

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.01.2018
DELIVERED ON : 21.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Review Application No.8 of 2017

M/s.VME Properties (P) Ltd.,
represented by its Managing Director,
V.Manickam
No.364, Pillayar Koil Street,
Panneer Nagar,
Chennai - 600 037.

... Review Applicant/Revision Petitioner

vs.

1.G.Veerapathiran

2.G.Kalidas @ Kaliappan

... Respondents/Respondents

Review Application filed under Order XLVII Rule 1 r/w Section 114 of the Civil Procedure Code against the order of this Court passed in C.R.P.(PD) No.2912 of 2013 on 17.08.2016.

For Applicant : Mr.S.Ayyadurai, senior counsel
for Mr.V.B.Perumal Raj

For Respondents : Mr.R.Bharath Kumar

ORDER

This application seeks review of the order of this Court passed in C.R.P.(PD) No.2912 of 2013 on 17.08.2016.

2. Heard learned senior counsel for review applicant and learned counsel for respondents.

3. Learned senior counsel for review applicant has raised the following contentions:

- (i) Complaint may be rejected at any stage.
- (ii) It is the function of the Court to reject the complaint even without intervention of defendant.
- (iii) The suit ought to have been valued u/s.40 of Tamil Nadu Court Fee and Suit Valuation Act, 1955, based on the market value/the sale consideration mentioned in the sale deed which is sought to be set aside in view of the reliefs seeking recovery of possession; setting aside the sale deed and mandatory injunction to direct sub-registrar to delete the entry of registration etc.
- (iv) Complaint may be rejected on the ground of limitation if it is possible to conclude so from statement in the complaint. In the instant case, meaningful reading of averment made in para 6 of the complaint read with averments made in para's 2;

knowledge about denial of their title in respect of suit item 3 & 4 in 1983 itself when joint patta was issued to plaintiffs in respect of portion of land in S.No.171 other than the said suit items comprised in the same survey number.

(v) Plaint is liable to be rejected for want of mandatory requirement of production of certified copy of entry in patta passbook as postulated in Sec.15 of Patta Pass Book Act.

(vi) The suit is not maintainable when undervaluation thereof affects pecuniary jurisdiction of trial Court and on grounds of limitation; no cause of action, under valuation; illusory cause of action and abuse of process etc.

(vii) Plaint may be rejected in part.

It has been contended that the vital grounds seeking indulgence to review the order are abuse of process of law and non-maintainability of suit on the ground of non-joinder of necessary parties, not challenging earlier sale deeds of predecessors in title, specific plea urged on the valuation of suit on market value when recovery of possession and mandatory injunction against Sub-Registrar were asked for and undervaluation affecting pecuniary jurisdiction of trial Court have not been addressed.

4. While there can be no quarrel with the proposition that a plaint can be rejected at any stage and even without intervention of defendants, such is a procedure to be adopted in an appropriate case and this Court has found the present case not so appropriate. Contentions on valuation and lack of jurisdiction

ought not to be raised by way of review application, particularly, where this Court specifically has held the findings of Court below correct on such aspects. A specific finding has been made by this Court by reference to Section 14 of Patta Pass Book Act, 1986 and it is not open to review applicant to raise contentions of mandatory requirement of production of certified copy of Patta Pass Book as stipulated in Patta Pass Book Act when this Court has reasoned otherwise.

5. Limitation generally is a mixed question of law and fact. The underlying case of plaintiffs is that defendants have no right whatsoever in respect of the suit property since they claim title through persons who fraudulently have obtained pattas. Establishment of fraud would avoid all acts pursuant thereto and consequential thereof. Paragraph No.8 of the plaint reads as follows:

