

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. (PD) Nos.4749 of 2013
& M.P.No.1 of 2013 and
CRP (PD) No.256 of 2014
& M.P.No.1 of 2014**

Judgment reserved on 06.03.2017	Judgment pronounced on 12.04.2018
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1.K.L.R.Niranjan

2.G.Vittal Kumar

... Petitioners in CRP No.4749 of 2013 /
3rd & 10th Respondents in CRP No.256/2014

Vs.

1.L.Leelakrishnan

... 1st Respondent in both CRPs

2.Shenoy Nagar Benefit Fund Ltd.,
Poonamallee High Road,
Amjikarai,

Chennai – 600 029.

2nd Respondent in CRP No.4749 of 2013 &
Petitioner in CRP No.256 of 2014

3.Alwin & Co.

No.260 (Old No.204) First Floor,
Thambu Chetty St.,

Chennai – 600 001.

... 3rd Respondent in CRP No.4749/2013 &
2nd Respondent in CRP No.256 of 2014

4.L.Jayalakshmi
 5.L.Visweswar
 6.L.Sundareswar
 7.L.Maheswar
 8.V.Indumathi
 9.M.Malathy

... Respondents 4 to 9 in both CRPs

Common Prayer : Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 13.11.2013 in I.A.Nos.13640 & 14309 of 2012 respectively in O.S.No.1222 of 2011 on the file of IV Additional Judge, City Civil Court, Chennai.

For Petitioner in }
 CRP No.4749/2013 }
 and R3 & R10 in } : Mr.S.Subbiah
 CRP No.256/2014 }

For 2nd respondent }
 in CRP 4749/2013 } : Mr.S.Vijayakumar
 and petitioner in } for Mr.G.Bharadwaj
 CRP 256/2014 }

For 1st respondent in }
 both CRPs : Mrs.A.L.Gandhimathi

Respondents 3 to 9 }
 in CRP 4749/2013 & }
 Respondents 2, 4 to } Given up
 9 in CRP 256/2014 }

COMMON ORDER

The issues and parties involved in both the Civil Revision petitions are one and the same and therefore, these petitions are disposed of by this common order.

2. The petitioner in CRP No.4749 of 2013 is the third defendant, petitioner in CRP No.256 of 2014 is the first defendant, and first respondent in both the CRPs is the plaintiff in O.S.No.1222 of 2011. The first respondent originally filed the above suit in C.S.No.382 of 2005 before this Court for the following reliefs -

(a) make a declaration that the purported auction sale of the property said to have taken place on 30.05.2005 purporting to be under the exercise of power under Section 69 of the Transfer of Property Act is hit by fraud and hence null and void.

(b) grant a permanent injunction, restraining the defendants 1, 2 and 3 namely the mortgagee, the auctioneer and/or the auction purchaser from, in any way, executing and/or registering any sale deed in pursuance of the purported auction in favour of the 3rd defendant auction purchaser or anyone claiming under him and/or acting on his behalf.

(c) granting a decree for a redemption of the mortgaged property, morefully described in the schedule hereunder, declaring that upon payment of a sum of Rs.14,00,000/- the defendant shall be directed to deliver to the plaintiff, the mortgaged instrument and all documents in his possession relating to the property execute and register and acknowledgment, in writing to the effect that

the interest created by the mortgagee has been extinguished.

(e) make a declaration that the clause in the mortgage deed dated 29.06.2001 charging compound interest and interest @ 36% p.a under the head default interest is usurious and unconsciable and not enforceable in law.

Subsequently, the first respondent filed Application No.1645 of 2006 in the said suit for amendment of the plaint to include the relief in Para 16 (f) as follows -

16(f) make a declaration that the execution and registration of the sale deed dated 25.04.2005 registered as document No.1649 of 2005 with the Sub-Registrar Office, Purasawalkam is illegal and null & void and not binding upon the plaintiff and the defendants 4 to 9.

3. The first respondent also sought for amendment of the plaint by inserting Paras 13(A) to 13(G). The petitioners opposed the said application. This Court, by order dated 08.12.2008 allowed the said application and permitted the first respondent to amend the plaint as prayed for, subject to the condition that court fee for the prayer sought for has to be paid. This Court granted four weeks time to the first respondent to carry out the amendment and file

amended copy of the plaint. Subsequently, the pecuniary jurisdiction of the City Civil Court was enhanced to Rs.25 Lakhs and hence the suit was transferred to City Civil Court, Chennai and re-numbered as O.S.No.1222 of 2011.

4. The petitioners filed written statement in C.S.No.382 of 2005 on 08.12.2008 and additional written statement after amendment before the IV Additional Judge, City Civil Court, Chennai on 22.08.2012. The petitioners in CRP No.4749 of 2013 filed I.A.No.13640 of 2012 under Order VII Rule 11 (b) CPC and the petitioner in CRP No.256 of 2014 filed I.A.No.14309 of 2012 under Order VII Rule 11 (c) CPC for rejection of plaint. According to the petitioners, this Court ordered amendment to include the prayer in Para 16 (g) on condition that the first respondent pays the deficit court fee. The first respondent carried out the amendment without paying the court fee either before this Court or before the IV Additional City Civil Court, Chennai, after transfer. According to the petitioners, the first respondent has not properly valued the relief as per amendment and failed to pay the court fee. If the first respondent is permitted to value the relief properly and allowed to pay the requisite court fee, the City Civil Court will not have the

jurisdiction to try the suit after amendment. Hence, the petitioners prayed for rejection of plaint on the ground that the first respondent failed to comply with the order of this court dated 08.12.2008 made in Application No.1645 of 2006 in C.S.No.382 of 2005.

