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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2018

DELIVERED ON : 09.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1917 of 2016

and

CMP (MD) No.9102 of 2016

Karuppaiya

.. Petitioner/1st Respondent/Plaintiff

vs

1.Palanivelu

.. 1st Respondent/Petitioner/3rd Defendant

2.M.Maruthan

3.Ravi @ Murugappan

4.Mani

5.Senthil

.. Respondent 2 to 5/Respondent 2 to 5/
Defendants 1,2 & 4,5

Revision filed under Article 227 of Constitution of India against the fair and decreetal order dated 23.06.2016 made in I.A.No.516 of 2015 in O.S.No.318 of 2013 on the file of the District Munsif Court, Pudukottai.

For Petitioner

: Mr.A.Arumugam

For M/s.Ajmal Associates

For Respondent

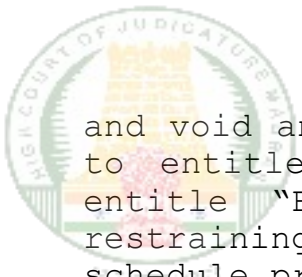
: Mr.K.Balasundaram (for R1)

For R2 to R5 - Ex-parte

O R D E R

This Civil Revision Petition has been filed by the petitioner against the order dated 23.06.2016 passed in I.A.No.516 of 2015 in O.S.No.318 of 2013 on the file of the District Munsif Court, Pudukottai. The petitioner is the plaintiff in the suit.

2. The plaintiff has filed the suit to declare that the partition deed dated 10.09.2004 executed between the plaintiff and the first defendant in respect of "B" schedule properties is null



and void and for mandatory injunction directing the first defendant to entitle plaintiff "A" schedule properties and the plaintiff to entitle "B" schedule properties and also permanent injunction restraining the defendants 2 to 5 from alienating the plaintiff "B" schedule properties and for costs.

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3. Pending suit, the third defendant filed I.A.No.516 of 2015 under Order 7, Rule 11 of C.P.C. to reject the plaint alleging that since the plaintiff sought declaration that the partition deed dated 10.09.2004 was null and void, he has to value the suit under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act as the plaintiff is party to the said partition deed. It is alleged that since the partition deed dated 10.09.2004 was valued at Rs.26,34,800/-, the plaintiff has to pay the court fee for the said amount. It is also alleged that the second prayer of the plaintiff for mandatory injunction was barred by limitation.

4. Resisting the petition, the plaintiff has filed the counter stating that the plaintiff has rightly valued the suit under Section 25(d) and there is no necessity to value the suit under Section 40 of the Act as alleged by the third defendant. Since the plaintiff was signatory of the partition deed dated 10.09.2004, the same cannot be taken into account. The plaintiff has filed the suit within the period of limitation and prayed for dismissal of the petition filed by the defendant.

5. Upon consideration of the rival submissions, the trial Court directed the plaintiff to pay court fee under Section 40 of the Act within a period of thirty days qua the relief declaration, failing which the petition shall stand allowed. Aggrieved by the same, the plaintiff has filed this Civil Revision Petition.

6. I heard Mr.A.Arumugam, learned counsel for the petitioner and Mr.K.Balasundharam, learned counsel for the first respondent and also perused the materials available on record.

7. The learned counsel for the petitioner submitted that the trial Court has assumed the jurisdiction not vested in it when it chose to allow the application filed under Order 7, Rule 11 of C.P.C. and directed the plaintiff to pay court fee under Section 40 of the Act. He would submit that the trial Court had completely misunderstand and misapplied the provision contained in Section 25 (d) and Section 40 of the Court Fees Act.

8. The learned counsel further submitted that the since partition deed only divides the properties and it does not transfer property from one person to another, the value mentioned therein is not the subject matter of transfer. He would submit that the partition deed does not create an interest in immovable property or does it extinguish any interest in immovable property and it adjust and arranges the property enjoyed by the parties in the partition deed and therefore, Section 40 of the Court Fees Act does not apply



to partition deed. In support of his submissions, the learned counsel cited the following decisions:

- (i) Gujarat State Financial Corporation v. Natson Manufacturing Co. Pvt. Ltd. and others, reported in (1979) 1 SCC 193.
- (ii) S. Periasami v. Chellammal and another, reported in 1980 I MLJ 46.
- (iii) Varadaraja Pillai v. Muthusamy Pillai and 2 others, reported in 1996 (II) CTC 523.
- (iv) N. Ramachandran v. Munisamy and 6 others, reported in 1998 - 2 - L.W. 152.

