

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2018

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.4109 of 2013

and

M.P.No.1 of 2013

1.P.Geetha

2.K.Govindarajulu

3.G.Selvaraj

.. Petitioners

..Vs..

1.A.Murugesan

2.Chitra

3.M.Santhanalakshmi

4.Kayalvizhi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to reject the plaint on the ground that the respondents have not paid the correct court fee as per Sec.40 of Tamil Nadu Court Fee & Suit valuation Act, 1955 in the plaint in the IA.No.712 of 2010 in O.S.No.191 of 2010 by dismissing the same in the order dated 18.9.2013 on the file of Sub-Court, Attur is to be set aside by rejecting the plaint.

For Petitioners

: Mr.S.R.Balasubramaniam

For Respondents

: Mr.G.Arul Murugan

ORDER

The instant revision has been filed by the Petitioners challenging the dismissal of application I.A.No.712 of 2010 filed by the petitioners under Order VII Rule 11 of Code of Civil Procedure to reject the plaint filed by the respondents in O.S.No.191 of 2010. O.S.No.191 of 2010 was filed by the respondents against the petitioners for a declaration that the Sale Deed dated 07.10.2010 executed in favour of the petitioners is null and void and they have also sought for a permanent injunction not to disturb their possession.

Brief facts leading to the filing of the revision:

2. The case of the respondents in the suit O.S.No.191 of 2010 is that the Sale Deed dated 07.10.2010 registered as Document No.5302 of 2010 in the Sub Registrar's Office at Attur was executed by the respondents in favour of the petitioners 1 and 2 under coercion, undue influence and misrepresentation. According to the respondents, no consideration was received for sale of the property to the petitioners 1 and 2. Based on these averments, the respondents have sought for declaration that the sale deed dated 07.10.2010 registered as document

No.5302 of 2010 is null and void and have also sought for permanent injunction restraining the petitioners from interfering with their peaceful possession and enjoyment of the suit schedule property. After receipt of suit summons, the petitioners who are the defendants in the suit have filed an application I.A.No.712 of 2010 in O.S.No.191 of 2010 under Order VII Rule 11 of Code of Civil Procedure seeking for rejection of the plaint filed in O.S.No.191 of 2010. The respondents have also filed counter before the Trial Court in I.A.No.712 of 2010 filed by the petitioners. The Trial Court by its order dated 18.09.2013 in I.A.No.712 of 2010 dismissed the application filed by the petitioners under Order VII Rule 11 of Code of Civil Procedure.

3. Aggrieved by the dismissal of I.A.No.712 of 2010, the instant revision has been filed under Article 227 of the Constitution of India.

Submissions of the learned Counsels:

4. According to the learned counsel for the Petitioners, the suit filed by the respondents is barred by law, since the Sale Deed executed by the respondents in favour of the petitioners 1 and 2 is a registered

document. The learned counsel for the Petitioners referred to Section 17 of the Registration Act and submitted that only in the presence of Sub Registrar, the document was executed and therefore, there is no question of coercion or undue influence or misrepresentation, as averred in the plaint.

5. The learned counsel further referred to Sections 91, 92 and 114 of the Indian Evidence Act and submitted that the Sale Deed, being a registered document, no amount of oral evidence will enable the respondents to disprove the said registered document. Relying on these submissions, the learned counsel for the Petitioners would submit that the suit is barred by law and hence, the Trial Court ought to have rejected the plaint filed in O.S.No.191 of 2010.

6. Per contra, the learned counsel for the respondents would submit that the Trial Court has rightly rejected the application I.A.No.712 of 2010 filed by the petitioners under Order VII Rule 11 of Code of Civil Procedure, in view of the fact that the respondents in their plaint have categorically stated that the sale deed executed in favour of the petitioners 1 and 2 was executed under coercion, undue influence

and misrepresentation. They have also stated that no consideration was received for the execution of the said sale deed in favour of the petitioners 1 and 2.

Discussion:

7. A plaint can be rejected under order VII rule 11 of Code of Civil Procedure only in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

[(e) where it is not filed in duplicate;

[(f) where the plaintiff fails to comply with the provisions of rule:9]].