5. The first respondent filed counter in both the I.As filed by the petitioners and contended that the first respondent filed suit on 25.04.2005 and on that day, the petitioner in CRP No.256 of 2014 sold the property to the second petitioner in CRP No.4749 of 2013, on the date of filing of the suit, the second petitioner was not a necessary party and due to the sale on 25.04.2005, the second petitioner became necessary party and hence amendment has been sought for and this court allowed the application permitting the first respondent to carry out the amendment. The first respondent has further stated that he is always ready and willing to pay the requisite court fee.

6. Before the learned Judge, the petitioner in both the CRPs contended that the first respondent is in fact seeking the cancellation of sale deed dated 25.04.2005 even though he has clearly drafted the relief of declaration that sale deed dated

25.04.2005 is null and void and is not binding on the petitioners herein. The petitioner further contended that the first respondent is liable to pay the court fee on the market value as per Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act.

7. The learned Judge, considering the averments in the affidavit, counter affidavits and contention of the learned counsel for the petitioners in both the CRPs as well as respondents and the judgments relied on by the parties, dismissed both the applications holding that the first respondent is seeking only declaration with regard to sale deed dated 25.04.2005 and not seeking cancellation of the said sale deed. The learned Judge further held that this Court granted four weeks time to the first respondent to carry out the amendment and did not fix any time limit for payment of court fee.

8. Against the said orders of dismissal dated 13.11.2013 in I.A.Nos.13640 & 14309 of 2012 respectively in O.S.No.1222 of 2011, the present Civil Revision Petitions are filed by the petitioners.

9. The learned counsel for the petitioners in both the Civil Revision Petitions contended that -

(i) this Court granted four weeks time for the first respondent to carry out the amendment and file amended copy of the plaint into court. This Court permitted the first respondent to amend the plaint on condition that the first respondent pays the requisite court fee.

(ii) The learned Judge erred in holding that this Court did not fix any time limit for payment of court fee on Rs.45 lakhs being the value of the sale deed dated 25.04.2005.

(iii) The learned Judge wrongly interpreted the condition imposed by this court and erroneously came to the conclusion that no time limit was fixed by this Court for payment of court fee. The amendment carried out in Para 13(G) in the plaint and the amended prayer in PARA 16(f) amounts to only relief of cancellation of sale deed. The first respondent has clearly drafted the amendment as though he is seeking only a declaration.

(iv) the learned Judge failed to consider the nature of amendment sought for by the first respondent and erred in holding that the relief of declaration is the proper relief as first respondent is not a party to the said document.

(v) the learned Judge erred in law by holding that the first respondent being the plaintiff is dominant litus and valuation given in the plaint has to be accepted.

(vi) the learned Judge erred in law by not properly applying the judgment of the Hon'ble Apex Court reported in **2010 (5) SCC 622 [Satheedevi vs Prasanna & Anr]** which was followed by this Court the decision reported in **2011 (3) CTC 26 [Minor Divya vs Sengamalai]**

(vii) the learned Judge erroneously distinguished the said judgment. The learned Judge, due to wrong interpretation of the conditional order permitted the first respondent to value the amended relief as one of the declaration and permitted him to pay the court fee of Rs.75/- under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act by way of memo filed on 06.12.2013.

(viii) the learned Judge, without giving any reason extended time for payment of court fee for amended relief and without passing a specific order, extended the time for payment and accepted the payment is contrary to the provisions of Order VII Rule 11 CPC which are not valid.

9 (a) The learned counsel for the petitioner in CRP No.4749 of 2013, in support of his contention, relied on the following judgments -

(i) AIR 1977 SC 774 [Narandas Karsondas v. S.A.Kamtan & anr.]

35. The mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. In England a sale of property takes place by agreement but it is not so in our country. The power to sell shall not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Further section 69(3) of the Transfer of Property Act shows that when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale. Therefore, until the sale is complete by registration the mortgagor does not lose right of redemption.

36. It is erroneous to suggest that the mortgagee is acting as the agent of the mortgagor in selling the

property. The mortgagor exercises his right under a different claim. The mortgagee's right is different from the mortgagor's. The mortgagee exercises his right under a totally superior claim which is not under the mortgagor, but against him. In other words, the sale is against the mortgagor's wishes. Rights and interests of the mortgagor and the mortgagee in regard to sale are conflicting.

37. In view of the fact that only on execution of conveyance, ownership passes from one party to another it cannot be held that the mortgagor lost the right of redemption just because the property was put to auction. The mortgagor has a right to redeem unless the sale of the property was complete by registration in accordance with the provisions of the Registration Act.