'8) The plaintiffs submit that the changes in revenue records came to their knowledge during 2007 when they obtained encumbrance certificate in respect of the said lands. Immediately on 15.10.2007, the plaintiffs made representation to the Collector of Kanchipuram District who forwarded the petition to the District Revenue Officer for passing orders after necessary enquiry. The plaintiffs further submit that the Tahsildar, Sriperumbudur Taluk, upon the orders of the Revenue Divisional Officer, Kancheepuram, made necessary enquiry and found the irregularity and recommended to cancel the patta standing in the name of persons who have no right on it and restore the name of plaintiffs. The plaintiffs submit that contrary to the findings given by the Tahsildar, Sriperumbudur Taluk, the Revenue Divisional Officer, Kanchipuram

forwarded the petition given by the plaintiffs with unnecessary observations to District Revenue Officer, Kanchipuram. The DRO dismissed the plaintiffs' petition on flimsy reasons and directing them to approach civil court. The plaintiffs filed writ petition under W.P.No.14972/2009 against the order passed by the DRO before the Hon'ble High Court, Madras. In the writ petition the Hon'ble High Court gave an observation to approach the civil court for their remedy and dismissed the writ petition.'

In paragraph No.2 of the counter in I.A.No.222 of 2010 in O.S.No.36 of 2010, plaintiffs/respondents have stated that *'However on coming to know about the above changes the plaintiffs had immediately contacted the concerned VAO and upon his guidance the plaintiffs preferred a complaint before the Collector who forwarded the same to the Thasildar, Sriperumbudur.'* In the plaint, it is informed that such knowledge was of the year 2007. Plaintiffs/respondents must be afforded an opportunity to prove their case.

6. Paragraph Nos.2 and 14 to 16 of the counter in I.A.No.222 of 2010 in O.S.No.36 of 2010 read as follows:

'2. It is admitted that the suit schedule properties belonged to the plaintiff's father and the same was reflecting in 1962 years 'A' register entries and subsequently the plaintiffs partitioned between the family members of the plaintiffs and the same were allotted to the share of the plaintiffs by virtue of a registered partition notice dated 4.6.1971 and they were paying kist regularly till 1981. However during the updating proceedings of revenue records in the

year 1983 and subsequently the said lands were sub-divided in favour of third parties and Patta was issued in their name. However on coming to know about the above changes the plaintiffs had immediately contacted the concerned VAO and upon his guidance the plaintiffs preferred a complaint before the Collector who forwarded the same to the Thasildar, Sriperumbudur. The Thasildar after conducting a detailed enquiry gave a full fledged report stating the full nature of the case and adduced the following:-

“ty;yk; m fpuhkg; g[y vz;/150/5. 150/8 kw;Wk; 171?y;
cs;s g[yd;fs; kDjhuh;fSf;F chpait vd tprhuiz mog;gilapy;
bjhpatUtjhy; ,jd; kPJ Mizfs; tH'f ghpe;Jiu bra;ag;gLfpwJ”.

The said report has been filed as document No.8 while filing the present suit.

14. Whereas it is true that the respondent/plaintiff has filed a suit against the petitioner/2nd defendant for declaration of title and to set aside the sale deeds under which the petitioner claims to have purchased the suit item Nos.3&4 and for recovery of possession. The petitioner/2nd defendant alleges that the suit cannot be valued under Section 25A of the TNCF and SV Act based on the kist value since the lands are classified as a industrial area and that a factory has been built up. However this respondent/plaintiff is not concerned whether a factory has been built up or not. The respondent/plaintiff submits that the suit land comprised is S.Nos.171/5 and 171/6 are still classified as “wet-lake Irrigation - Double Crop- Class I. Hence the suit can be very well valued under Section 25A of the TNCF & SV Act, and hence this Court has jurisdiction to try the suit.

15. Secondly the respondents/plaintiffs always challenged the

erroneous order of the DRO dated 20.04.2009. the respondents/plaintiffs also filed a writ petition in W.P.No.14972/2009 before the Hon'ble High Court and only upon the said Court's direction has filed the present suit.

16. The further allegation that the suit is wholly time barred one and barred my limitation in the light of the Patta Pass Book Act, 1986 under which UDR Scheme was introduced to the suit village and the owners were issued patta subsequently cannot be entertained since those things were done with some ulterior motive to defraud the respondents/plaintiffs as mentioned supra.'

