

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2019

PRONOUNCED ON : 04.06.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(PD).No.3993 of 2014

Dhanalakshmi

.. Petitioner

vs.

1.Arunchalam
2.Padmavathi

.. Respondents

PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India, against the order of the District Munsif, Virudhachalam dated 25.09.2014 returning the plaintiff to value the suit under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

For Petitioner : M/s.G.Sumitha

For R1 : No Appearance

For R2 : M/s.D.Malarvizhi

ORDER

The present Civil Revision Petition has been filed under Article 227 of the Constitution of India, the learned District Munsif, Virudachalam by a docket order dated 25.9.2014 has returned the plaint and directed the petitioner/

plaintiff to value the suit under Section 40 of the Tamil Nadu Court Fees And Suits Valuation Act, 1955. The petitioner/plaintiff has valued the suit under Section 25 (d) of the said Act.

2. The petitioner had filed a suit before the District Munsif Court, Virudachalam for a declaration that the suit schedule property belongs to her and to declare that the settlement deeds dated 25.9.2008 and 18.8.2014 as null and void and also to grant decree of permanent injunction to restrain the respondents/defendants from interfering with the suit possession and enjoyment of the suit properties.

3. The reliefs as prayed in the above unnumbered plaint read as under:-

- “ i) pass a decree in favour of the plaintiff declaring her title to the suit properties and
- ii) pass a decree for permanent injunction restraining the defendants or their men and agent from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit properties and
- iii) declare that the settlement deeds dated 25.09.2008 and 18.08.2014 are null and void and
- iv) award costs “

4. The case of the petitioner before the said court is that she is the 2nd wife of the 1st respondent and that he married with the consent of the 2nd respondent as no issue were born out of the marriage between the 1st and the 2nd respondents.

5. It is the case of the petitioner that the 1st respondent by sale deed dated 14.03.2005 transferred the ownership over of the suit schedule property in her favour.

6. However, by way of two different settlement deeds the ownership over of the suit schedule property were transferred in favour of the 2nd respondent by fraud.

7. During the hearing, learned counsel for the petitioner submits that the 2nd respondent impersonated before the Registrar and got the suit properties transferred from the 1st respondent who in turn settled the same in favour of the 2nd respondent.

8. The court while returning the plaint has concluded that even though relief is couched in the form of a declaratory relief, nevertheless it was indeed intended to cancel the settlement deeds dated 25.9.2008 and 18.8.2014 and therefore, the petitioner/plaintiff should pay Court fee under Section 40 of the Act.

9. The learned counsel for the petitioner/plaintiff submits that the suit was to be valued under Section 25 (d) of the Act relied on the following decision of this court :-

- “ i) **Siddha Construction (P) Ltd represented by its power agent Anjay Sharma versus M Shanmugam and others 2006 (5) CTC 255;**
- ii) **G. Seeta Devi versus R Govindaraj and 2 others 2011 (1) TLNJ 575 (Civil).”**

10. Per contra, the learned counsel for the respondents/defendants submitted that the present Civil Revision Petition was liable to be dismissed. In this connection learned counsel for the respondents relied upon and unreported decision dated 10.08.2017 of the Honourable Supreme Court in **J Vasanthi and others vs N Ramani Kanthamal** rendered in Civil Appeal No. 3396 of 2017 (Arising out of SLP (C) No. 33692 of 2016).

11. I have considered the rival submissions and the decisions cited by the learned counsel for the petitioner and the respondents.

12. The short point that arises for consideration in the present Civil Revision Petition is whether the petitioner/plaintiff has valued the suit under Section 25 (d) or under Section 40 of the Tamil Nadu Court Fees And Suits Valuation Act, 1955.

13. In **Siddha Construction (P) Ltd** represented by its power agent **Anjay Sharma vs M Shanmugam and others** referred to *supra* cited by the learned counsel for the petitioner/plaintiff it was held that the suit has to be valued based on the averments in the plaint. There the petitioner was not the author of the sale deed and did not receive any consideration.

14. In **G. Seeta Devi vs R Govindaraj and 2 others** referred to *supra* also cited by the learned counsel for the petitioner/plaintiff, it was held that since the petitioner had not executed the power of attorney in favour of the executor of the sale deed, the suit was to be valued under Section 25 (d) of the Act.

