

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.08.2019

DELIVERED ON : 10.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP.PD.No.112 of 2012

and

MP.No.1 of 2012

Ramnivachari @ Ramsankar Sharma

... Petitioner

vs.

1.Vasudevan

2.Bathrinarayan

3.T.S.Raman

4.S.Kumar

5.K.A.Barathi

6.S.Nithiyaraj

7.M.K.Prakash

8.M/s.Pranesh Developers,
Rep. by its Managing Partners,
Mrs.Sunitha W/o.J.Murugesan
No.91, 92, Kodambakkam High road,
Nungambakkam, Chennai 600 034.

9.B.Thiruselvan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 18.07.2011 passed in Check slip No.121/XXVR/N in OS.No.441 of 2009 on the file of the Principal District Munsif Court, Kancheepuram.

For Petitioner : Mr.T.Sathiyamoorthy

For Respondents : Mr.P.Sivamani for R8 and R9
No appearance for R1 to R7

ORDER

The revision petitioner is the plaintiff in OS.No.441 of 2009 on the file of the Principal District Munsif Court, Kancheepuram. He filed the suit against the defendants for the following reliefs:

(i) Declare that the sale deeds on the basis of the General Power of Attorney deeds registered as Document No.75 of 2006, dated 27.02.2006 and Document No.297 of 2006, dated 06.07.2006 before the Sub-Registrar Joint IV, Kancheepuram are null and void.

(ii) Permanent injunction restraining the defendants and their men and agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

(iii) Permanent injunction restraining the defendants and their men and agents from alienating or encumbering the suit properties.

(iv) Mandatory injunction directing the first defendant to hand over the relevant documents, stamp papers and blank papers signed by the plaintiff and

(v) costs of the suit.

2. The plaintiff valued the suit under Section 25 (d) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 and paid the fixed court fee of Rs.75.50/- for the relief of declaration.

3. The learned Principal District Munsif, Kancheepuram issued a Check slip No.121/XXVR/N to the plaintiff, based on the report of Court Fee Examiner, North Division, High Court of Madras, directing him to value the suit under Section 40 and under Section 27 (c) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. He was also directed to pay the deficit court fee of Rs.90,441.50/-. It is further observed that since the suit is beyond the pecuniary jurisdiction of the District Munsif Court, the same should be returned for presentation before the proper forum having pecuniary jurisdiction to try the suit.

4. The plaintiff raised objections and the learned Principal District Munsif, Kancheepuram vide his fair and decreetal orders dated 18.07.2011 had

concluded that since the plaintiff is a party to the documents which he seeks to cancel, the suit should be valued under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 (herein after called 'the Act') and not under Section 25 (d) of the Act.

5. Aggrieved over the same, the present civil revision petition is filed by the plaintiff.

6. Mr.T.Sathiyamoorthy, learned counsel appearing for the revision petitioner / plaintiff relied on the decision in **Alamelu alias Chinnakannammal vs. Manickammal** reported in **92 LW 306** and contended that since in the instant case the plaintiff had clearly averred in the plaint that the first defendant got the signatures of the plaintiff in some blank papers and stamp papers and utilised the same for creating forged General Power of Attorney in favour of the defendants 2 and 3 and also created sale deeds in favour of the defendants 3 to 5, the only relief the plaintiff could ask for was for a declaration and therefore the prayer for cancellation of the document would be quiet inappropriate. He would further contend that the forged documents would not confer title on any person and it would be unnecessary to get the documents set aside in order to succeed in the prayer for declaration and that the payment of court fee is to be adjudged on the

plaint averments. He therefore contended that the suit has been valued properly under Section 25 (d) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

7. *Per contra*, Mr.P.Sivamani, learned counsel appearing for the respondents 8 and 9 contended that the court fee has to be paid under Section 40 of the Act when the plaintiff has sought declaration for treating the documents as null and void, which basically amounts to seeking the relief of cancellation of the said documents. It is therefore urged that the suit should be valued only under Section 40 of the Act.

8. The facts of the case in nutshell is as follows:

The plaintiff, a native of Bihar state is the absolute owner of the suit properties. Originally the suit properties belonged to one Srinivasachariyar, elder brother of the plaintiff and he got the suit properties through a Will dated 21.12.1994 executed by one Sudarschanachari Swami, Matathipathi of Uthiradi Srivaishanava Mutt at Kancheepuram. Srinivasachariyar was a bachelor and he was murdered on 20.01.2005 and the plaintiff as a class II heir succeeded the properties of the late Srinivasachariyar. The first defendant used to assist the plaintiff during the trial of Srinivasachariyar murder case, as the plaintiff was not conversant with

Tamil language. Taking advantage of this situation, the first defendant got the signatures of the plaintiff in some blank papers and stamp papers contending that he needs the same for transfer of Patta and other revenue records in the name of the plaintiff. Since the plaintiff reposed trust on the first defendant, he also went over to Registrar Office four times and put his signatures on blank papers and some documents written in Tamil. Subsequently, the plaintiff came to know about the creation of fraudulent Power of Attorney in favour of the defendants 2 and 3. Therefore, all the transactions that took place between the defendants 2 to 5 are null and void.

9. The learned counsel appearing for the revision petitioner stressed the point that in a suit of this nature, court fee has to be paid only under Section 25 (d) of the Act, as General Power of Attorney in favour of the defendants 2 and 3 and the sale deeds in favour of the defendants 3 to 5 were fraudulent documents for they were never executed by the plaintiff.

10. Section 40 of the Act reads as under:
"Suit for cancellation of decrees, etc -
(1) In a suit for cancellation of 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 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."

