



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1170 of 2018
and C.M.P. (MD) No.4975 of 2018

Pappayee

... Petitioner/Respondent/Plaintiff
-vs-

1.R.Saminathan
2.D.Navamani
3.Arunbabu
4.M.Kasthuri
5.K.N.Saminathan
6.N.Dhanabalan
7.N.Selvakumar
8.C.Palanisamy
9.K.Chandrasekaran
10.M.Nallasamy
11.Vidya
12.Rajarajan
13.R.Vanjinathan
14.R.Sathyamoorthy
15.P.Balusamy
16.KS.Chellamuthu
17.S.Revathy
18.S.Chitradevi
19.S.Subathram
20.M.Menaka
21.P.Ravikumar
22.G.Santhi
23.M.Geetha
24.K.Balakrishnan
25.M.Santhi
26.KV.Thiyagaraju
27.M.Kandasamy
28.N.Karupannan
29.S.Nallammal
30.Ganesan
31.K.Palanisamy
32.P.Chidambaram

... Respondents/Petitioners/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 05.10.2017 made in I.A.No.543 of 2016 in O.S.No.290 of 2016 on the file of the Additional Subordinate Judge, Karur and pass such other orders.



For Petitioner : Mr.K.Prabhakar

ORDER

WEB COPY The revision petitioner is the plaintiff in O.S.No.290 of 2016 on the file of the Additional Subordinate Judge, Karur and in the suit, she sought for declaration that the sale deed dated 15.07.2013 registered as Doc.No.9956 of 2013 on the file of the Sub Registrar No.2, Karur as null and void among various other reliefs. During pendency of the suit, the defendants/respondents herein had filed an application in I.A.No.543 of 2016, seeking a direction to the plaintiff for valuation of the suit as Rs.32,99,700/- as per Section 40 of the Court Fees Act, failing which, sought for rejection of the plaint and the said application was allowed by the Trial Court, directing the plaintiff to pay necessary Court Fees with permission to amend the plaint and also to move the plaint through proper forum. Challenging the said order, the plaintiff / petitioner herein is before this Court.

2. It is the case of the revision petitioner that she is a rustic villager, aged about 80 and the defendants 1 to 17 had created a sale deed dated 15.07.2013 in favour of the defendants 18 to 41 in the suit, as if she had sold her share in the property. She was misrepresented to believe that the document purported to have been executed by her is nothing, but a supplemental Trust Deed to expand the Trust and her signature was obtained fraudulently. It is the further case of the petitioner that the alleged sale deed was not at all read over to her and based on the representation of some of the defendants, she had affixed her thumb impression on the document, which turned out to be a fraudulent one.

3. The revision petitioner states that the documents, namely, the sale deed and lease cancellation were executed without her knowledge and her signatures were obtained by way of fraud and misrepresentation and therefore, the plaintiff need not calculate the value as per Section 40 of the Court Fees Act. It is further stated that when the plaintiff herself had denied execution of the sale deeds, the Court Fee payable could be only under Section 25(d) of the Act and not under Section 40 of the Act. Moreover, she had not received consideration for such execution and as such, the plea of payment of Court Fee under Section 40 of the Act does not arise at all.

4. Heard the learned counsel for the petitioner and notice to other side is dispensed with, in view of the nature of disposal of this case. This Court also perused the material documents available on record.

5. The stand taken by the plaintiff was that the sale deeds were obtained from her 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. However, the trial Court recorded a finding that the sale deed had been executed by the plaintiff herself 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. The allegation as found mentioned in the Plaint in substance amounts to cancellation of the document. Though the prayer is couched in the form of seeking declaration that the documents are not valid and not binding, the relief in substance indirectly amounts to seeking for cancellation of the Sale Deeds and therefore, learned Additional Subordinate Judge, Karur was right in ordering payment of Court Fee under Section 40 of the Act.

6. At this juncture, this Court feels it appropriate to reproduce Section 40 of the Act, which reads as follows:

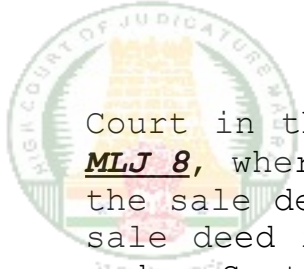
"40. Suits for cancellation of decrees, etc. - (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, 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.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less."

7. The singular issue that gains significance in this case is that the plaintiff was a party to the transaction. Section 40 of the Act, as we notice, provides that in a suit for cancellation of a document, the court fee has to be computed on the value of the subject-matter of the suit and such value shall be deemed to be the whole decree or other document, which is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed. It also spelt out that a part of the decree or other document is to be cancelled, such part of the amount or value of the property. On a careful scrutiny of the provision, it is limpid that it refers to the decree or other document and in that context, it uses the word "value". The stand of the respondents before the High Court as well as before this Court is that the documents were sought to be declared as null and void on the ground of fraud and, therefore, Section 40 of the Act would not be attracted. It is useful to refer to the judgment rendered by this



Court in the case of **Alamelu vs. Manickammal**, reported in **(1979) 2 MLJ 8**, wherein it has been held that 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 Section 25(d). In yet another case in **Gnanambal Ammal vs. Kannappa Pillai**, reported in **(1959) 1 MLJ 355**, this Court had held that where a plaintiff's case is that a document is sham and nominal, it need not be set aside.

8. Admittedly, in the present case on hand, it is no doubt true, as observed by the Trial Court itself that, the plaintiff is a party to the sale deed dated 15.07.2013 and the cancellation of lease deed dated 07.08.2013 and therefore, it is crystal clear that those documents were not executed behind her back and cannot also be construed as sham and nominal.

9. The Hon'ble Supreme Court, while dealing with the similar issue in the case of **J.Vasanthi and others vs. N.Ramani Kanthammal (dead) represented by Legal Representatives and others**, reported in **(2017) 11 SCC 852**, has observed as under:

"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 contesting 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.

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."

10. In view of what is stated hereinabove and considering the overall facts and circumstances of the case, this Court is of the view that the order dated 05.10.2017 made in I.A.No.543 of 2016 in O.S.No.290 of 2016 by the learned Additional Subordinate Judge, Karur holds good and the present petition is liable to be dismissed.

11. In the result,

a) this civil revision petition is dismissed, confirming the order dated 05.10.2017 made in I.A.No.543 of 2016 in O.S.No.290

of 2016 by the learned Additional Subordinate Judge, Karur;

b) the petitioner/plaintiff is directed to pay the requisite Court Fee, as ordered by the Trial Court in I.A.No.543 of 2016 in O.S.No.290 of 2016 dated 05.10.2017, within a period of two weeks from the date of receipt of a copy of this order;

c) upon payment of necessary Court Fee by the petitioner, the learned Additional Subordinate Judge, Karur shall take a decision on the jurisdictional issue (as it was observed in the order dated 05.10.2017 that if the real value is placed, this Court has no jurisdiction), within two weeks thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Additional Subordinate Judge,
Karur.
2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mr.K.PRABHAKAR, Advocate in SR.No.69006

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RJ/PN/SAR-2/25/07/2018 - 5P/5C

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