(ii) AIR 2005 MAD 405 [Chellakannu v. Kolanji]

13. Contending that the *Plaint averments* are to be the guiding factor in determining the question of Court Fee, learned counsel for the Revision Petitioner has relied upon the decisions reported in *Neelavathi and Ors. v. N. Natarajan and Ors.* (A.I.R. 1980 S.C. 691) and *Virudamal and Four Ors. v. Kandasamy and Four Ors.* (2000 (II) C.T.C. 263). Those cases relate to Partition suits. In partition suits, it is settled law that the question of Court Fee must be considered in the light of the allegations made in the *Plaint* and the decision cannot be influenced either by the pleas in the *Written Statement* or the final decision of the Suit on merits. The above principles applicable in a Partition Suit cannot be applied to the case in hand where astuteness is employed by the Plaintiff to evade payment of proper Court Fee. The *Plaint* allegations cannot be accepted as it is. As discussed earlier, though the Plaintiff has averred that the *Sale Deeds* are not binding on him, being a party to the Suit, in substance the Suit is one for cancellation of the *Sale Deeds*.

15. The allegation on the Plaint in substance amounts to cancellation of the document. Though the prayer is couched in the form of seeking declaration that the document is not valid and not binding, the relief in substance indirectly amounts to seeking for cancellation of the Sale Deed. Learned District Munsif was right in ordering payment of Court Fee under Section 40 of the Act. This Revision Petition has no merits and is bound to fail.

(iii) AIR 1983 MAD 217 [SUS Davey & sons v. P.M.Narayanaswami & anr.]

7. Mr.Dolia, learned counsel for the appellant, contended that in a sale under Section 69 of the Transfer of Property Act by a mortgagee, the purchaser acquires title to the property free from all encumbrances subject only to the provisions contained in Section 69(4) of the Transfer of Property Act, and that the attachment does not preclude the mortgagee from bringing the property to sale. The Supreme Court had occasion to consider the right of the mortgagee under Section 69 of the Transfer of Property Act in the decision reported in Narandas v. S.A.Kamtam. The Supreme Court pointed out "It is erroneous to suggest that the mortgagee is acting as the agent of the mortgagor in selling the property. The mortgagor, exercises his right under a different claim. The mortgagee's right is different from the mortgagor's. the mortgagee exercises his right under a totally superior claim which is not under the mortgagor, but against him. In other words, the sale is against the mortgagor's wishes. Rights and interests of the mortgagor and the mortgagee in the regard to sale are conflicting. (The emphasis is ours)". In fact, Section 69 is one of these rare instances where a person, who is not the owner of the property, could convey the right, title and interest of a third party mortgagor. The mortgagee gets a power to sell the mortgagor's interest in the property along with his interest and while exercising such power of sale, as observed by the Supreme Court he is not acting under the mortgagor or as an agent of the mortgagor. The

attachment order will have therefore no effect on the power of sale exercised by the mortgagee.

(iv) AIR 1973 SC 2384 [Shamsher Singh v. Rajinder Prashad]

3. Before us a preliminary objection was raised based on the observations of this Court in *Raihnavaaramaraja v. Smt. Vimla* (1) that the present appeal is not competent. In that case this Court observed that whether proper court-fee is paid on a plaint is primarily a question between the plaintiff and the State and that the defendants who may believe and even honestly that proper court-fee has not been paid by the plaintiff has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court-fee payable on the plaint. But the observations must be understood in the background of the facts of that case. This Court was there dealing with an application for revision filed before the High Court under s. 115 of the Code of Civil Procedure and pointed out that the jurisdiction in revision exercised by the High Court is strictly conditioned by clauses (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the Court has acted illegally or with material irregularity in the exercise of its jurisdiction, and the provisions of ss. 12 and 19 of the Madras Court Fees Act do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable. The ratio of that decision was that no revision on a question of court fee lay where no question of jurisdiction was involved. This decision was correctly interpreted by the Kerala High Court in *Vasu v. Chakki Mani* (2) where it was pointed out that no revision will lie against the decision on the question of adequacy of court-fee at the instance of the defendant..... unless the question of court fee, involves

also the question of jurisdiction of the court. In the present case the plaint was rejected under Order 7, Rule 11 of the C.P.C. Such an order amounts to a decree under section 2(2) and there is a right of appeal open to the plaintiff. Furthermore, in a case in which this Court has granted special leave the question whether an appeal lies or not does not arise. Even otherwise a second appeal would lie under section 100 of the C.P.C. on the ground that the decision of the 1st Appellate Court on the interpretation of s. 7(iv) (c) is a question of law. There is thus no merit in the preliminary objection.

4.As regards the main question that arises for decision it appears to us that while the court-fee payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiff's suit will have to fail for failure to ask for consequential relief is of no concern to the court at that stage the court in deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for. Consequently when the plaintiffs sued for a declaration that the decree obtained by the appellant against their father was not binding on them they were really asking either for setting aside the decree or for the consequential relief of injunction restraining the decree holder from executing the decree against the mortgaged property as he was entitled to do. This aspect is brought out in a decision of the Full Bench of the Lahore High Court in Zeb-ul-Nisa v. Din Mohammad(2)where it was held that :

"The mere fact that the relief as stated in the prayer clause is expressed in a declaratory form does not necessarily show that the suit is for a mere declaration and no more. If the relief so disclosed is a declaration pure and simple and involves no other relief, the suit would fall under Art. 17(iii)."

