

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (PD) No.2049 of 2010

M.P.No.1 of 2010

M.Rajini

... Petitioner

Vs.

1. Vasandha Durai (deceased)
2. D.Hemalatha
3. D.Suresh Babu
4. D.Revathi
5. T.V.Subramani
(Respondent No.2 to 5 recorded as LRs of deceased
R1 vide order dated 10.08.2012 made in
CRP No.2049 of 2010 (Memo dated 23.11.2011
Memo S.R.No.102618 of 2012)

6. T.V.Ganesan
7. T.V.Amsalingam
8. Shakila
9. Krihika
10. Parthiban

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the orders dated 23.04.2010 passed in I.A.No.1445 of 2009 in O.S.No.166 of 2008 by the Additional District Judge, Fast Track Court No.I, Poonamallee.

For Petitioner : Mr.P.L.Narayanan

For Respondents : No appearance

ORDER

The civil revision petitioner is the plaintiff in O.S.No.166 of 2008 on the file of the Additional District Judge, Fast Track Court No.I, Poonamallee. She filed the above suit for partition of the suit properties into six equal shares and to allot one such share to her and also for rendition of accounts by the defendants in respect of the plaintiff's 1/6th share in the suit properties. She further prayed for a declaration that the release deed dated 09.07.2007 executed by her is null and void and unexecutable .

2. The 7th defendant filed written statement and the same was adopted by the other defendants. The defendants also filed a petition in I.A.No.1445 of 2009 under Order VII Rule 11 of the Code of Civil Procedure seeking for rejection of the plaint on the ground that since the plaintiff had relinquished her right over the suit properties and executed a release deed dated 09.07.2007, there is no cause of action for filing the suit. Their further contention is that she is out of possession of the suit properties and therefore, the court fees should have been paid under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. It is also contended by them that though the plaintiff is a party to the release deed, she had paid court fees under Section 25(d) of the Tamil Nadu Court

Fees and Suits Valuation Act 1955, which is not correct and according to them, when a party to the documents wants to cancel/avoid the document, the party should file the suit and pay the court fees as per the provisions contained under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act 1955. Therefore, they prayed for rejection of the plaint. The present revision petitioner/plaintiff filed her counter. The learned Additional District Judge, Fast Track Court No.I, Poonamallee, vide his order dated 23.04.2010, partly allowed the petition and directed the plaintiff to pay court fee under Section 37(1) and 40 of the Tamil Nadu Court Fees and Suits Valuation Act 1955. Aggrieved over the orders passed by the trial court, the plaintiff has filed the present revision petition.

3. The learned counsel appearing for the revision petitioner would contend that the revision petitioner/plaintiff is the Class-I heir of her father late Vadivel Mudaliar and that the defendants in O.S.No.166 of 2008 got the release deed executed by the plaintiff, taking advantage of her illiteracy and therefore, the plaintiff filed the suit to declare the release deed dated 09.07.2007 executed by the plaintiff is null and void.

4. He also relied upon the decision in **1.Minor Subha, 2.Minor Swathi @ Sikkanam Vs. 1.Ramu, 2. Rani. 3.Mala, 4.R.M.Natarajan**

reported in 2006(3) L.W.931 and contended that the since plaintiff is a co-owner, she is in joint possession of the suit properties and not out of possession. Therefore, the court fees paid by the plaintiff under the Tamil Nadu Court Fees and Suits Valuation Act 1955 is perfectly in order. He further contended that since the plaintiff is attacking the release deed dated 09.07.2007, court fees paid by her under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act 1955 cannot be said to be incorrect and that the Additional District Judge, Fast Track Court No.II. Poonamallee without considering these aspects had directed the plaintiff to pay court fees under Section 37(1) and 40 of the Tamil Nadu Court Fees and Suits Valuation Act 1955 and hence, the orders passed by the trial court is liable to be set aside.

5. No appearance on behalf of the respondents.

6. In the plaint in O.S.No.166 of 2008, the contention of the plaintiff is that she executed the release deed dated 09.07.2007 by misrepresentation by the defendants and that if she was put on notice about the actual share in the estate of her father, she would not have executed the said release deed. The plaintiff had further admitted in the plaint that she received a sum of Rs.25,000/- for execution of the release

deed. It is not the case of the plaintiff that she signed the document without knowing the contents thereon. Further more, a perusal of the written statement filed by the 7th defendant adopted by the other defendants clearly shows that the plaintiff had signed the release deed in English. Whether the release deed was obtained from the plaintiff by misrepresentation is a thing, which can be decided only after the conclusion of trial. However, the plaintiff after receiving a sum of Rs.25,000/- for executing the release deed, cannot contend that she is still in possession of the suit properties. In fact, the suit was filed a year after the release deed dated 09.07.2007, executed by the plaintiff. Therefore, since the plaintiff is out of possession of the suit properties, she should have paid the court fees under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act.

7. The plaintiff has further prayed for a declaration that the release deed dated 09.07.2007 executed by her is null and void. Since the plaintiff is a party to the said document, she must pay court fees under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. A plain reading of Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 clearly shows that the court fees should be computed on the value of the subject matter of the suit and such value shall be deemed to

be the amount or value of the property for which the document was executed. In the case on hand, the plaintiff has valued the suit under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, which reads thus:

25. Suit 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 four hundred, whichever is higher.

Since the plaintiff seeks for cancellation of the release deed, she must have valued the suit under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and Section 25(d) of the said Act has no application at all.

8. Further more, the decision in *1.Minor Subha, 2.Minor Swathi @ Sikkanam Vs. 1.Ramu, 2. Rani. 3.Mala, 4.R.M.Natarajan reported in 2006(3) L.W.931 (cited supra)* relied on by the learned counsel appearing for the revision petitioner cannot apply to the facts and circumstances of the present case, in view of the fact that the plaintiff

herself had admitted the execution of the release deed dated 09.07.2007, after receiving a sum of Rs.25,000/- and her only contention is that her brothers did not inform the actual share to which she is entitled to in the suit properties. In such circumstance, she cannot be considered to be in possession of the suit properties. Therefore, the orders passed by the Additional District Judge, Fast Track Court No.1, Poonamallee directing the plaintiff to pay court fees under Section 37(1) and 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is perfectly in order and I do not see any reason to interfere with the said order.

9. In the result, the civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed. The orders passed by the Additional District Judge, Fast Track Court No.1, Poonamallee dated 23.04.2010 in I.A.No.1445 of 2009 in O.S.No.166 of 2008 is upheld.

सत्यमेव जयते

08.07.2019

Index : Yes/No
Internet : Yes/No
Speaking/non-speaking order
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To

The Additional District Judge, Fast Track Court No.I, Poonamallee.

R.HEMALATHA,J.
mst



CRP (PD) No.2049 of 2010
M.P.No.1 of 2010

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