

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.12.2018**

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

C.R.P.[PD] No.2445 of 2018

and

C.M.P.No.14981 of 2018

Mr.S.R.Charles Balavendar Reddy .. Petitioner

Vs

1. Mrs.L.Amalarani

2. The Sub-Registrar,
Kodambakkam,
Chennai – 600 024.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Fair Order and Decreetal Order dated 03.04.2018 passed in I.A.No.14304 of 2017 in O.S.No.9508 of 2011, on the file of XIV Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.S.J.Jagadev

For Respondents : Mr.P.Emmanuel for Caveator.

ORDER

The order under challenge in the present revision is for rejection of the petitioner's application under Order VII Rule 11(b) of Civil Procedure Code.

2. The only ground raised by the learned counsel for the petitioner is that the real value of the suit property is more than Rs.6 Crores and as such, the learned XIV Assistant Judge, City Civil Court, Chennai may not have pecuniary jurisdiction to try the suit.

3. According to the learned counsel for the petitioner, the valuation of the suit is distinct for the purpose of payment of Court fees and for determining the pecuniary jurisdiction. By relying upon the judgment of Privy Council reported in **[1918 AIR (PC) 188 – Rachappa Subrao Jadhav Deta v. Shidappa Venkatrao Jadhav Desai]**, the learned counsel submits that the notional value of the property cannot displace the real value for the purpose of determining the pecuniary jurisdiction. He would also rely upon the judgments of the other High Courts reported in (i) **AIR 1932 ALL 413 – Inayat Husain v. Bashir Ahmad and another** (ii) **AIR 2002 CHHATTISGARH 7 – Bhupendra Singh Babara and another v. Municipal Council, Ambikapur and another** and (iii) **AIR 1940 Cal 375 – Iswar Chandra Saha and another v. Chulo Garo and others** on the same lines.

4. On the other hand, the learned counsel for the respondent relied upon the judgment of this Court **dated 05.01.2007** made in **C.R.P (PD) No.937 of 2006** in the case of **K.Chinnathurai V.**

Allimuthu and others and submitted that when the plaintiff is not a party to the document sought to be canceled, the proper valuation would be under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and as such the City Civil Court would have pecuniary jurisdiction to try the same.

5. I have carefully considered the submissions made by the respective counsels.

6. It is not in dispute that the plaintiff was not a party to the cancellation deed and subsequent settlement deed which is sought to be canceled in the instant suit. In very many decisions of this Court, it has been held that when the plaintiff averments reveals that the plaintiff was not a party to the document which is sought to be canceled, the valuation of the said suit would be under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act and it is not necessary to value the suit property under Section 40(1) of the Act. By relying upon various judgments on the proposition, this Court had an occasion to decide the issue. In the judgment relied upon by the learned counsel for the respondent in the case of K.Chinnathurai (cited supra), the relevant portion of the said order in paragraphs 9 to 18 reads as follows:

"9. However, the learned Counsel for the respondents relied on the decision in [Ponnammal v. Kanthammal](#), wherein the Full Bench decision of this Court in AIR 1940 Mad 113 has been followed. The said decision is to the effect that a person who is not a party to a decree or a document is not bound to sue for its cancellation. In fact, it is logically impossible for a person who is not a party to a document or to a decree to ask for its cancellation. It is also held that the relief which the plaintiff asked could be given without a cancellation of the document and therefore she was not required to pay court fee for the cancellation of the document.

10. So also in AIR 1956 Mad 179 (In re Thirupathiammal, this Court held that the plaintiff not being a party to the sale deed and the plaint allegations being to the effect that the sale deed is a sham transaction, the plaintiff need not pray for cancellation of the document. Prima facie third parties are not bound by a document of the description in question and are not obliged to sue for cancellation. They can ignore the document and ask for the appropriate relief that they may be entitled to on that footing and pay the proper court fee thereon without asking cancellation.

11. In 1995 (2) LW. 880 (Kasthuri Radhakrishnan and 2 Ors. s. A.Radhakrishnan and 4 Ors.) this Court held that in a suit for

declaration that the sale agreement was created fraudulently regarding the suit property and it is not valid and binding on the plaintiff and also for permanent injunction etc., the valuation under [Section 25\(d\)](#) is sufficient and the direction by the trial court to pay court fee under [Section 40](#) of the Act was set aside.