..... The decision of the Lahore High Court in Prithvi Raj v. D. C. Ralli (1) is

exactly in point. It was held that in a suit by the son for a declaration that the mortgage decree obtained against his father was not binding upon him it is essential for the son to ask for setting aside of the decree as a consequence of the declaration claimed and to pay ad valorem court fee under s. 7(iv)(c). It was pointed out that a decree against the father is a good decree against the, son and unless the decree is set aside it would remain executable against the son, and it was essential for the, son to ask for setting aside the decree.

(v) 2017 (11)SCC 852 [J.Vasanthi & Ors. v. N.Ramani Kanthammal]

17. The further stand taken by the plaintiff was that the sale deeds were obtained from him under fraud and hence, suit had been filed for declaration that the sale deeds were not binding on the plaintiff and since the suit was not filed for cancellation of the sale deeds, the defendants could not insist the plaintiff to pay the court fee under Section 40 of the Act. The trial court recorded a find that the sale deeds had been executed by the plaintiff himself and prima facie the sale deeds were binding on the executants and when there is a prayer to declare the sale deeds as invalid, it tantamounts to seeking cancellation of sale deeds and therefore, court fee payable would be governed by Section 40 of the Act.

27. On a perusal of the decision in Rathnavarmaraja (supra), we find the controversy had arisen with regard to proper valuation and the stand of the defendant was that the court fee had not been properly paid and in that context, the Court has held what as we have reproduced hereinabove. The issue being different, the said decision is distinguishable. We may reiterate that proper valuation of the suit property stands on a different footing than applicability of a particular provision of an Act under which court fee is

payable and in such a situation, it is not correct to say that it has to be determined on the basis of evidence and it is a matter for the benefit of the revenue and the State and not to arm a con- testing party with a weapon of defence to obstruct the trial of an action. It is because the Act empowers the defendant to raise the plea of jurisdiction on a different yardstick.

10. The learned counsel for the petitioner in CRP No.256 of 2014, in support of his contention, relied on the following judgments -

(i) 2014 (1) CTC 447 [T.Sivaperumal v. S.Viswanathan & ors.]

28. At this juncture, the learned counsel placed another question of law to the effect that when the plaintiff has not paid the court fees to cancel the sale deed, whether he is entitled for declaration? Definitely not. In this case, though in amendment, he has stated about the cancellation of sale deed in the plaint, he has sought for cancellation not of the sale deed, but, he carefully worded in such a way that cancellation from the Registrar from the Registrar's Office in regard to the registered documents. He has paid the court fees of Rs.1,000/- only. Normally, cancellation has to be done at T.Sivaperuaml vs S.Viswanathan on 19 April, 2013 Indian Kanoon - <http://indiankanoon.org/doc/40799201/> 7 the value of the sale deed. No doubt, for the relief of declaration, he has paid at the value of the property, but, he paid the half of the market value. But, he has failed to pay the court fees insofar as the cancellation of sale deed. Therefore, definitely, this point has not been considered by both the Courts below at all. He ought to have paid the Court fee. Even otherwise, the prayer is not sustainable, as it is

prayed in such a manner that they want only cancellation in the Registrar Office. Hence, the second question is answered in favour of the appellant and against the first and second respondents herein.

(ii) AIR 2005 MADRAS 405 [Chellakannu v. Kolanji]

15. The allegation on the Plaint in substance amounts to cancellation of the document. Though the prayer is couched in the form of seeking declaration that the document is not valid and not binding, the relief in substance indirectly amounts to seeking for cancellation of the Sale Deed. Learned District Munsif was right in ordering payment of Court Fee under Section 40 of the Act. This Revision Petition has no merits and is bound to fail.

The learned counsel for the petitioner in CRP No.256 of 2014 relied on Paragraphs 27 & 28 the judgment reported in **2017 (11) SCC 852** cited *supra*, which was also relied by the learned counsel for the petitioner in CRP No.4749 of 2013. Para 27 is already extracted above. Para 28 reads as follows -

28. In the ultimate analysis, we arrive at the conclusion that the appeal is to be allowed, the impugned orders passed by the trial court and the High Court, being unsustainable are to be set aside and we so direct. The trial court is directed to grant three months time to the plaintiff to pay the requisite court fee. There shall be no order as to costs.

11. Per contra, the learned counsel appearing for the first respondent contended that the petitioner in CRP No.256 of 2014, in collusion with the petitioner in CRP No.4749 of 2013, fraudulently sold the property in question worth several crores of rupees for meagre amount. The first respondent has right of redemption of mortgage and has initiated the suit for the reliefs mentioned therein and paid proper court fee on the same. On the date when the suit was filed, the petitioner in CRP No.256 registered the sale deed in favour of the second petitioner in CRP 4749 of 2013. The said sale deed is null and void and is not binding on the first respondent. In such circumstances, the first respondent has sought for proper relief of declaration and necessary amendment in the plaint. This Court, considering the contention of the first respondent, allowed the application.