9. Per contra, the learned counsel appearing for the first respondent submitted that the trial Court after analysing the case laws had rightly directed the plaintiff to pay court fee under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act within a period of thirty days, failing which the petition shall stand dismissed. He would further submit that there is no infirmity in the order of the trial Court and the same has to be confirmed.

10. The point arises for consideration in this Civil Revision Petition is whether the trial Court was right in directing the plaintiff to pay the court fee under Section 40 of the Court Fees Act qua the declaration prayer.

11. The grievance of the first respondent before the trial Court was that since the petitioner has prayed for the relief based on the partition deed dated 10.09.2004, he ought to have valued the suit under Section 40 of the Court Fees Act. Since the suit has not been properly valued, it has to be rejected under Order 7, Rule 11 of C.P.C.

12. According to the petitioner, partition deed is only a distribution of property among the sharers and no transfer of property is involved and therefore, the petitioner has valued the suit under Section 25(d) of the Court Fees Act in respect of the declaration prayer and the trial Court erred in directing the petitioner to pay court fee under Section 40 of the Court Fees Act.

13. Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act provides:

"25. Suits for declaration . -

(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees one thousand], whichever is higher."

14. Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act provides as under:

<https://hcservices.ecourt.gov.in/hcservices/>

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. Explanation.-- A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section."

15. In Gujarat State Financial Corporation v. Natson Manufacturing Co. Pvt. Ltd. and others, supra, the Hon'ble Supreme Court, dealt with the applicable provision of the Bombay Court Fees Act, 1959 to an application filed under Section 31(1) by the State Financial Corporation before the District Judge against the defaulting industrial undertaking a loan to which was guaranteed by the Corporation and held that Court fees Act being a taxing statute must be strictly construed in favour of the subject litigant. In paragraphs 11 and 15, the Hon'ble Supreme Court observed thus:

"11. Let it be recalled at this stage that if the Court-fees is a taxing statute its provisions have to be construed strictly in favour of the subject litigant (vide State of Maharashtra v. Mishri Lal Tarachand Lodha, reported in AIR 1964 SC 457. In a taxing statute the strict legal position as disclosed by the form and not the substance of the transaction is determinative of its taxability (vide Joint Commercial Tax Office, Harbour Div. II, Madras v. Yound Men's Indian Association (Regd.), Madras, reported in (1970) 1 SCC 462. If it is a fee, the enormity of the exaction will be more difficult to sustain. While we do not pronounce, we indicate the implication of the High Court's untenable view."

16. In S.Periasami v. Chellammal and another, supra, the learned Single Judge of this Court held:

"11. Lastly a partition deed cannot in the strict sense be construed as one of the documents referred to in Section 40 of the Tamil Nadu Court-fees and Suits Valuation Act. What Section 40 of that Act contemplates



is a document which purports or operates to create, declare, limit or extinguish whether in present or in future any right, or interest in money, movable or immovable property. A partition deed entered into between members of a joint family does not create or assign right in properties for the first time among the sharers; nor does it limit or extinguish their right over all items of properties dealt with in the partition. A partition deed operates as a re-adjustment of the rights between sharers in the properties jointly owned by all of them till the time of partition. Therefore, it is doubtful if a partition deed can be construed as a document of the nature envisaged in section 40 of the Tamil Nadu Court-fees and Suits Valuation Act, for the cancellation of which alone court-fees will have to be paid on the value of the subject-matter of the property concerned in the document."

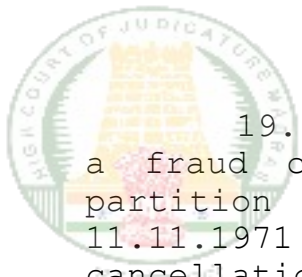
17. Referring to the decision in Periasamy v. Challemmal, supra, in Varadaraja Pillai v. Muthusamy Pillai and 2 others, supra, this Court held:

"10. a partition deed entered into between members of a joint family does not create or assign a right in properties for the first time among the sharers, nor does it limit or extinguish their right over all items of properties dealt with in the partition. a partition deed operates as a re-adjustment of the rights between the sharers in the properties jointly owned by all of them till the time of partition and therefore, it is doubtful if a partition deed can be construed as a document of the nature envisaged under Section 40 of the Court Fees and Suit Valuation Act."