12. In [K. Sundarmoorthy Mudaliar v. Manickammal and Anr.](#) 1964 MLJ 152 this Court held that where the purchaser of a property files a suit only for a declaration that an equitable mortgage created by his vendor was not binding on him, he is entitled to pay court fee under [Section 25\(d\)](#) and is not liable to pay court fee under [Section 40](#) of the Madras Court Fees Act for cancellation of the equitable mortgage.

13. In a recent judgement in [Siddha Construction \(P\) Ltd., v. M. Shanmugham](#) 2006 (5) CTC 255 this Court again reiterated that a suit for declaration that particular sale deed is null and void could be valued under [Section 25\(d\)](#) of Tamil Nadu Court Fees and Suit Valuation Act if on plaint averments it is found that plaintiff was not party to such sale deed i.e., neither he executed the sale deed, nor he received any consideration.

14. In 2001 (4) CTC 764 ([Kamaleshwar Kishore Singh v. Paras Nath Singh and Ors.](#)) the

Hon'ble Supreme Court held that court fee has to be paid based on the plaint as framed and not as it ought to have been framed, unless while drafting plaint plaintiff had attempted at evading payment of court fee by his astuteness in drafting. If there is provision of law requiring the plaintiff to value the suit in a manner other than the one plaintiff had adopted then the court fee has to be paid as required by law. For the purpose of determination of court fee payable on plaint, the court should begin with presumption that averments in the plaint are correct and arbitrary valuation of the suit property to evade payment of court fee or for conferring jurisdiction on court which it does not have or for depriving jurisdiction of court which it would otherwise have, can also be interfered with by the court. The Supreme Court also held that it is the substance of relief and not the form which will be determinative of valuation and for payment of court the defence taken in written statement may not be relevant.

15. From the above decisions it is clear that if the plaintiffs are not parties to the sale deed which is being attacked as sham and nominal or on any other ground, then a suit for declaration without asking for the relief of cancellation of the said deed is maintainable and the suit property can be valued under [Section 25\(d\)](#) of the Act and it is not necessary to value the suit property

under [Section 40\(1\)](#) of the Act. Admittedly, in the present case the plaintiffs have sought for the relief of declaration and permanent injunction and there is no prayer for cancellation of the sale deed. Further, the plaintiffs are not parties to the said sale deed. As per the ration laid down in the above said decisions, only a party to the document alone need to pay the court fee as valued under [Section 40\(1\)](#) of the Act and a third party to the document is not entitled to value the suit property under [Section 40\(1\)](#) of the Act. If a third party to the document is required to pay the court fees as per [Section 40\(1\)](#) i.e., as per the market value of the suit property, then it will result in disastrous consequences.

16. As regards other contention that there are two separate prayers but court fee has been paid only for one relief, the learned Subordinate Judge has rightly held that when the decree passed in O.S.No:144 of 2004 is declared as a nullity then consequently the sale deed dated 15.12.2004 which has been executed pursuant to the order in REP. No. 130 of 2004 becomes unenforceable and void and therefore it cannot be considered as two separate prayers and in effect both the reliefs sought for by the plaintiff is one and the same and therefore payment of court fee for declaration itself is sufficient.

17. As regards the contention that the copy of the document has not been filed along with the Plaint at the time of institution of the suit, the trial Judge has rightly held that since the document has been impounded at the Sub-registrar's office for deficit stamp duty, the plaint has been taken on file by obtaining an undertaking from the plaintiffs and there is no infirmity in accepting the Plaint.

18. As regards under valuation of the suit property the trial Judge rightly held that since the plaintiffs are entitled to value the suit property under Section 25(d), since they not being party to the sale deed, even the admission that the suit property is worth at Rs. 40 lakhs is of no consequence and as per Section 25(d) they have valued the suit property at Rs. 1,11,000/= and paid the court fee."

7. In view of the aforesaid findings, the payment of Court fees under Section 25(d) of the Act can only be held to have been properly valued, since the plaintiff was not a party to the conveyances, of which, she seeks for cancellation.

8. With this above proposition, the next question that could be addressed is as to whether the value of the suit for the purpose of

payment of Court fees would be applicable for the purpose of determining the jurisdiction. The learned counsel for the petitioner raised strong reliance on the judgment of the Privy Council reported in **1918 AIR (PC) 188** (*cited supra*). The relevant portion of which is extracted hereunder :-

"16. **Section 7** deals with the computation of fees payable in certain suits, and among them are a suit to obtain a declaratory decree where consequential relief is prayed, and a suit to obtain an injunction. In each case the fee is to be computed according to the amount at which the relief sought is valued in the plaint, and it is provided that in such suits the plaintiff shall state the amount at which he values the relief sought. By **Schedule II** to the Act a fixed fee of Rs. 10 is prescribed for a plaint in a suit to obtain a declaratory decree where no consequential relief is prayed.