11(a) In view of the reasons given by this court for allowing the amendment for the relief of declaration, the contention of the learned counsel for the petitioners in both the Civil Revision Petitions are without merits. It is not open to the petitioners to contend that first respondent is infact seeking cancellation of sale deed dated 25.04.2005. If courts come to the conclusion that court

fee paid by the first respondent is not proper, time must be granted for payment of deficit court fee and plaint should be rejected only when the first respondent fails to pay the court fee. In the present case, no time limit was granted for payment of court fee. The first respondent valued the relief for Rs.1000/- and paid court fee of Rs.75/- under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act and the same has been accepted by the learned Judge. The first respondent is not a party to the sale deed dated 25.04.2005 which is sham and nominal and relief of declaration is the proper remedy and there is no necessity for the first respondent to seek cancellation of the said sale deed.

11(b) The learned counsel for the first respondent, in support of his contention, relied on the following judgments -

(i) 1996 (1) CTC 280 [G.Krishnamurthy & Ors. v. Sarangapani & Anr.]

3.The Act, it is true by S. 19 provides that for the purpose of deciding whether the subject-matter of the suit or other proceeding has been properly valued or whether the fee paid is sufficient, the Court may hold such enquiry as it considers proper and issue a commission to any other person directing him to make such local or other investigation as may be necessary and report thereon. The anxiety of the Legislature to collect Court-fee due from the litigant is manifest from the detailed

provisions made in Ch. III of the Act, but those provisions do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the Court-fee payable. In our view, the High Court grievously erred in entertaining revision application on questions of Court-fee at the instance of the defendant, when no question of jurisdiction was involved."

(ii) 2013 (5) CTC 12 [L.P.Alaghappa Chettiar & anr. v. V.Janardhanan & anr.]

20. In fact, an issue of Court Fee is a matter which is between the Revenue/Government and a litigant, who is supposed to pay the correct Court Fee. As a matter of fact, the Defendants are entitled to raise objections in regard to the payment of Court Fee by the Plaintiffs either through their Written Statement or by way of filing of application before evidence is taken in the main suit. Sections 12(2) and (3) of Tamil Nadu Court-Fees and Suits Valuation Act, 1955, confer a right to the defendants to pinpoint their objections in regard to the adequacy of the Court Fee paid by the Plaintiffs in a given case.

21. It is to be pointed out that a plaint can be returned to the Plaintiff under Order 7 Rule 10 of the Code of Civil Procedure only if the Court in which the plaint is filed and prosecuted, suffers from lack of territorial or pecuniary jurisdiction. If a Court of Law has no jurisdiction, it must return the plaint although the claim is not properly valued or undervalued, as the case may be. A Court of Law returning the plaint has no jurisdiction on correcting the valuation in regard to the demand of Additional Court Fee or has to dismiss the suit for default under Order 7 Rule 11 of the Code of Civil Procedure.

22. If a suit is not properly or correctly valued, an appropriate order to be passed by a Court of Law, is to call upon the Plaintiff to furnish the correct valuation. If a Court of Law holds that the relief prayed for by the Plaintiff has been undervalued and orders a party to

correct the same, then, it is open to the Plaintiff to amend the valuation at any time before an order rejecting the plaint is made so as to limit the claim to the Court Fee paid, as per decision Ramakrishna Reddi v. Veera Reddi, AIR 1946 Mad 126.

(iii) 1996 (1) CTC 55 [Tmt. Kasthuri Radhakrishnan & ors. v. A.Radhakrishnan & ors.]

2. The main question that arises for consideration is whether the court below was right in the view it took that on the facts set out in the plaint in this case, court-fee should be paid under Section 40 of the Act, instead of Section 25(d) of the Act? It would, therefore, be necessary to set out Section 40(1) of the Act which as under:- "40 Suit for Cancellation of Decrees, etc.:- (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, "any right, title or interest in money, movable or immovable property, fee shall be computed on 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 value of the property for which the decree was passed or other document was 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". In this case, the relief prayed for is for a declaration that the sale agreement dated 20-7-1987 had been created fraudulently by the first respondent in favour of the second respondent and that the agreement is invalid and not binding upon the petitioners. To the agreement dated 30-7-1987, admittedly the first petitioner is not a party and therefore, there is no question of her praying for the cancellation of the agreement for sale. In Ponnammal alias Guruvammal and Ors. v. Kanthammal and Ors. , it has been laid down that though the word "document" is

wide enough to comprehend all kinds of documents, strangers to the document can ignore the same and need not seek to set it aside. In view of this, in so far as the first petitioner is concerned, there is no question of the applicability of Section 40(1) of the Act. In regard to petitioners 2 and 3, it has been stated in the plaint that one of them, viz., third petitioner, was a minor even on the date of the agreement and if that be so, then there is no need for cancellation of the document at his instance.

(iv) 2006 (5) CTC 255 [Siddha Construction (P) Ltd. v. M.Shanmugam & Ors.]