8. Even though, in the grounds for revision, the petitioners have canvassed under valuation of the suit as a ground for rejection of plaint,

the learned counsel for the petitioners has not made his submissions on that ground but has submitted that the suit is barred by law in view of Sections 91, 92 and 114 of the Indian Evidence Act read with Section 17 of the Indian Registration Act. Sections 91, 92 and 114 of the Indian Evidence Act reads as follows:

“91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document. -- When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

92. Exclusion of evidence of oral agreement. -- When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as

between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). -- Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1[want or failure] of consideration, or mistake in fact or law.

Proviso (2). --The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). --The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). --The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant

or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). -- Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). -- Any fact may be proved which shows in what manner the language of a document is related to existing facts.

114. Court may presume existence of certain facts.

-- The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

9.The respondents have filed the suit O.S.No.191 of 2010 against the petitioners for a declaration that the sale deed dated 07.10.2010 registered as document no.5302 of 2010 in the Sub-Registrar's Office,

Attur in favour of the petitioners is null and void as it was executed under coercion, undue influence and misrepresentation and they have also sought for a permanent injunction restraining the petitioners from interfering with their peaceful possession and enjoyment of the suit schedule property. The respondents in their plaint have categorically stated that they have not received any consideration for the execution of the sale deed. It is an admitted case of the petitioners that there are two agreements for sale. One is a registered one and another is an unregistered one. The registered sale agreement dated 02.12.2009 was for a sum of Rs.1,50,000/- and the unregistered sale agreement dated 03.12.2009 was for a sum of Rs.10,75,000/-. The registered sale deed executed by the respondents in favour of the petitioners 1 and 2 which is the subject matter of challenge in the suit is dated 07.10.2010. The sale consideration mentioned in the registered sale agreement dated 02.12.2009, unregistered sale agreement dated 03.12.2009 and the registered sale deed dated 07.10.2010 varies which creates suspicion. The suspicion can be removed by the petitioners only after letting in oral and documentary evidence to disprove the claim of the respondents in the suit O.S.No.191 of 2010.

10. Sections 91, 92 and 114 of the Indian Evidence Act relied upon by the learned counsel for the petitioners to support his submissions that the suit filed by the respondents is barred by law, will not apply to the facts of the instant case. In the suit, the case of the respondents is that only under coercion, undue influence and misrepresentation, the alleged sale deed was executed in favour of the petitioners. In the plaint, the respondents have also denied the receipt of the sale consideration from the petitioners. Sections 91, 92 and 114 of the Indian Evidence Act will get attracted only when the sale deed which is the subject matter of challenge in O.S.No.191 of 2010 is an undisputed document. In the case on hand, the respondents in unequivocal terms in the plaint have stated that the sale deed dated 07.10.2010 is a sham document and was executed under coercion, undue influence and misrepresentation.

11. Sections 91 and 92 of the Indian Evidence Act apply only when the document on the face of it contains or appears to contain all the terms of the contract. Section 91 is concerned solely with the mode of proof of a document with limitation imposed by Section 92 relates only

to the parties of the document. After the document has been produced to prove its terms under Section 91, provisions of Section 92 come into operation for the purpose of excluding evidence of any oral evidence or statement for the purpose of contradicting, varying, adding or subtracting from its terms. Sections 91 and 92 in effect supplement each other. Section 91 would be inoperative without the aid of Section 92 and similarly Section 92 would be inoperative without the aid of Section 91. Both these provisions are based on “best evidence rule”. But, in the case on hand, the respondents in their plaint in O.S.No.191 of 2010 have categorically stated that the alleged sale deed was executed under coercion, undue influence and misrepresentation and no sale consideration was received by them. The contents of the sale deed are disputed by the respondents in the plaint filed by them in O.S.No.191 of 2010. Section 92 of the Evidence Act may get attracted only when the contents of the sale deed is undisputed. The Court cannot also presume the genuineness of the sale deed just because it is a registered document and its genuineness can be tested only after trial. The proviso (1) of Section 92 of the Indian Evidence Act also permits a party to prove any fact which would invalidate any document, or which would entitle any

person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, (want or failure) of consideration or mistake in fact or law. Therefore, the suit which challenges the execution of a registered Sale Deed on the ground of coercion, undue influence and misrepresentation is maintainable. The merits of the suit can be tested only after trial and not at the preliminary stage itself.

