.

3. According to the Court fee examiner, the relief (E) sought for in the plaint to be valued at the market value and the Court fee to be paid as per Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act.

4. The petitioner filed objections in the month of March 2008. According to the petitioner, he is not a party to the document and therefore, value and the Court fee paid are correct. The petitioner also stated that the relief (F) and (G) are independent to other reliefs and they are consequential reliefs.

5. The petitioner filed memo dated 13.06.2011 stating that the petitioner may be directed to delete the relief (F) and (G) in para-29 of the plaint and permitted to file a petition to amend the plaint.

6. The learned Judge considering the check slip issued by the Court fee examiner, objections and memo filed by the petitioner, the averments and reliefs sought for in the plaint, held that by seeking relief (E) in the plaint, the petitioner is seeking declaration of title in respect of the immovable property and he has to value the relief at market value and pay the Court fee as per Section 25(b) of the Tamil Nadu Court Fees and Suit Valuation Act.

7. Against the order dated 04.07.2012 made in check slip in O.S.No.24 of 2008, the present civil revision petition is filed by the petitioner/plaintiff.

8. The learned counsel for the petitioner submitted that the petitioner is not a party to the settlement deeds. As per the provisions of Indian Stamp Act, settlement deed cannot be executed in favour of the strangers. The settlement deeds mentioned in the reliefs (A) to (D) are fraudulently settled and bad in law. As per the Article 58 Schedule-I of the Indian Stamp Act, settlement deed can be executed only in favour of the family members and settlement in favour of the third parties is statutorily barred and is non-est in law. The learned Judge erred in directing the petitioner to pay the Court fee under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, which is contrary to the check slip issued by the Court fee examiner. No opportunity was given to the petitioner to put forth his case. The injunction sought for by the petitioner in the reliefs (F) and (G) are independent reliefs and are not consequential reliefs. In any event, the petitioner has given up the relief of injunction. In view of the same, the Court fee payable is only under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act. In support of his contentions, he relied on the following judgments, wherein it has been held as follows:

(i) ***2005 SCC Online Mad 147 (T.S.Sridharan and another v. M.F.Simon and another)***

"19. In the case on hand, a suit for declaration of administration of the society has been sought for by the plaintiffs and for consequential relief that the defendants have no right to interfere with the same. The trial Court has found that the said case falls within Section 25 (d) of the Tamil Nadu Court Fee and Suit Valuations Act, 1955. The plaintiffs are also in possession of the property or certain portion of the property. It is not in dispute that the property, which is the subject matter of the suit belonged only to the society, but not belonged to either of the parties. Hence, the right claimed in the plaint is an intangible one, relating to administration of the property. Once in a suit, a prayer for declaration or any other consequential relief is sought for in respect of intangible right, it will be governed by clause (d) and it does not attract clause (a) or (b) or (c) of Section 25."

(ii) ***1994-1-L.W.474 (Rangoon Chidambara Reddiar Chatram Trust, Tiruvanaikoil, Tiruchi, represented by Trustee S.Yasodai v. State of Tamil Nadu, by the Collector of Tiruchirappalli)***

"4. S.25(b) relates to the prayer for a declaration and for consequential injunction with reference to any immovable property. In this case there is no prayer for the relief of declaration and consequential injunction with reference to any immovable property. What is prayed for is, as foreseen, declaration that the assessment proceedings are void, illegal, irregular, ultra-vires etc., and a consequential relief that the defendants be restrained from collecting the amount as tax assessed by sale of the plaintiff's property.

5. While so praying, the plaintiff has also stated that the defendants shall be prevented from interfering with her peaceful possession and enjoyment of the properties, by bringing the property to sale. Therefore in essence the relief prayed for by the plaintiff is to declare that the assessment proceedings and the order passed therein are void and to restrain the defendants from enforcing it. Therefore, clearly the relief sought for cannot be said to be with reference to any immovable property as mentioned in S.25(b)."

(iii) ***Order dated 19.11.2010 made in C.R.P.(NPD)No.4002 of 2010***

"7. On a careful perusal of the ingredients of Section 34 of the Specific Relief Act, any person who wants to declare his status as to any property, can file the suit for declaration of his status or right as per the said provisions and he need not ask for any further reliefs. However, the proviso to the said section would go to show that such declaration shall not be issued in the event, the Court finds that the plaintiff is able to seek further relief than a mere declaration of title and omitted so.

8. At the stage of presentation of the plaint, the Court has to go through the averments of the plaint and to come to a conclusion about the nature of relief sought for by the petitioner/plaintiff. The necessity of asking for further relief than mere declaration of status or right, can be decided only after issuing summons to defendants and after going through the contentions of the defendants in answer to the claim of the petitioner/plaintiff. At the stage of presentation of the plaint itself, the Court cannot decide the right of the petitioner/plaintiff and direct her to go for further reliefs also along with the declaration of his status or right in the suit property. On the face of the allegations made in the plaint, it is found to be in order for a suit for the relief of status declaration under section 34 of the Specific Relief Act. Therefore, it has to entertain the suit and to value the suit only under section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act. In

case, the suit is subsequently attracted under the proviso to section 34, it has to be converted into that of a suit for declaration and for consequential reliefs and at the said contingency only it will be covered under section 25(b) of the Tamil Nadu Court Fee and Suit valuation Act."