7. Insofar as the Court Fee is concerned, the trial court after relying on the judgment of this court reported in 1979 (II) M.L.J. 8 (Alamelu v. Manickammal) held that when the plaintiff is not a party to the sale deed and when he seeks only a declaration that the impugned sale deed is null and void, it is subject to the value of the suit under Sec.25(d) of the Court Fees Act.

11. For deciding the value of the Court Fee payable by the plaintiff the averments in the plaint alone are to be considered. In O.S.No.13/2002, the prayer sought for is to declare the sale deed executed by the 1st defendant (the 5th respondent herein) in favour of the 3rd defendant (Revision Petitioner) as null and void and not binding on them. It is averred at para 10 of the plaint that since they are not party to the sale deed dated 31.10.2001, which is to be declared as null and void, the plaintiff valued the suit for the purpose of the Court Fee under Sec.25(d) of the Tamil Nadu Court Fees Act. It is also further averred in para 7 of the plaint that the plaintiffs did not execute the sale deed and they did not receive any sale consideration. It is the further case of the revision petitioner that they did not make any alienation to and in favour of any one till today in respect of the suit schedule property.

12. In the light of the averments made in the plaint, the trial court is right in coming to the conclusion that the suit has been rightly valued and the trial court has pecuniary jurisdiction to try the suit.

The learned counsel for the first respondent also relied on judgment reported in **2017 (11)SCC 852** *cited supra*, which was relied by the learned counsel for the petitioner in both the Civil Revision Petitions.

12. Heard the learned counsel for the petitioners in both the Civil Revision Petitions as well as first respondent and perused the materials available on record.

13. The point for consideration in both the Civil Revision Petitions is ***whether the order of the learned Judge dismissing the applications filed by the petitioners for rejection of plaint is correct or not.***

13(a) The petitioners filed applications to reject the plaint under Order VII Rule 11 CPC. The petitioners in both the Civil Revision Petitions have made similar averments for rejection of plaint. According to the petitioners, after filing of the suit in C.S.No.382 of 2005 before this Court, the first respondent filed application No.1645 of 2008 for amendment of the plaint. The first

respondent sought for amendment of the pleadings and amendment by way of including additional relief. Additional relief sought for by the first respondent is as follows -

16(f). make a declaration that the execution and registration of the sale deed dated 25.04.2005 registered as document No.1649 of 2005 with the Sub-Registrar Office, Purasawalkam is illegal and null & void and not binding upon the plaintiff and the defendants 4 to 9.

13(b) The first respondent, in addition to the amendment, by way of inclusion of the said relief, also sought for amendment of the plaint averments to include Para 13 (A) to 13 (G). The petitioners opposed the said application. This Court, considering the contention of the learned counsel for the first respondent as well as petitioners, by order dated 08.12.2008 allowed the application. In para 10 of the said order, this Court held as follows -

10. Accordingly, application No.1645 of 2006 for amending the plaint is allowed. The applicant/plaintiff is permitted to amend the plaint as prayed for subject to a condition that necessary court fee thereon for the said prayer should be paid. For carrying out amendment and filing amended copy of the plaint, four weeks time is granted. The suit and the other applications, shall be listed on 08.01.2009.

13(c) The first respondent amended the plaint and filed

amended copy of the plaint into the court. The first respondent did not pay the court fee for the additional relief. While so, the pecuniary jurisdiction of the City Civil Court was enhanced to Rs.25 lakhs and C.S.No.382 of 2005 was transferred to IV Additional City Civil Court, Chennai and re-numbered as O.S.No.1222 of 2011. After the said suit was transferred to City Civil Court, Chennai, the petitioners filed additional written statement on 22.08.2012. After filing the additional written statement, the petitioners filed two applications in I.A.No.13640 of 2012 and 14309 of 2012 under Order VII Rule 11 CPC for rejection of plaint. The contention of the petitioners that amendment sought for and allowed by this Court is infact amounts to cancellation of sale deed dated 25.04.2005 executed by the petitioner in CRP No.256 of 2014 in favour of the second petitioner in CRP No.4749 of 2013 who is the nominee of the first petitioner in CRP No.4749 of 2013. The first petitioner was the successful bidder in the public auction conducted by the second defendant whereby the property belonging to the respondents was sold by public auction for the amounts due in respect of mortgage created by the respondent.

13(d) According to the petitioners, the additional relief sought

for by the first respondent by way of amendment is not for declaration for sale deed dated 25.04.2005 as null and void but it is only for cancellation of the sale deed as per the amended averments in the plaint. According to the petitioners, a reading of the amended para 13(G) shows that the first respondent is seeking to set aside the sale deed which is in fact cancellation of the sale deed dated 25.04.2005. Additional relief sought for and allowed has to be valued as per Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act and the first respondent has to value the suit at market rate, i.e. Rs.41 lakhs being the value mentioned in the sale deed. On the other hand, the contention of the first respondent that he is not a party to the sale deed which was executed by the petitioner in CRP No.256 of 2014 who is the mortgagee. The first respondent, as a mortgagor has a right of redemption of mortgage executed by him and has filed said suit for redemption of mortgage in addition to declaration that auction sale purported to have taken place on 30.03.2005 (30.05.2005 which was wrongly mentioned by the petitioners) is hit by fraud as null and void. Permanent injunction restraining the petitioner in CRP No.256 of 2014, the first petitioner in 4749 of 2013 and second petitioner in the suit from in any way executing the sale deed in favour of the first petitioner or

anybody claiming under 3(D) and other relief.

