



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2017
(Reserved on 10.11.2017)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) No.1125 of 2016
and
CMP (MD) No.5625 of 2016

Kuraisha Beevi

... Petitioner

vs.

Mymoonath

... Respondent

Petition filed under Article 227 of the Constitution of India, to direct the learned District Munsif cum Judicial Magistrate, Eraniel, to number the plaint filed as O.S.SR.No.761 of 2016 by the petitioner and may direct to proceed the same in accordance with law.

For Petitioner : Mr.K.P.Narayanakumar
For Respondent : No appearance

ORDER

This revision petition has been filed for a direction to the learned District Munsif cum Judicial Magistrate, Eraniel, to number the plaint filed as O.S.SR.No.761 of 2016 and to direct the learned District Munsif to proceed the same in accordance with law.

2.Brief facts of the case is that the revision petitioner/plaintiff and her husband were residing in a house bearing Door No.C.M.C.No.6/36E (Old No.6-36B) in Survey No.C2-1/7A having an extent of 2 cents. The said property belongs to the plaintiff and she did not have children. The respondent/defendant who is none other than her sister's daughter was in good relationship with the plaintiff. The respondent taking advantage of the relationship demanded the revision petitioner to settle the property in her favour with the life interest vested with the plaintiff and her husband till their death. So saying, the plaintiff who is an illiterate woman, was taken to the Sub Registrar office, Colachel, for executing settlement deed, but under the guise of settlement deed, a fraudulent sale deed was executed by the defendant and at present, the defendant is forcing



the plaintiff to evict from the suit property as she was intending to alienate the property. Hence, the plaintiff has filed the suit for the following reliefs:-

'(a) A decree for declaration that the sale deed No.804/2013 dated 17.04.2013 of Colachel Sub-Registry in favour of the defendant, which is created by fraud, breach of trust. It is sham, illegal and void abinitio, not binding on the plaintiff.

(b) A decree for declaration that the unregistered acceptance deed dated 17.04.2013 in favour of the plaintiff and her husband, which is created by fraud, breach of trust. It is sham, illegal and void abinitio, not binding on the plaintiff.

(c) A decree for permanent injunction restraining the defendant and her men, agents and her servants from disturbing the plaintiff's peaceful possession and enjoyment over the plaint schedule property by way of alienation or evicting the plaintiff and her husband forcefully from the plaint schedule property or any other manner.'

3. Though the suit was filed on 13.04.2016, the same was returned on two grounds:-

(i) The payment of court fee under Section 25(d) of the Tamilnadu Court Fee and Suit Valuation Act was questioned by mentioning that Section 40 of the Tamilnadu Court Fee and Suit Valuation Act will be attracted.

(ii) The value of the property is mentioned as Rs.8,86,500/- and therefore, the Munsif Court questioned the pecuniary jurisdiction and the query was answered and it was re-submitted.

4. Learned counsel for the petitioner would contend that in the present case, the sale of plaint schedule property does not create any charge over the property and hence, court fee has to be paid as per Section 25(d) of the Tamilnadu Court Fee and Suit Valuation Act and according to him, Section 40 of the Tamilnadu Court Fee and Suit Valuation Act does not govern and apply to the present case as the suit is for declaration. According to the learned counsel, since the sale deed has been executed in a fraudulent manner, sale is invalid and not binding on the plaintiff. Further, consideration mentioned in the sale deed has not passed to the plaintiff and therefore, the Court below has got pecuniary jurisdiction to try the suit. In support of his contention, the learned counsel relied on a judgment of this Court in **G.Seethadevi vs. R.Govindaraj** reported in **2011 (6) MLJ 399**, wherein at paragraph 7, it has been held as follows:-



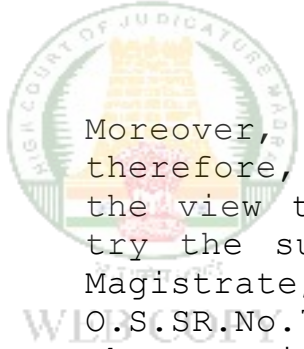
''7. In the case on hand, it is to be seen that the case of the petitioner is that she has not executed Power of Attorney in favour of one Bhaskaran so as to execute the sale deed in favour of third parties. That apart, it is contended that the said Bhaskaran is unknown to the petitioner and he is an employee of the first respondent in his petrol bunk. When such statement has been made in the plaint, the court fee that has to be payable on the relief that has been sought for by the petitioner viz., for declaration that the sale deed dated 25.04.2008 is null and void and not binding on the petitioner, under section 25(d) of the Act and not under Section 40 of the Act. The petitioner has not admitted the execution of Power of Attorney. The court below is not justified in directing the petitioner to pay the court fee under section 40 of the Act. In the case relied on by the respondents, the Power of Attorney was admitted by the respondents/plaintiffs therein and hence, this Court in the said decision has directed the party to pay the Court Fee under section 40 of the Act.''

5. Learned counsel for the petitioner has also relied on the judgments in **Tmt. Kasthuri Radhakrishnan and 2 others vs. A. Radhakrishnan and 4 others** reported in **1995 (2) LW 880** and **Balaji Distilliers Pvt. Ltd., vs. M/s. Swagat Film Distributors** reported in **1996(1) LW 158**, reiterating the above contention. Though the case was re-submitted, the plaint has been returned on various dates and therefore, the petitioner has come forward with the present revision petition.

6. Despite service of notice, the respondent has not chosen to appear either in person or through pleader. Hence, this Court is constrained to pass orders on the basis of available records.

7. It is the contention of the petitioner that taking advantage of her illiteracy, instead of executing a settlement deed with life interest, sale deed has been created and upto 2016, she has not been disturbed. But, in 2016, to alienate the property, the defendant tried to evict the plaintiff and her husband forcibly from the plaint schedule property. According to the plaintiff, no consideration passed to her according to the sale deed and therefore as per the aforesaid judgments, court fee has been paid under Section 25(d) of the Tamilnadu Court Fee and Suit Valuation Act.

8. In the present case, as the sale of plaint schedule property does not create any charge over the property, the court fee under Section 40 does not govern and apply to the suit which has been filed for the relief of declaration as the execution of sale deed is fraudulent and such sale will not bind the plaintiff.



Moreover, consideration has not passed to the plaintiff and therefore, in the light of the above decisions, this Court is of the view that the Court below has got pecuniary jurisdiction to try the suit. Hence, the learned District Munsif cum Judicial Magistrate, Eraniel, is directed to number the plaint filed in O.S.SR.No.761 of 2016 by the revision petitioner and proceed with the same in accordance with law.

With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif cum Judicial Magistrate,
Eraniel.
2. The Section Officer,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.P.Narayanakumar, Advocate Sr.No.93972

BALA

VB/SV/MMS/SAR4/09/01/2018/4P/4C

order made in
CRP (NPD) (MD) No.1125 of 2016
19.12.2017