11. The only point that deserves for consideration in the case is that whether the plaintiff was a party to the transaction. Section 40 of the Act 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 if 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 if a part of the

decree or other document is to be cancelled, such part of the amount or value of the property should be paid. The provision refers to the decree or their document and in that context it uses the word "value". The specific contention of the revision petitioner is that since the documents were sought to be declared as null and void on the ground of fraud, Section 40 of the Act would not be attracted.

12. In the decision in **Alamelu alias Chinnakannammal vs. Manickammal** reported in **92 LW 306** (*cited supra*) relied on by the learned counsel for the revision petitioner, the Hon'ble MR. Justice Sethuraman, as he then was, has 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, the suit should be valued under Section 25 (d) of the Act. The very same question arose for consideration before the Hon'ble Supreme Court in **J.Vasanthi vs. N.Ramani Kanthammal** in **Civil Appeal No.3396 of 2017** arising out of **SLP(C) No.33692 of 2016**. The Supreme Court after referring to various decisions of this Court including the decision in **Alamelu alias Chinnakannammal vs. Manickammal** reported in **92 LW 306** (*cited supra*) relied on by the learned counsel for the revision petitioner held that the view taken by this Court in **Chellakkannu vs. Kolanji** reported in **AIR 2005 Mad 405** is the correct position of law. In **Chellakkannu vs. Kolanji** reported in **AIR**

2005 Mad 405, this court had held that when the plaintiff who is a party to the sale deed seeks to get rid of the sale deeds in substance, it amounts to cancellation of the deeds. The plaintiff may seek to avoid the sale deed if he is not a party to the sale deed, but when he himself is a party, he must first obtain the cancellation of the sale deed before he seeks for any relief. It is also held thus, "the word "cancellation" implied that the persons suing should be a party to the document. Strangers are not bounded by the documents and are not obliged to sue for cancellation. When the party to the document is suing, challenging the document, he must first obtain cancellation before getting any further relief. Whether cancellation is prayed for or not or even it is impliedly sought for in substance, the suit is one for cancellation. In the present case, when the plaintiff attacks the sale deeds as having been obtained from him under fraud and misrepresentation, the plaintiff cannot seek for any other relief without setting aside the sale deeds.....

.....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. The learned Principal District Munsif, Kancheepuram 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."

13. In the instance case, the contention of the plaintiff is that he put his signatures in the Sub-Registrar Office, Kancheepuram on some blank papers and stamped papers where contents were written in Tamil. He had also contended that the first defendant had fraudulently used the same, as if, he executed General Power of Attorney in favour of defendants 2 and 3 who in turn executed sale deeds in favour of the defendants 3 to 5. Thus the plaintiff wants to cancel the Power of Attorney also, based on which, the defendants 2 and 3 had executed the sale deeds in favour of the defendants 3 to 5 as an agent of the plaintiff (the principal). Therefore, the orders passed by the learned Principal District Munsif, Kancheepuram is perfectly in order and no interference is warranted by this Court.

14. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

सत्यमेव जयते

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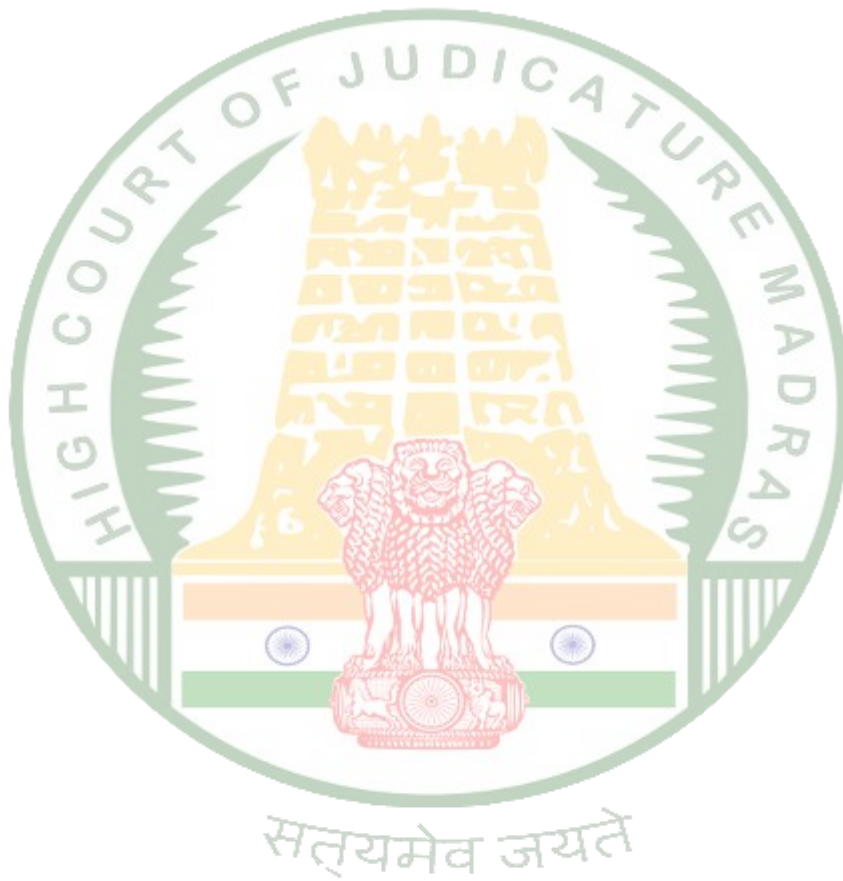
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Index : Yes/No

Speaking / Non-Speaking Order

To

The Principal District Munsif,
Kancheepuram.



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R.HEMALATHA, J.

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Pre-Delivery Order in
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