

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD)No.4077 of 2017
and C.M.P.No.19117 of 2017

1.Balaraman
2.Mariammal

.. Petitioners

Vs.

1.Lakshmi
2.Tamilarasi

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and Decretal order dated 11.08.2017 made in I.A.No.694 of 2012 in O.S.No.63 of 2008 on the file of the Principal Sub Court, Puducherry.

For Petitioners : Mr.R.Ganesan for Mr.R.Bakyaraj
For Respondents : Mr.T.S.Baskaran

WEB COPY
ORDER

This Civil Revision Petition has been filed to set aside the order and decretal order dated 11.08.2017 made in I.A.No.694 of 2012 in O.S.No.63 of 2008.

2. The defendants in O.S.No.63 of 2008 on the file of the Principal Sub Court, Puducherry, are the revision petitioners herein.

3. According to the petitioners, the respondents herein had filed a suit in O.S.No.63 of 2008 seeking declaration and permanent injunction restraining the defendants/revision petitioners herein from interfering with the peaceful possession and enjoyment of the suit property. In the aforesaid suit, the petitioners had filed an application in I.A.No.694 of 2012 to reject the plaint. After the elaborate arguments, the Trial Court dismissed the said application. Aggrieved by the same, the petitioners have filed the present civil revision petition before this Court.

4. The learned counsel for the petitioners would contend that the relief sought for in the suit is to declare the sale deed dated 23.07.2007 as null and void. Whereas, the first prayer in the plaint ought to have been valued under Section 40(1) of the Puducherry Court Fees and Suit Valuation Act, 1972 and not under Section 25(d) of the Puducherry Court Fees and Suits Valuation Act. Therefore, the revision petitioners filed the written statement and also raised the main plea that the suit has been under valued and therefore, the proper Court fees not paid and only deficit court fee is affixed. Therefore, the

petitioners have constrained to file petition under Order VII Rule 11 of C.P.C. to reject the plaint. Though the trial court accepted the view taken by the revision petitioners that the suit ought to have been valued under Section 40(1) of the Puducherry Court Fees and Suits Valuation Act, the trial Court has failed to consider the fact of the case and dismissed the application.

5. The learned counsel for the respondents would contend that the suit itself is attacking the particular document, and the Court fee has been paid under Section 40 (1) of the Puducherry Court Fees and Suit Valuation Act, and therefore there is no error. Though it was wrongly mentioned as Section 25(d) of the Puducherry Court Fees and Suits Valuation Act, that itself will not give any right to the revision petitioners, to agitate the matter. Hence, he prays for dismissal of this Civil Revision Petition.

6. I have heard the submission made by the learned counsel for both sides and perused the materials available on record.

7. It is not in dispute that the respondents have filed the suit against the revision petitioners seeking declaration that the sale deed dated 23.07.2007 is vitiated by fraud and null and void and permanent injunction in O.S.No.211 of

2014 and it is also not in dispute that the Court fee was paid for the value mentioned in the sale deed, that there is no dispute that suit claim was valued under Section 40 of the Pondicherry Court Fee and Suit valuation Act but not under Section 25(d) of the Act. At the same time in para V of the plaint mistakenly the section is mentioned as 25(d) instead of Section 40 and mere wrong quoting of section will not vitiate the case.

8. However, the suit is of the year 2008 and also on a careful perusal of the pleadings, the trial court has not framed proper issue based on the disputed facts in the pleadings. Therefore, this Court is inclined to frame the following additional issue:

- i) Whether the trial Court has got pecuniary jurisdiction to try the case ?

9. Under the above said circumstances, the learned Principal Sub Judge, Puducherry, is directed to consider the additional issue and to dispose of the suit in O.S.No.63 of 2008 on merits and in accordance with law, without being influenced by any observation made in this petition.

10. With the above direction, the Civil Revision Petition is disposed of
No costs. Consequently, the connected miscellaneous petition is closed.

12.04.2018

Index:Yes/No

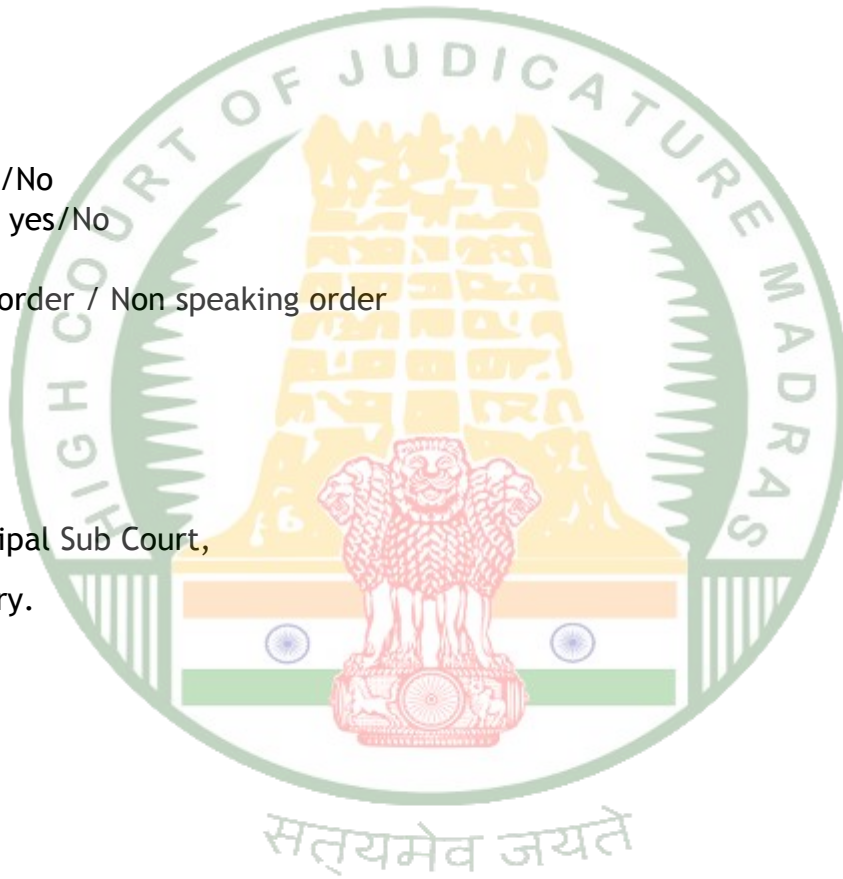
Internet : yes/No

Speaking order / Non speaking order

kkd

To

The Principal Sub Court,
Puducherry.



WEB COPY

P.VELMURUGAN,J.

kkd



C.R.P.(PD)No.4077 of 2017
and C.M.P.No.19117 of 2017

WEB COPY

12.04.2018