18. The argument is that as the prayer for a declaration is valued at Rs. 130 and that for an injunction at Rs. 5, the value for the purposes of jurisdiction must be taken to be this figure, though the real value exceeds Rs. 60,000.

24. If regard be had to the real as distinct from the imputed value of the property, the suit was properly instituted in the Court of the First Class Subordinate Judge, and if any part of the

fee payable and paid was a fixed fee under Schedule II of the Act, then the notional value of the property or any part of it could not displace its real value for the purposes of jurisdiction.”

9. The other judgments relied upon by the learned counsel for the petitioner are also on the same lines, wherein the principle determined in the decision of the Privy Council has been followed. It is seen that in all the judgments relied upon by the learned counsel for the petitioner, the prayer in the plaint is for declaration of the plaintiff's title over the respective suit properties and not for cancellation of a document. When a plaintiff claims declaration of his title over the property, the possibilities of valuing the suit for the purpose of pecuniary jurisdiction could be on the real value of the suit properties, as per the ratio laid down by the Privy Council. But, when the relief sought is for cancellation of the document, the same analogy may not apply. सत्यमेव जयते

10. In the present case on hand, the plaint averments reveal that the plaintiff was being deprived of her title over the suit property, in view of the unilateral cancellation deed and subsequent settlement deed behind her back. In other words, in view of the cancellation deed dated 19.08.2008 vide document No.2991 of 2008 and settlement deed dated 04.09.2008 vide document

No.3185 of 2008, the plaintiff's right over the suit property has been deprived. With these documents, it cannot be said that the pecuniary jurisdiction of the suit is to be determined on the real value of the property.

11. It is well established that when the plaintiff seeks for cancellation of document through which certain rights and titles have been conveyed, the Court fees payable could only be under section 25 (d) of Tamil Nadu Court Fees and Suits Valuation Act and not under Section 40 of the Act. It would automatically follow that when such a deed by way of cancellation of a settlement is sought to be declared as null and void, the notional value described under Section 25(b) of the Act alone would be applicable and not the real value of the property. As such, I am not in agreement with the contentions raised by the learned counsel for the petitioner that the notional value of the property will displace the real value for the purpose of jurisdiction.

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12. The Civil Revision Petition also deserves to be dismissed on yet another ground. The plaint was filed on 21.12.2011 and the written statement has been filed in the month of January 2012. It is stated that the trial in the suit had commenced and is at the stage of cross examination. The 2nd defendant had chosen to file this

application under section Order VII Rule 11(b) of Civil Procedure Code on 10.08.2017, (i.e.,) after almost six years. The reasons stated by the petitioner for the delay in filing the application is that the first defendant, who was his mother, had already filed an application under Order VII Rule 11(b) of Civil Procedure Code and therefore it did not necessitate him to file another application earlier. The first defendant had later expired and therefore it is claimed that the petitioner has chosen to invoke the provisions under Order VII Rule 11(b) of C.P.C. in the month of August 2017. I do not think that such a reasoning for a belated filing of the application would be justified for two reasons: firstly, nothing prevented the petitioner also to file an application along with his mother at an earlier point of time. Secondly, the mother had expired in the year 2016 and this present application came to be filed only after one year from her death, which delay has not been properly explained. When the trial had commenced and the application has now been belatedly made for rejecting the plaint, it would cause serious prejudice to the parties at this stage. As such, even on this ground, it would be appropriate to reject the present Civil Revision Petition.

13. In the light of all the aforesaid discussions, I do not find any infirmity in the order of the Trial Court in rejecting the

application filed under Order VII Rule 11(b) of C.P.C. Accordingly, the Civil Revision Petition is dismissed.

14. At this juncture, it would be appropriate to clarify that all the above observations in this order is made for the purpose of answering the various grounds raised by the learned counsels for the parties and the Trial Court shall decide the suit on its own merits, without relying upon any of the observations made in this Civil Revision Petition.

15. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.12.2018

Index : Yes/No
Internet : Yes/No

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To

1. The XIV Assistant City Civil Court,
Chennai.

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M.S.RAMESH, J.

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