12. In the instant case, it has been the stand of the respondents in their plaint that the alleged sale deed was executed under coercion, undue influence and misrepresentation and is sham document. The proviso (1) of Section 92 of the Indian Evidence Act also comes to the aid of the respondents. Only after the oral and documentary evidence is let in by both the parties, the dispute can be effectively adjudicated.

13. It is settled law that the Court will have to look into the plaint averments alone while deciding an application under Order VII Rule 11 of Code of Civil Procedure. In the case on hand, the respondents have categorically stated in the plaint that the Sale Deed executed in favour

of the petitioners 1 and 2 was executed by them only under coercion, undue influence and misrepresentation and they have also stated that they have not received any consideration. Therefore, before trial, the plaint cannot be thrown out. The Trial Court has rightly rejected the application filed by the petitioners for rejection of plaint under Order VII Rule 11 of Code of Civil Procedure.

14. Further in the instant revision, the petitioners have raised a ground that the suit has to be rejected for under valuation but the learned counsel for the petitioners did not make any submissions on that issue but restricted his submissions only to other grounds as discussed supra. It can therefore be inferred that the suit was properly valued.

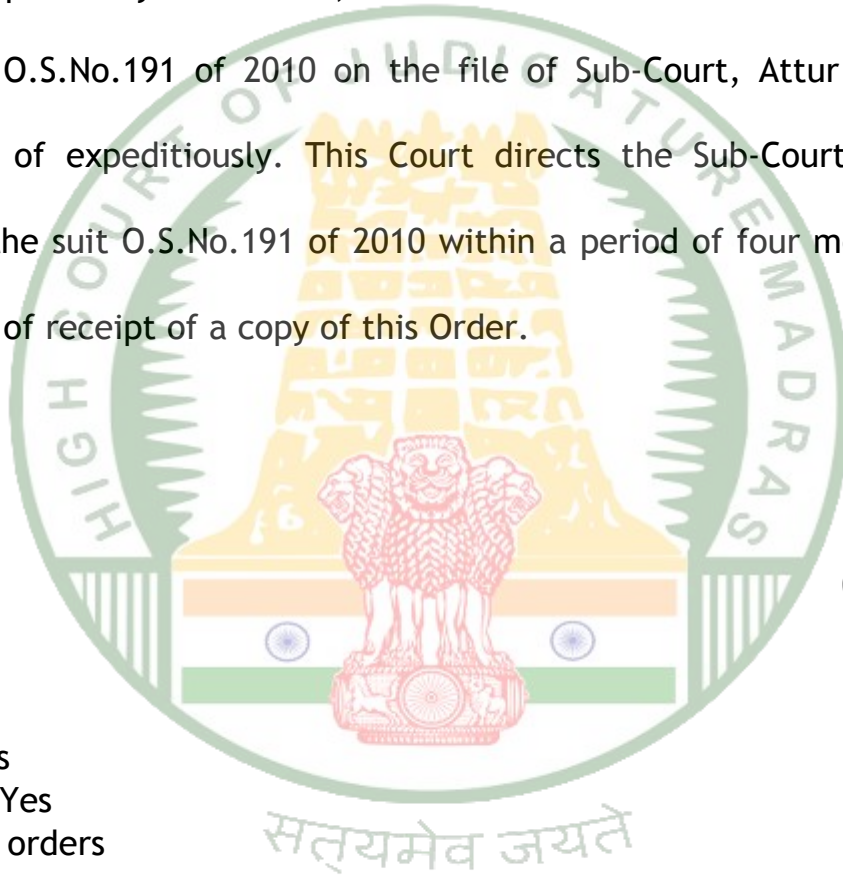
15. In the light of the above discussion, this Court does not find any merit in the instant revision. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

16. It is brought to the notice of this Court by both the counsels that the pleadings in the suit have already been completed and issues

ABDUL QUDDHOSE, J.

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have been framed by the trial Court and the suit is ripe for trial. Due to the long pendency of the suit, this Court is of the considered view that the suit O.S.No.191 of 2010 on the file of Sub-Court, Attur has to be disposed of expeditiously. This Court directs the Sub-Court, Attur to dispose the suit O.S.No.191 of 2010 within a period of four months from the date of receipt of a copy of this Order.



09.11.2018

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Index:Yes
Internet:Yes
Speaking orders

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To
The Sub-Court,
Attur

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