15. As per the decision of the Honourable Supreme Court in **J Vasanthi and others vs N Ramani Kanthamal** cited to by the learned counsel for the respondent/defendant, the court held that proper valuation of the suit property stands on a different footing than the applicability of particular provision of an Act under which court fees are payable and in such a situation, it is not correct to say that it has to be determined on the basis of evidence. The Court further held that it is a matter for the benefit of the revenue and the state should not arm a contesting party with a weapon of defence to obstruct the Trial of action because the Act empowers the defendant to raise the plea of jurisdiction with a the different yardstick. The court set aside the

orders passed by the Trial court and the High Court allowing valuation under Section 25(d) of the Act as unsustainable.

16. The decision of this court rendered in **Chellakanu vs Kolanji** AIR 2005 Mad 405 was approved that the plaintiff had taken the stand that the sale deed were obtained from him by way of fraud and hence suit has filed for a declaration that the sale deeds were not binding on the plaintiff and the suit was not filed for cancellation of the sale deeds, the defendants could not insist on payment of court fee under section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. There the court held as follows:-

“15. 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. Learned District Munsif 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.”

17. Thus, the order of the Trial court cannot be faulted. The ratio laid therein applies to four corners of the present case.

18. It may be useful to refer to Section 25 of the Act, which reads as under:-

25)Suits for declaration.-In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 26 --

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees three hundred, whichever is higher;

(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on rupees three hundred, whichever is higher;

(c) where the prayer relates to the plaintiff's exclusive right to use, shall, print or exhibit any mark, name, book, picture, design or other thing and is based on infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees five hundred, whichever is higher;

(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.

19. From reading of section 25 it is clear that it is applicable where declaratory relief is sought for with or without consequential relief. Section 25 (d) is a residuary provision.

20. Section 40 of the Act on the other hand deals with 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 the present or in the future, any right, title or interest in the money, movable or immovable property.

21. Thus, there being a special dispensation under Section 40 of the Act, the valuation ought to have been made under Section 40 of the Act. Earlier several decisions of this court stating that if plaintiff was not the author of the documents that is sought to be declared as null and void, valuation should be made under Section 25 (d) of the Act is no longer good law in the light of the decision of the Honourable Supreme Court in **J Vasanthi and others vs N Ramani Kanthamal** referred to by the learned counsel for the respondent/defendant.

22. The petitioner/plaintiff was seeking to value the suit under Section 25 (d) of the Act for a remedy to be valued under Section 40 of the Act, which is impermissible.

23. Therefore, learned District Munsif, Virudachalam has correctly returned the plaint for payment of appropriate Court fee under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

24. In the light of the above observation, the present Civil Revision Petition filed by the petitioner is liable to be dismissed and is hereby dismissed. The petitioner may to however approach the District Munsif Court at Virudhachalam and pay the Court fee within a period of 30 days from the

date of receipt a copy of this order, in which case the District Munsif Court, Virudachalam, shall number the suit and proceed with the trial and endeavour to pass a judgment and decree within a period of nine months from date of receipt of a copy of this order.