18. In N.Ramachandran v. Munisamy and 6 others, supra, the learned Single Judge of this Court held as under:

"11. So, in view of the above observations the perusal of the plaint filed in this case makes it clear that the case of the plaintiff that the partition deed which is sought to be reopened was never acted upon. The relevant averment in para 6 of the plaint is as follows:

"But the partition deed was never acted upon and it never came into force. A sheer perusal of the partition deed will disclose that the partition is unequal and the sharers are not treated as per the allocation of the properties. All the properties covered in the partition deed and mentioned in the schedule hereunder are still in the common enjoyment without a division on ground. A great fraud has been played which was left unnoticed by the plaintiff."



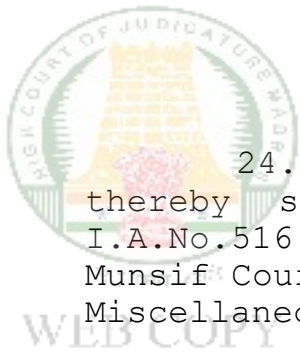
19. In the case on hand, the petitioner pleaded in his plaint a fraud committed by the first defendant in execution of the partition deed dated 10.9.2004 by suppressing the Will dated 11.11.1971 executed by Murugappa Udayar. The petitioner sought cancellation of the said partition deed dated 10.9.2004 by valuing the suit under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act. The plaint is silent about the enjoyment of the properties.

20. On the other hand, in the written statement filed by the first defendant, it has been stated that pursuant to the partition, 2558 square feet in plaint "B" schedule property was allotted to him and he had constructed a house therein. Subsequently, as per the family arrangement, the first defendant settled the said property in favour of the third defendant by way of settlement deed dated 14.08.2012. In the written statement, it has also been stated that before the alleged partition deed, the plaintiff and the first defendant have jointly enjoyed the properties. Subsequently, there were differences of opinion between them for enjoyment of the properties and as per the decision taken in the panchayat, the properties were divided into equal share and they were enjoying the same separately. Thereafter, the partition deed dated 10.09.2004 was executed between the plaintiff and the first defendant.

21. While directing the petitioner to pay court fee under Section 40 of the Court Fees Act, the trial Court observed that since the petitioner has prayed relief based on the partition deed and since partition deed dated 10.09.2004 had created right over the properties, the petitioner ought to have valued the suit under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act.

22. The aforesaid finding of the trial Court appears to be unacceptable on the ground that the partition entered into between the plaintiff and the first defendant does not create or assign right in properties and the same operates as a re-adjustment of the rights between them in the properties jointly owned by all of them till the time of partition. Therefore, as held by this Court in a catena of decisions, it is doubtful that the partition deed dated 10.09.2004 can be construed as a document of the nature envisaged under Section 40 of the Court Fees Act. Since the petitioner pleaded fraud in obtaining the alleged partition deed dated 10.09.2004, the same will be decided at the time of trial. Further, whether the partition deed dated 10.09.2004 was really executed between the parties is a matter of evidence.

23. The partition deed dated 10.09.2004 cannot in the strict sense be construed as one of the documents referred to in Section 40 of the Court Fees Act and therefore, the trial Court was not right in directing the petitioner to pay court fee under Section 40 of the Court Fees Act for relief of declaration.



24. In the result, the Civil Revision Petition is allowed thereby setting aside the order dated 23.06.2016 passed in I.A.No.516 of 2015 in O.S.No.318 of 2013 on the file of the District Munsif Court, Pudukottai. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The District Munsif,
Pudukottai.

+1cc to M/S.Ajmal Associates, Advocate SR.No. 77954

+1cc to Mr.K.Balasundaram, Advocate in SR.No. 78227

order made in
C.R.P. (MD) (PD) No.1917 of 2016
and
CMP (MD) No.9102 of 2016

09.08.2018

vsv

JM/KAK/SAR 3/28.08.2018/7P/4C