

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.06.2018
CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP (PD).No. 790 of 2018 and
C.M.P.No.4357 of 2018

1.M/s. Nagindas Kasthurchand & Bros.,
Represented by its Partner
Sri. Kamant M.Shah,

... 1stPetitioner/1st
Defendant/Petitioner

2. Hemant M.Shah

...2nd Petitioner/3rd
Defendant/Petitioner

3. Sujal Hemanthbhai Shah

...3rd Petitioner/4th
Defendant/Petitioner

Vs.

M/s. Sri Rajendra Mills Ltd.,
Represented by its Power of Attorney
Mr.Tamilselvan

... Respondent/Plaintiff/ Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 06.09.2017 passed by the District Munsif Court, Salem made in I.A.No.1275 of 2015 in O.S.No.1073 of 2012 and consequently reject the plaint in O.S.No.1073 of 2012 on the file of the District Munsiff Court, Salem.

For Petitioners : Mr.Madhan Babu
For Respondent : Mr.M.Arunachalam

O R D E R

The Respondent/Plaintiff has filed the suit against the revision petitioners for declaration declaring that the Sale Agreement dated 13.03.2008 and the Sale Deed dated 13.03.2008 as null and void and the consequential relief of permanent injunction. But the plaintiff has paid Rs.1,000/- for each reliefs under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1870. The revision petitioners, after entering appearance filed an application under Order 7 Rule 11 CPC to reject the plaint and after giving opportunity to the petitioners, the trial court considering the facts and circumstances of the case rejected the application

2.Being aggrieved with the order passed by the

District Munsif Court, Salem, the revision petitioners

have approached this Court by way of this Civil Revision Petition.

3. The learned counsel appearing for the petitioners submitted that the plaintiff company executed the sale deeds through their Power of Attorney and they have challenged the sale deeds in the suit, for which they have to pay necessary court fees under Section 25 (d) of the Court Fees and Suits Valuation Act, 1870. They filed the suit under Section 40 and Section 25(d) of the said Act.

4. The learned counsel appearing for the respondent would submit that the plaintiff company is not a party to the sale deed. Therefore, the Court Fees was valued under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

5. The trial court, after hearing the arguments, found that the respondent company was not a party to the documents under challenge. Therefore, the valuation of the suit and the payment of the court fee made under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is correct. Hence, the above application for rejection of the plaint was dismissed.

6. Heard both sides and perused the records.

7. The suit was filed by the respondent/plaintiff company for the aforementioned reliefs. Even a cursory perusal of the documents show that the respondent/plaintiff company executed the documents through Power of Attorney which proves that the plaintiff company is a party to the documents. Even the plaintiff admitted in the plaint, the plaintiff executed sale agreement and Power of Attorney in favour of the defendants 1 to 3. Therefore, the contention of the learned counsel for the respondent/plaintiff that all reliefs sought for in the plaint are valued under Section 25(d), is not correct. However, the revision petitioners filed application under Order 7 Rule 11 of Civil Procedure Code to reject the plaint. Order 7 Rule 11 CPC contemplates that if the suit is barred by any law, the plaint has to be rejected. In so far as the relief claimed in (b) and (c) of the plaint, regarding Court fees is concerned if the Court finds that the plaintiff has not valued the suit claim properly and not paid the correct court fee, the plaint cannot be rejected straightaway. The court has to first direct the plaintiff to pay the correct court fees and even after issuing direction, if the plaintiff fails to comply with the direction given by the Court, thereafter, the Court could reject the plaint.

8. In this case, there is no such direction given by the Court. Therefore, application filed under Order 7 Rule 11 of CPC straight away, is not maintainable. Accordingly, the Civil Revision Petition is dismissed. However, the reason given by the Court below for dismissal is not tenable, since it is already stated that the documents were executed through Power of Attorney, and the principal later on, cannot be termed as to say that he is not party to the documents. Therefore, under these circumstances, the reason given by the District Munsif, Salem, that the plaintiff is not party to the documents is not acceptable. On a perusal of the sale deeds, it is seen that these documents were executed through Power of Attorney, as a principal the plaintiff company which is also party to the documents, since the plaintiff company is challenging the above sale deeds, naturally suit has to be valued under the correct provisions of law. The questions as to whether the plaintiff cancelled the Power of Attorney or not. Whether, the so called cancellation of Power of Attorney is valid or not. On the date of execution of sale deeds whether the Power of Attorney was in force or not will be decided only after the trial not at this stage.

9. In view of the above circumstances, the District Munsif Court, Salem, is directed to consider the reliefs sought for in the plaint in accordance with law. The plaintiff is directed to value the suit claim in accordance with law and pay necessary Court Fees within a stipulated time as may be prescribed by the court below and proceed further in accordance with law.

10. With the above directions, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msm

To

The District Munsif Court, Salem

+1cc Mr.AR.M.Arunachalam, Advocate, S.R.No.40143

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CNR (CO)

BM 06/08/2018