13(e) According to the first petitioner, while injunction is in force, the petitioner in CRP No.256 of 2014, in collusion with the petitioners in CRP No.4749 of 2013 executed a registered sale deed dated 25.04.2005 in favour of the second petitioner in CRP No.4749 of 2013 which is sham and nominal and null and void and it is not binding on the respondent. It is an admitted fact that the first respondent is not a party to the said sale deed. The petitioner in CRP No.256 of 2014, as a mortgagee executed the registered sale deed in favour of the second petitioner. According to the petitioner, the petitioner in CRP No.256 of 2014, as a mortgagee has a better right than the right of the first respondent. Whether the petitioner in CRP No.256 of 2014 has a better right than the first respondent and whether the sale deed dated 25.04.2005 is sham and nominal and null and void and whether it is not binding on the first respondent are the issues to be decided in the suit. The issue in the application and present Civil Revision Petition is whether the plaint has to be rejected for non-payment of court fee.

14. To decide whether the first respondent has to pay the

court fee as per Section 40 of the Tamil Nadu Court Fees & Suits Valuation Act paid by the first respondent as per Section 25 (d) of Tamil Nadu Court Fees & Valuation Act after dismissal of the application filed by the petitioners, the relevant portion of the plaint to be considered or para 13 (G) and 16(f). In the plaint, Para 13(G) and 16(f) reads as follows -

13(G) The plaintiff states that it is now necessary in the interest of justice to set aside the illegal and sham sale and to restore the suit property to the plaintiff who is the beneficial owner and who had exercised the right of redemption prior to the fraudulent execution of the sale deed in the name of the 10th defendant. It is therefore necessary to declare the sale as null and void and also to cancel the sale deed registered as document no.1649 of 2005 at the Sub Registrar's office at Purasawalkam.

16 (f) make a declaration that the execution and registration of the sale deed dated 25.04.2005 registered as document No.1649 of 2005 with the Sub-Registrar Office, Purasawalkam is illegal and null & void and not binding upon the plaintiff and the defendants 4 to 9.

15. A reading of Para 13 (G) would reveal that the first respondent is seeking for a declaration that the sale deed dated

25.04.2005 as null and void. He is not seeking for cancellation of the sale deed. The proper consideration of 13 (G) would reveal that the first respondent is not seeking cancellation of the said sale deed. It is also well settled, including in the judgment relied on by the both the learned counsel for the petitioners as well as respondent, extracted above, that when a person is not a party to any document, he need not seek a relief for cancellation of the said document. The proper remedy to such a person is only to seek declaration that said sale deed is null and void. A reading of the plaint as a whole shows that the contention of the petitioner that amendment sought for and allowed only amounts to cancellation of sale deed is without merits. It is the case of the petitioners that petitioner in CRP No.256 of 2014 did not sell the property in Public auction and execute and register sale deed as Agent of first respondent. It is their case that the petitioner in CRP No.256 of 2014, as mortgagee has a super right than the first respondent. This stand taken by petitioners clearly reveals that the first respondent is not a party to the sale deed and he need not seek cancellation of said sale deed and pay court fee under Section 40 of Tamil Nadu Court Fees and Suits Valuation Act. The proper relief is for a declaration that sale deed is null and void and court fee

payable is only under Section 25(d) of the Act. In the judgments relied on both the petitioners and first respondent, it has been held that when a person is a party to a document, he has to seek setting aside the same namely cancellation even if he alleges fraud and pay court fee under Section 40 of the Act. If a person is not a party to a document, he need not seek cancellation and can seek declaration that same is null and void and pay court fee under Section 25(d) of the Act.

16. A reading of the plaint in entirety shows that the first respondent is not a party to the sale deed and therefore he is seeking only declaration that the said sale deed is null and void. As far as rejection of plaint under Order VII Rule 11(b) is concerned, once the court comes to the conclusion that the first respondent has not paid proper court fee, then the first respondent must be given time to pay the court fee. Only if the first respondent fails to pay the court fee within the time limit granted by the court, the plaint can be rejected.

Order VII Rule 11(b) CPC reads as follows -

Order VII Rule 11 (b) CPC :

11. Rejection of Complaint

(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;

17. The contention of the learned counsel for the petitioners that this court, while allowing the application for amendment on 08.12.2008 granted four weeks time for the first respondent to pay the court fee and carryout amendment and first respondent failed to pay the court fee and therefore the plaint has to be rejected is without merits. This Court has allowed the application for amendment on condition that the first respondent pays requisite court fee and carries out the amendment and files the amended copy of the plaint into the court. This Court did not pass any order that if the first petitioner fails to pay the requisite court fee, the plaint will be rejected. The learned Judge has considered Para 10 of the order of this Court in Application No.1645 of 2006 and held that this court has not directed the first respondent to pay the court fee within the time limit specified therein.