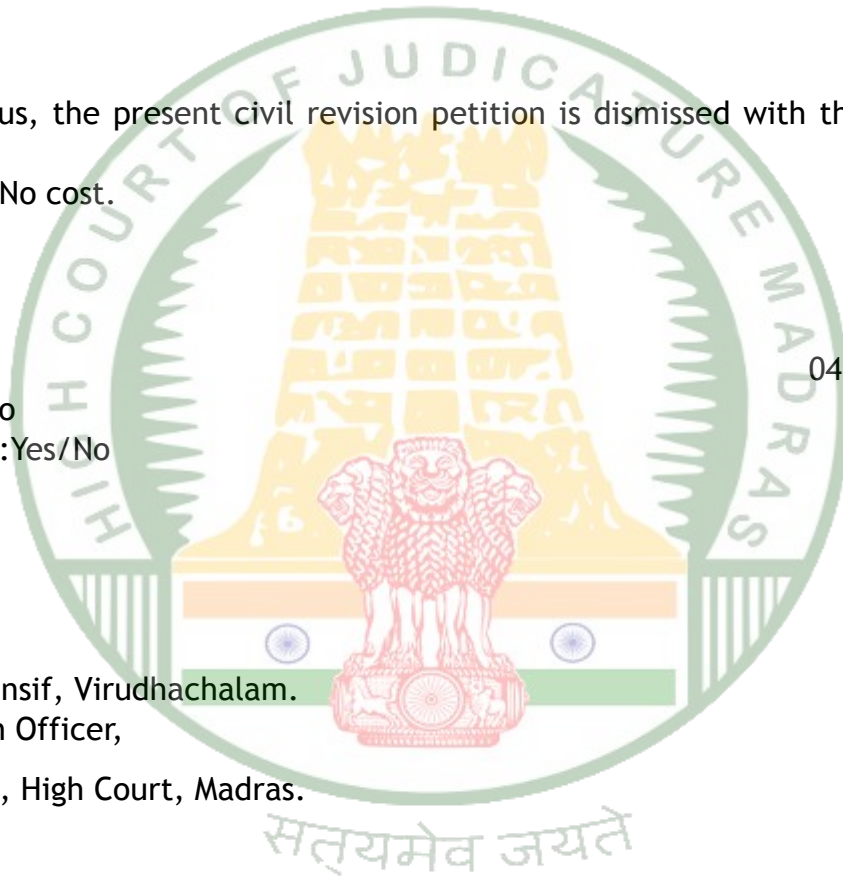
25. Thus, the present civil revision petition is dismissed with the above observation. No cost.

04.06.2019

Index :Yes/No
Internet :Yes/No
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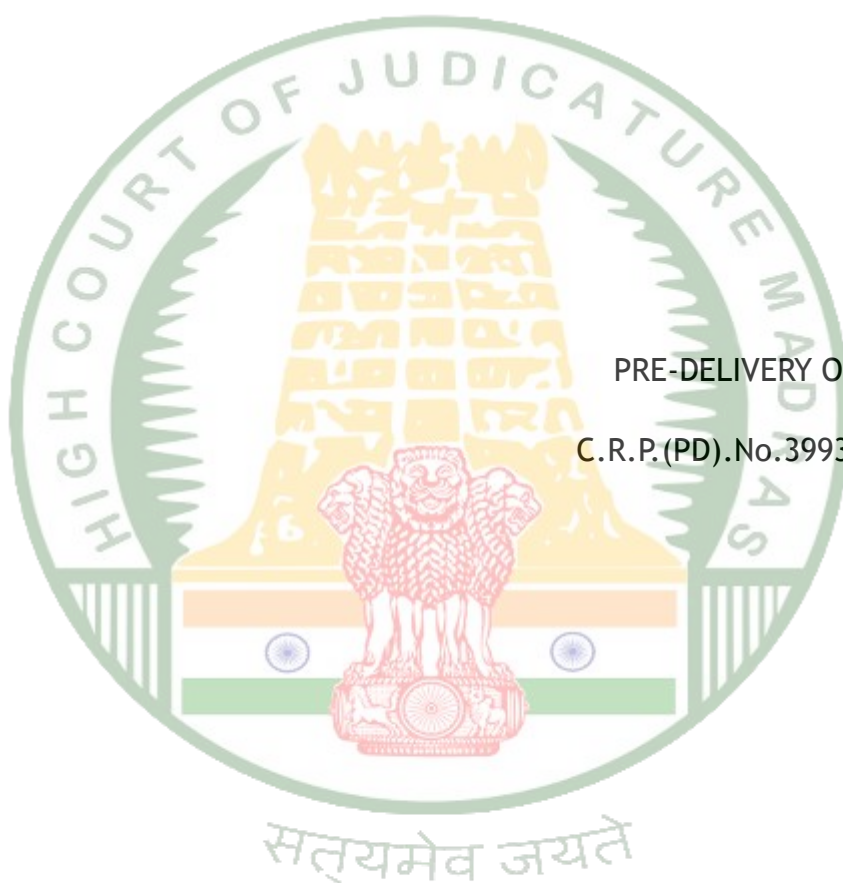
1. District Munsif, Virudhachalam.
2. The Section Officer,
V.R.Section, High Court, Madras.



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C.SARAVANAN,J.

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PRE-DELIVERY ORDER IN

C.R.P.(PD).No.3993 of 2014

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