(iv) ***2012 SCC Online Mad 3730 (J.Thomas Joseph Prakash and others v. Thara and others)***

"6. It has been vividly stated in the above said decisions that on three grounds, the payment of Court-fee and the suit valuation can questioned. Firstly, at the instance of the Defendant, to agitate the valuation in his written statement and on the evidence adduced by him, the Court has to decide the matter. Secondly, the Court-fee examiner is to check the correctness of the payment of Court fee under proper provisions. Thirdly, the order of the Court regarding Court fee can be considered by Court of Appeal or Revisional Court when the matter is being carried on Appeal or Revision.

7. In view of the above, it is clear that the Court which admitted the suit is impliedly precluded from reviewing its decision subsequently.

8. He has also relied on another decision of this Court reported in the case of T.S.Sridharan v.

M.F.Simon, (LE-Civil) 14874 Mad: 2005(2) CTC 92 : AIR 2005 Mad 291.

9. In this case, the learned Judge has elaborately dealt with the fact citing various Authorities. Following the decision of the Supreme Court in Lakshmi Ammal v. K.M.Madhavakrishnan, AIR 1978 SC 1607, the learned Judge has held that the right claimed by the plaintiffs in the plaint is an intangible one, relating to administration of the property and once in a suit, the prayer for declaration or any other consequential relief, is sought for in respect of intangible right, it will be governed by clause (d) and it does not attract clause (a) or (b) of Section 25.

10.In Lakshmi Ammal v. K.M.Madhavakrishnan, AIR 1978 SC 1607, the operative portion of the judgment is as follows:

"2. It is unfortunate that long years have been spent by the Courts below on a combat between two parties on the question of Court-fee, leaving the real issues to be fought between them to come up leisurely. Two things have to be made clear. Courts should be anxious to grapple with the real issues and not spend the energies on peripheral ones. Secondly, Court-fee, if it seriously restricts the rights of a person to seek his remedies in Courts of justice, should be strictly construed.

After all access to justice is the basis of the legal system. In that view, where there is a doubt, reasonable of course, the benefit must go to him who says that the lesser Court-fee alone be paid. In the above case, the Honourable Supreme Court held that access to justice is the basis of the legal system. Where there is a doubt, if it is reasonable, the benefit must go to him who says that the lesser Court-fee alone be paid." "

9. Learned counsel appearing for the respondents 3 and 4 in support of his contentions, relied on the order dated 24.02.1967 made in C.R.P.No.1955 of 1966.

"4. Regarding the second contention of the learned Counsel for the petitioner that Section 25(d) of the Court-fees Act has no application and that Section 25(a) or (b) is only attracted in the instant case, also appears to be untenable. It has been repeatedly held by our Court that Sections 25(a) or 25(b) dealt with rights in immovable property or tangible rights where substantial questions as to the title of immovable property is involved. Section 25(d) on the other hand would apply where no investigation is necessary regarding the title of the property but the adjudication relates to intangible rights concerning such property.

> 5. In Dr. Arthur Nathenial and Anr. v. Dr. R.P. Nathenial (1962) 2 M.L.J. 420, the scope of Section 25(d) has been well laid down by Mr. S. Ramachandra Iyer, the learned Chief Justice. The following sentence in the said judgment is apposite:
>
> "It is evident that Section 25(a) of the Court-fees Act cannot apply to the case as it relates to tangible
> property." "

10. Heard the learned counsel for the petitioner as well as the respondents 3 & 4 and perused the materials on record.

11. The check slip dated 11.02.2008 issued by the Court fee examiner is with regard to the relief (E) only and the said relief reads as follows:

> "(E) To declare that the settlement deed dated 05.11.2007 executed by the 1st defendant to the plaintiff is valid and genuine and binding on the defendants. The plaintiff values the relief under Section 25(d) as Rs.1,000/- and Court fee paid is Rs.75.50. "

12. By seeking the above relief, the petitioner is seeking title over the property mentioned in the settlement deed executed by the first respondent. If the said relief is granted, the petitioner gets the declaration of title and he is a party to the deed. Therefore, the said relief has to be valued at the market value and the Court fee should be paid under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act. In view of the fact that the petitioner is seeking declaration of title framing the relief as declaration of settlement deed dated 05.11.2007 as valid and binding on the respondents, the learned Judge properly appreciating the averments in the relief (E) held that the petitioner has to value the property as per the market value, pay the Court fee as per Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act and the Court fee paid under Section 25(d) of the Act is not correct.

13. A reading of the check slip shows that the Court fee Examiner by clerical mistake, has mentioned in the operative portion that the petitioner has to pay the Court fee as per Section 25(d) of the Act in respect of the relief (E). The learned Judge considering the check slip as a whole has corrected the clerical error in the check slip. In the circumstances, the judgments relied

on by the learned counsel for the petitioner are not applicable to the facts of the present case. The civil revision petition is devoid of merits.

14. At this juncture, the learned counsel for the petitioner seeks four weeks time to ascertain the value of the property on the date of filing of the suit and pay the Court fee.

15. In the result, the Civil Revision Petition is dismissed. The petitioner is granted four weeks time to ascertain the value of the property on the date of filing of the suit and pay the Court fee. No costs. Consequently, connected Miscellaneous Petition is closed.

31.07.2017

Index : Yes/No
Speaking/Non-Speaking Order
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To

V Additional District Judge, Coimbatore.

V.M.VELUMANI, J.

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