7. In decision of this Court in **Radhakrishna Reddy and others v. G.Ayyavoo and others [2013 (6) CTC 314]**, it has been informed thus:

'10. It is seen from Order 7, Rule 11(d), C.P.C., where the Suit appears from the statement made in the *Plaint* to be barred by any law, the Suit can be rejected. Therefore, on the basis of the allegation made in the *Plaint*, if the Court comes to the conclusion that the Plaintiff cannot plead adverse possession then the Court can reject the *Plaint*. Admittedly, O.S.No.25 of 1968 was filed by the Defendants 1 to 5 before the Sub-Court, Chengalpattu for setting aside the Sale Deed dated 23.6.1965, in favour of the Plaintiff executed by them. They have also prayed for injunction and the Suit was partly decreed on 2.5.1972 and the Sale Deed, in favour of the Plaintiff was set aside and injunction prayer was negatived and the same was confirmed in the Appeal in A.S.No.65 of 1973, in the year 1977.'

8. Learned senior counsel for review applicant places reliance on the above extract to submit that in the counter filed in I.A.No.222 of 2010 in O.S.No.36 of 2010, an application moved by review applicant, plaintiffs/respondents had admitted to existence of factory buildings on the property and there from draws a conclusion that denial of respondents' title was to the knowledge of respondents even in 1983 and hence, the suit was barred by limitation.

9. Learned senior counsel has placed heavy reliance on decision in **Satheedevi v. Prasanna and another [2010 (5) SCC 622]**, particularly, paragraph Nos.38 and 39, which read thus:

'38. In view of our analysis of the relevant statutory provisions, it must be held that the judgments of the Division Bench of the Madras High Court and of the learned Single Judges in Venkata Narasimha Raju v. Chandrayya [AIR 1927 Mad 825 : (1927) 53 MLJ 267], Navaraja v. Kaliappa Gounder [(1967) 80 Mad LW 19 (SN)], Arunachalathammal v. Sudalaimuthu Pillai [(1968) 83 Mad LW 789] and Andalammal v. B.Kanniah [(1971) 2 MLJ 205] as also the judgment of the learned Single Judge of the Andhra Pradesh High Court in Allam Venkateswara Reddy v. Golla Venkatanarayana [AIR 1975 AP 122] lay down the correct law. In the first of these cases, the Division Bench of the Madras High Court rightly observed that when there is a special rule in the Act for valuing the property for the purpose of court fee, that method of valuation must be adopted in preference to any other method and, as mentioned above, Section 40 of the Act certainly contains a special rule for valuing the

property for the purpose of court fee and we do not see any reason why the expression “value of the property” used in Section 40(1) should be substituted with the expression “market value of the property”.

39. The judgment of the learned Single Judge of the Madras High Court in Balireddi v. Khatipulal Sab [AIR 1935 Mad 863 : ILR 59 Mad 240] , which was approved by the Full Bench of that Court in Kutumba Sastri v. Sundaramma [AIR 1939 Mad 462] turned primarily on the interpretation of Section 7(iv-A) of the Court Fees Act as amended by the Madras Act which refers to the value of the property simpliciter and the Court interpreted the same as market value. Neither the learned Single Judge nor the Full Bench were called upon to interpret a provision like Section 40 of the Act. Therefore, the ratio of those judgments cannot be relied upon for the purpose of interpreting Section 40 of the Act.’

10. The observations above extracted in no way carry forward the contentions of learned senior counsel for review applicant. In the said decision the question revolved on whether Court fee is to be paid on the value reflected in the document or the market value of the property. The Supreme Court merely has informed that the decisions of Madras High Court related to the interpretation of Section 7(iv-A) of the Court Fees Act, 1870, as amended by the Madras Act. Section 7(iv-A) of the Court Fees Act, 1870, as amended by Madras Act V of 1922, reads as follows:

‘In a suit for cancellation of a decree for money or other property having a money value, or other document securing money

or other property having such value,

according to the value of the subject-matter of the suit, and such value shall be deemed to be -

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.'

