



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2017

CORAM

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (PD) (MD) No.387 of 2017

1. M/s.Euro Construction through its
Proprietor Paul Chellakumar,
D.No.20, 2nd Street,
Perumalpuram,
Tirunelveli 627 007.
 - 2) Paul Chellakumar
 - 3) Ajay Kumar
- ... Petitioners

Vs.

- 1.Murugan,
 - 2.Chinnadurai
 - 3.Tamilnadu Mercantile Bank Ltd.,
through its Branch Manager,
Palayamkottai Branch,
St.John's College Campus,
Palayamkottai,
Tirunelveli 627 002.
 - 4.Gnanasakthi
 - 5.Ajay Sudarson
 - 6.Subacellin
 - 7.James Jeffery
- ... Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and direct to number the unnumbered OS.SR.No.7522 of 2016 on the file of Principal Sub Judge, Tirunelveli dated 21/11/2016 and allow this Civil Revision Petition with costs.

For Petitioner :Mr.T.S.R.Venkataramana

O R D E R

The Civil Revision Petition has been filed against the order of the Principal Sub Judge, Tirunelveli, dated 20.11.2016 in unnumbered S.R.



2. The petitioners filed a suit in O.S.S.R.No.7522 of 2016 against the respondents claiming for declarations, permanent injunction, for accounts and for mesne profit. In the prayer, in para 16 (a), the petitioners sought for the relief of declaration to declare the sale deed, dated 09.10.2015 bearing Document No.755/2015 registered in the office of SRO Palayamkottai executed by the first respondent in favour of the second respondent and financed by the third respondent, as null and void under Section 31 of the Specific Relief Act and for consequential relief of possession of S1 apartment, the second schedule property and part of the first schedule property and to hand over the same to the petitioner.

3. The learned Judge returned the plaint on the ground that the petitioner has not properly valued the relief of possession and on such proper valuation, the Court has no pecuniary jurisdiction and directed the petitioner to properly value and present the plaint in proper Court within one month. Against the said order of return, the present civil revision petition is filed.

4. The learned counsel for the petitioners reiterated the averments in the grounds raised in the plaint and submitted that the learned Judge has not properly appreciated Section 25 (a), (b), (d) of Tamil Nadu Court Fees and Suit Valuation Act and the order of learned Judge directing the petitioners to value the suit (a) prayer for recovery of possession under Section 30 of the Court Fee Act is not correct. The learned Judge having held that the petitioner has properly valued the relief of declaration and erred in holding that the petitioner has not properly valued the suit in respect of relief of possession. The learned Judge failed to properly appreciate the ratio laid down in the judgment relied on by the learned counsel for the petitioner. The relief of possession is a consequential relief for declaration as contemplated under Section 25 (d) of Tamil Nadu Court Fees and Suit Valuation Act and therefore, the Court fee paid is proper.

5. The learned counsel for the petitioners relied on a judgment in J.Vasanthi and others vs. N.Ramani



Kanthammal and others reported in (2016) 4 MLJ 375, in which, it is stated as follows:

"12. A Reading of the plaint shows that the plaintiff has denied the execution of sale deeds. In an earlier occasion, this Court on a similar issue has held that Court fee payable is only under Section 25(d) and not under Section 40 of the Act. The Judgments relied on by the learned counsel for the respondent are squarely applicable to the facts of the present case.

13. Further the valuation of the property and Court Fee are not purely question of law. It is a mixed question of fact and law. This can be decided only, based on the evidence let in by the parties. Till that time, the averments made in the plaint has to be taken as correct, with regard to the valuation and payment of Court Fee. In the circumstances, the Court below has rightly dismissed the application. This Court does not find any irregularity or illegality in the said order, warranting interference by this court."

6. The learned counsel for the petitioners also relied on a judgment in Selvakumar Rice and Oil Mills, Slem by its Partner R.S.Gunasekaran vs. Tamil Nadu Electricity Board reported in 1986(3) CTCOL 293, wherein, it has been held as follows:

"I have heard learned counsel for both sides. This suit is for a declaratory relief not covered by section 25(a), (b) or (c), of the Act. The consequential relief of injunction is not with reference to immovable property and hence Section 25(b) will not apply. No relief of declaration is sought for in respect of title to any immovable property. Only the mode of classification of the plaintiff's service for purposes of levying current consumption charges is sought to be declared as ultra vires. The relief claimed in this case clearly falls within the ambit of section 25(d) of the Court Fees Act, which clearly lays down that in cases falling under this provision it is open to the plaintiff to give any notional valuation subject



to minimum of Rs. 400 prescribed therein. When the Act itself permits adoption of a notional value, irrespective of the fact whether the relief is capable of valuation or not, it cannot be said that the plaintiff has camouflaged the real relief and has paid a lesser court fee. Hence, the decision reported in Mahaveerchand v. Town Panchayat, Sriperumbudur, rep. By its Executive Officer, 1984 2 Mad LJ 45, and relied on by the lower Court will not apply to this case.

7. Heard the learned counsel for the petitioner.

8. A reading of the first prayer of declaration in paragraph 16 (a) of the plaint shows that the petitioner is seeking declaration that the sale deed, dated 09.10.2015, bearing Document No.755 of 2015 as null and void and for possession of S1 apartment mentioned in the second schedule of the suit property. The petitioner has valued the suit relief under Section 25(d) of Tamil Nadu Court Fees and Suit Valuation Act. When the petitioner is seeking recovery of immovable property, he has to pay the Court fee on the market value of the property or Rs.1,000/- whichever is higher. Section 25(a) and (b) are not applicable to the relief sought for by the petitioner. There is no other section dealing with payment of Court Fee for possession of immovable property, after cancellation of sale deed and in the case, Section 30 of the Tamil Nadu Court Fees and Suit Valuation Act comes into play. As per Section 30 of the Act, if Court fees payable in respect of possession of immovable property is not otherwise provided, the Court fee has to be paid on the market value of the property or Rs.1,000/-, whichever is higher. The judgment relied on by the learned counsel for the petitioner do not advance the case of the petitioner and are not applicable to the facts of the present case. When the possession is sought for in respect of immovable property, Court fee is payable either under Section 25 (a) or under Section 30 of Tamil Nadu Court Fees and Suit Valuation Act. The contention of the petitioner that the nature of the declaration sought for and consequential possession claimed by the petitioner, Court fee payable is only under Section 25(d), has no



force and is not acceptable. The learned Judge has considered all these aspects in proper perspective and by an elaborate order by giving consent and valid reasons, returned the plaint to value the suit properly and present the same in proper Court, having pecuniary jurisdiction. The learned Judge had rightly held that the recovery of possession of the immovable property is not fall under Section 25 (d) and the Court below has rightly held that it has to be valued only as per Section 30 of Tamil Nadu Court Fees and Suit Valuation Act. In the said return, there is no irregularity or illegality warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-
Assitant Registrar(C)

/True copy/

Sub Assistant Registrar

To

1. The Principal Sub Judge,
Tirunelveli.

+1cc.to.M/s.T.S.R.VENKATRAMANA, Advocate,in SR No.10892

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