

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CIVIL REVISION PETITION No.5738 OF 2017

ORDER :

This Civil Revision Petition is filed by the petitioners/plaintiffs against order dated 07.08.2017 in S.R.No.1945, dated 21.06.2017, wherein and whereby the Court below directed the petitioners/plaintiffs to value the plaint for the relief of declaration separately as per Market Value of the properties as per the Market Value Certificate issued by the Sub Registrar and directed them to pay the Court Fee on both the reliefs within three weeks from the date of the Order or otherwise the plaint is deemed to be rejected. The suit is filed for both the reliefs i.e., for recovery of money and also for declaration.

2. Heard learned counsel for the petitioners, who submits that the main relief in the suit is for recovery of money and other relief sought in the suit is for declaring that the documents executed by 1st defendant in favour of defendants 2 to 4 as null and void, as the same were executed to defeat the claim of the petitioners/plaintiffs. He submits that since the petitioners are not parties to the said documents, petitioners need not pay separate court fee on the relief of declaration. He also submits that the petitioners could not have seek for cancellation of documents, since they are not parties to the documents executed by the 1st defendant in favour of the defendants 2 to 4. In support of his contention, he relied on the judgments reported in

Nade Ali Mirza v. Khalida Mohammed Salim Dawawala¹ and Mohd.Ikramuddin v. Sangram Bosle².

3. In this case, it is to be seen that the suit is filed for the following reliefs:

- (a) To pass a decree for Rs.26,56,500/- in favour of the 1st plaintiff and against the 1st defendant.
- (b) Pass a decree for Rs.17,49,333/- in favour of the 2nd plaintiff and against the first defendant.
- (c) To grant subsequent interest at 12% from the date of suit till realization of the amounts due under the decrees in favour of the plaintiffs.
- (d) To find that the transaction covered under the document Nos.4444/2010 to 4448/2010, 4503/2010 and 7853/2014 of SRO, Attili, between the 1st defendant and defendants 2 to 4 are fraudulent transaction, intended to defeat the rights of the creditors like the plaintiffs and others and set aside them as not binding on the plaintiff for enforcing the decrees that will be passed in favour of the plaintiffs and against the 1st defendant, by bringing the schedule properties or sufficient part thereof for sale for realization of the amounts due to the plaintiffs.
- (e) To grant costs of the suit.
- (f) To grant such further or other reliefs as the honourable court may deem fit and proper in the circumstances of the case agasint the defendants and in favour of the plaintiffs.”

4. In **Nade Ali Mirza v. Khalida Mohammed Salim Dawawala (supra)**, this Court held as follows:

“27. Admittedly, in the present case, the petitioners are not parties to the 107 documents which they seek to be declared as null and void and not binding on them. Therefore, in view of the above decision, it cannot be said that they are bound to seek relief of cancellation of the 107 documents and compute court fee on the market value of the land comprised therein.

31. However, as stated above, since the petitioners are not parties to the 107 documents which they seek to be declared as null and void and not binding on them, they are not bound to seek the relief of cancellation of these 107 documents and they are not bound to pay court fee as computed under [Section 37](#) of the Act. Therefore, the above decisions cited by the counsel for respondent nos.1 to 7 cannot be applied to the present case.

42. In the present case also, the petitioners contend that the title to the plaint schedule property belongs to them and they are the heirs to their father late Hyder Ali Mirza and the respondents cannot deal with the

¹ 2016 (1) ALT 300

² 2007 (5) ALT 607

plaint schedule properties without any right, title or interest therein. Since they are not parties to the 107 sale deeds/agreements of sale cum GPAs mentioned in the plaint, and they contend that they are sham, invalid, null and void and collusive documents and have sought a declaration that they are null and void and not binding on them, they not only need not seek relief that these documents be cancelled, but they are also not bound to pay any court fee on this relief of declaration in view of the decisions in *Bijoy Gopala Mukerji* (2 supra), *Radha Rani* (24 supra), *Ramaswami Ayyengar* (1 supra), *Nagappan* (26 supra) and *Mohd. Ikramuddin* (3 supra)."

5. In **Mohd. Ikramuddin v. Sangram Bosle (supra)**, this Court held as follows:

"A.P. Court Fees and Suits Valuation Act, 1956, Sections 24 (d) and 37-Court fees-Relevant provision-Suit for declaration of title and recovery of possession of plaint schedule property-Prayer also includes consequential declaration that sale deed registered by 2nd defendant in favour of 1st defendant in respect of the said property is null and void and not binding on him-Petitioner-plaintiff paid court fees under Section 24(d) of the Act in respect of relief of declaration and possession-Court below directed plaintiff to pay deficit court fee for the relief of cancellation of sale deed as contemplated under Section 37 of the Act-Order of Court below is erroneous-As plaintiff being a third party to the said sale deed, he is not bound by it-He need not ask for cancellation of such document-Even if any such prayer is made, he need not pay court fees in respect of such prayer-Order of Court below is set aside-Court fees paid under Section 24 (d) of the Act-Correct-Direction given to trial Court to accept the suit."

Admittedly, in the present case also, the petitioners are not parties to the documents executed by the 1st defendant in favour of defendants 2 to 4, which they seek to be declared as null and void and not binding on them. Therefore, in view of the above decisions, it cannot be said that they are bound to seek relief of declaration that the aforesaid documents as null and void and compute court fee on the market value of the land comprised therein. In the instant case, the suit is at the stage of numbering and the Court below could have given an opportunity before passing such an order. *Prima facie*, this Court is of the opinion that the petitioners need not seek relief of declaration of such documents executed by 1st defendant in favour of defendants 2 to 4 for setting aside the same. In view of aforesaid decisions of this

Court, even if such declaration is sought, petitioners are not liable to pay the stamp duty for relief of declaration since the petitioners are not parties to the same.

Since the suit filed by the petitioners was returned by the Court below before issuing summons to the respondents, notice to respondents in this Revision Petition is not required.

In view of the same, the impugned order is set aside and the Court below is directed to number the suit, if the same is otherwise in order. It is open for the Court below to frame an issue regarding payment of Court fees and decide the same in accordance with law. It is made clear that above observations are made and the impugned order of the Court below is set aside at the admission stage for the purpose of numbering the suit only.

Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed.

A.RAJASHEKER REDDY, J

19-02-2018

kvs

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