Under order dated 17.08.2016, this Court has considered it appropriate to hold that respondents are not parties to documents which they wish to declare null and void. They could have well ignored such sale deeds and while so, they could not be required to pay stamp duty on the value of the sale deeds. The relief prayed for there regards only is consequential (see Full Bench decision of this Court in ***C.R.Ramaswami Aiyangar v. C.S.Rangachariar and others [1940 ILR Mad 259]***).

11. We fail to see how decision of the Supreme Court in ***Satheedevi's*** case renders the decision reported in ***1940 ILR Mad 259*** bad law. As informed in the order dated 17.08.2016, review applicant may, if he considers it appropriate, invoke provisions of Order XIV Rule 5 CPC and should resist from resorting to stubborn insistence of acceptance of contentions which have been found erroneous by this Court and after this Court having shown much indulgence in hearing and discussing the propositions put forth by learned senior counsel for review applicant through setting apart the afternoon session of 29.06.2016 for hearing him and having done so, almost through such entire session. The decision

of this Court may even be wrong but that would not make it amenable to review.

The Review Application is dismissed. The direction of this Court to dispose of O.S.No.36 of 2010 on the file of learned District Munsif cum Judicial Magistrate, Sriperumbudur, is to be strictly adhered to. No costs.

21.02.2018

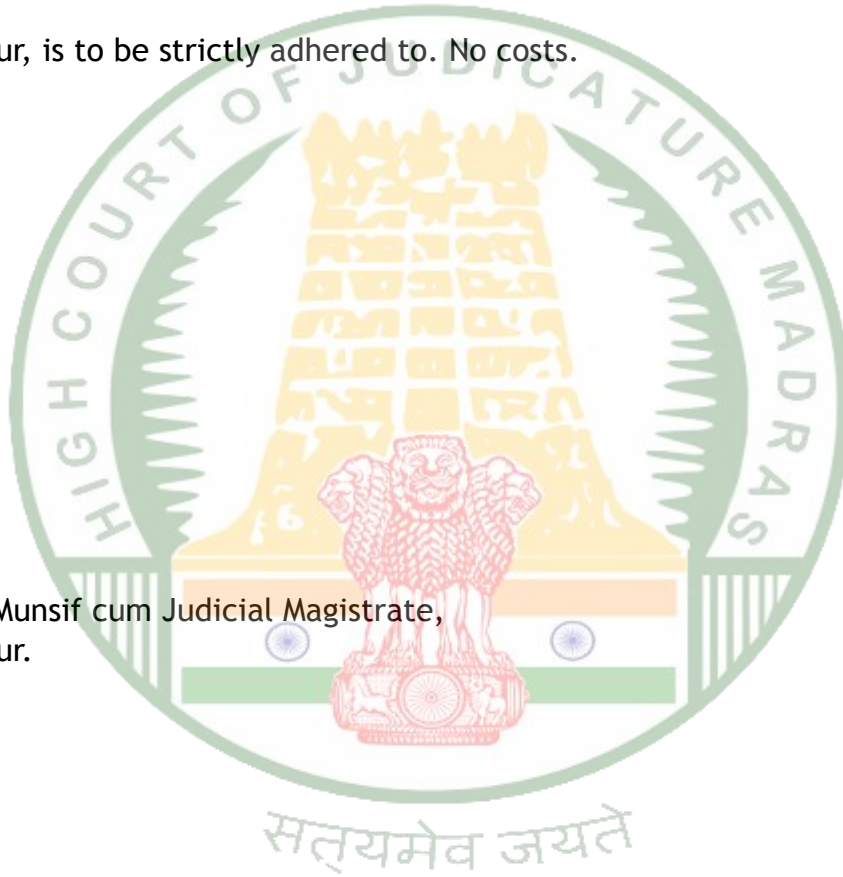
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To

The District Munsif cum Judicial Magistrate,
Sriperumbudur.



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C.T.SELVAM, J

gm



Pre-delivery order
in
Review Application No.8 of 2017

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