18. It is pertinent to note that the first respondent has prayed for various relief including the relief of redemption and declaration that the auction sale held on 30.03.2005, wrongly mentioned by the petitioners as 30.05.2005, as null and void. The first respondent has paid proper court fee for the relief sought for when he originally filed the suit on 25.04.2005. It is not the case of the petitioners that the first respondent did not pay the proper court fee for the said reliefs also. Plaint cannot be rejected in part. Either it must be rejected in entirety or application for rejection of plaint must be dismissed. In the present case, the petitioners are seeking rejection of plaint for non-payment of court fee for the relief included by amendment. For such non-payment, the plaint cannot be rejected in entirety. The learned Judge, considering all the materials on record, held that the petitioners, being not a party to the sale deed need not cancellation of the said sale deed.

19. After considering all the materials on record including the judgments relief on by the learned counsel for the petitioners as well as respondent, I hold that the first respondent need not seek for cancellation of sale deed as he is not a party to the sale deed

dated 25.04.2005 and the relief of declaration sought for by the first respondent is in order. Further, as early as on 08.12.2008, this court allowed the application for amendment whereby it was held that the first respondent is entitled to seek for declaration of sale deed dated 25.04.2005 as null and void. The petitioners have not challenged the said order in Application No.1645 of 2006 and therefore, it is not open to the petitioners to contend that the relief of declaration allowed by this Court is only cancellation of sale deed.

20. It is admitted by the learned counsel for the petitioners that after dismissal of the applications filed by the petitioners for rejection of plaint, the first respondent has valued the relief of declaration in Para 16(f) at Rs.1000/- and paid court fee of Rs.75/- and the same has been accepted by the learned Judge. The suit is pending in the City Civil Court and therefore the contention of the learned counsel for the petitioners that the court fee has to be calculated as per Section 11 of the Tamil Nadu Court Fees & Suits Valuation Act is without merits. Only the registry of the Court in which the suit is pending is competent to verify whether the court fee paid by the first respondent is correct or not. If the court comes

to the conclusion that the court fee paid by the first respondent by memo dated 03.12.2013 and court fee paid on 06.12.2013 is not proper, it is for the court to decide the proper court fee payable by the first respondent and call upon the first respondent to pay the correct court fee within the time limit fixed by the court. Judgments relied on by the learned counsel for the petitioners do not advance the case of the petitioners. On the other hand, the judgments relied on by the learned counsel for the first respondent are squarely applicable to the facts of the present case.

21. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.04.2018

Index : Yes

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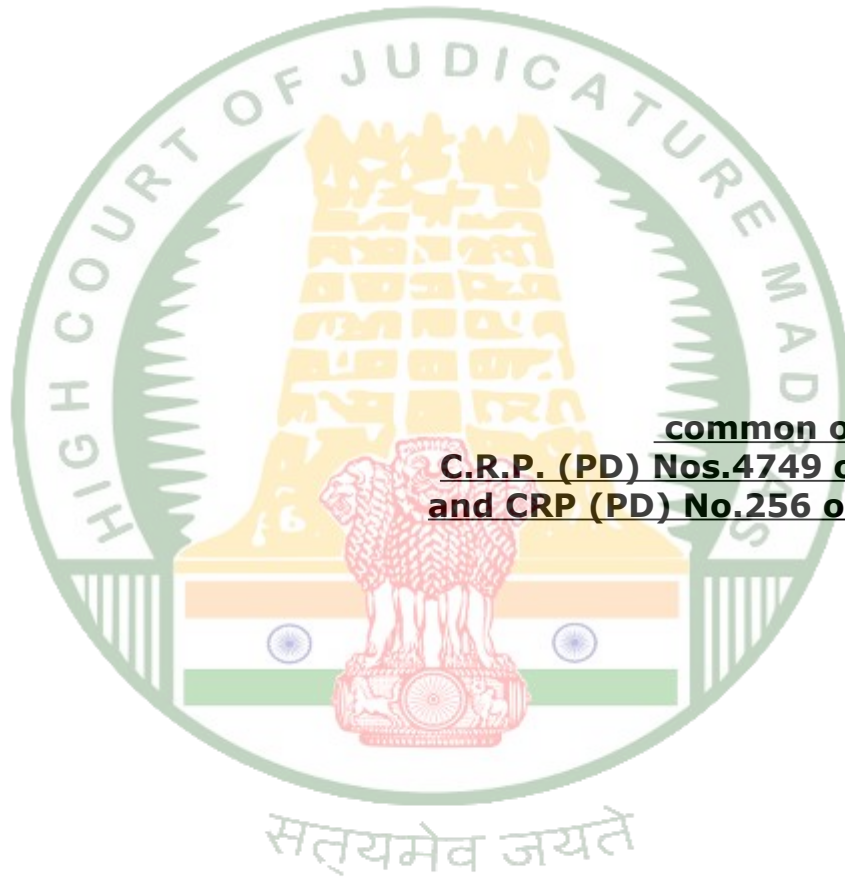
To

The IV Additional Judge,
City Civil Court,
Chennai.

WEB COPY

V.M.VELUMANI,J.

rgr



common order in
C.R.P. (PD) Nos.4749 of 2013
and CRP (PD) No.256 of 2014

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12.04.2018