

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2019

CORAM :

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN**

CRP.(PD).No.198 of 2014

and

MP.No.1 of 2014

1.Ms.Meera  
2.Sathish

... Petitioners

Versus

1.C.Sivakarthikeyan  
2.Chidambaram  
3.K.S.Shanmugamoorthy  
4.K.S.Subramaniam  
5.V.Alamelu  
6.G.R.Ashokan  
7.Pandurangan  
8.V.Suganthi  
9.K.Saraswathi  
10.G.K.Karthik

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 18.07.2013 passed in I.A.No.404 of 2013 in O.S.No.232 of 2012 by the First Additional District Judge, Erode.

For petitioners : Mr.S.M.Muralidharan

For Respondents : Mr.A.K.Kumarasamy (for R1 to R5)

: Mr.R.Vinothkumar (for R7 to R10)

: R6 (Died)

## ORDER

The petitioners are plaintiffs in the suit in O.S.No.232 of 2012 and they are sister and brother and also daughter and son of Ashokan/first defendant in the suit, who is the sixth respondent herein.

2.The suit before the First Additional District Judge, Erode in O.S.No.232 of 2012 has been filed by the petitioners/plaintiffs to set aside the various sales deeds executed by their father/Ashokan and her mother as a natural guardian and next friend of the then minors, namely the petitioners herein. After attaining majority, they have filed the suit, on the ground that the sale was not effected for any legal necessity or to protect the minors interest.

3.The defendants have entered appearance and filed a written statement. Pending suit, the defendants 4 to 8 have also filed an application in I.A.No.404 of 2013 to decide the issue on payment of Court fee as a preliminary issue on the ground that in respect of those defendants, the sale deeds were dated 07.04.2003 and 15.11.1999 and they have taken the possession of the property long back. The plaintiffs are out of possession but wanted to set aside the sale deeds executed by her mother along with their father, while so, the suit ought not to have valued under Section 37(2) of Tamil Nadu

Court Fees and Suits Valuation Act, 1955, but, the Court fee has been paid under Section 37(1) of the said Act. A counter affidavit has also been filed in I.A.No.404 of 2013. The Trial Court on considering the oral and documentary evidence, has allowed the application. Hence, the present Civil Revision Petition is filed.

4.The learned counsel for the petitioners would contend that there is absolutely no legal necessity on the parents of the petitioners to sell the property and such sale is against the interest of the minors. On attaining majority, they came to know about the sale and hence, filed the suit when they were 25 and 28 years old.

5.This Court is not going to examine the maintainability of the suit on the point of limitation. The only point before this Court is whether the suit has to be valued for the purpose of Court fee under Section 37(2) or 37(1). Admittedly, it is not in view of the number of sale deeds executed by the father and the mother, but, the value of the Court fee is to be paid as indicated thereon.

6.The learned counsel appearing for the contesting defendants would contend that the sale deeds were of the year 1999 to 2016, and they are already in possession. Hence, the recovery of possession has also comes into play and relied upon the following decisions of

this Court:-

" 1. (1993) 2 MLJ 428 in order dated 19.03.1993 passed in A.No.221 of 1983 in between Sridharan V. Arumugam;

2. (2006) 4 MLJ 1067 in Judgment dated 27.04.2006 passed in S.A.No.449 of 1994 in between Chinnannan V. Paranimalai and;

3. 2002 (2) CTC 513 in order dated 25.01.2002 passed in C.R.P.No.692 of 2001 and CMP.No.3727 of 2001 in between Gopalakrishnan V. Andiammal."

7.He also drew my attention to the *Guide to the Law of Court Fees in Madras, Fifth Edition page 77, in which it is stated that,*

*"Where family properties have been alienated by the father or manager by sale or usufructuary mortgage for purpose not binding on the plaintiff and possession has been transferred by such alienation to the alinees, who are impleaded as defendants, the suit in respect of the plaintiff's share in them has to be valued at the value of the plaintiff's share in them as*

*computed under Section 37(1) read with Section 7 and ad-valorem Court fee should be paid on such value plus a fixed fee for partition of the unalienated properties."*

The defendants has also relied upon the very same decision though they have not relied any separate citations.

8. Pending the revision, it is stated that the sixth respondent died and a memo to that effect was filed stating that the sixth respondent remained ex-parte in O.S.No.232 of 2012 and he was only a formal party in I.A.No.404 of 2013 as well as in the present C.R.P.No.198 of 2014 and his legal heirs need not be brought on record.

9. Taking into consideration the law laid down on the points which arises on the above factual position, as could be seen from the pleadings, minors, who are *eo nomine* parties to a sale deeds executed by the father have filed the suit for cancellation of such document which is to be valued under Section 37(1) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. This is objected to by the defendants on the ground that the suit has to be valued only under Section 37(2) of the said Act.

10.The prayer in the plaint, amongst other things is for to declare the Sale Deeds dated 15.11.1999, 07.04.2003, 23.12.2004, 14.02.2005, 25.06.2008, 20.07.2009, 24.08.2009, 07.06.2010, 28.12.2010, 18.08.2011, 13.03.2012, 06.03.2016, 10.03.2016 and Settlement Deed dated 23.11.2006 as null and void and for preliminary decree for partition and for permanent injunction from alienating the suit property. It appears that the plaintiffs have paid the court fee under Section 25 (d) of the Act on the ground that they are not parties to the sale deeds and that they are seeking a declaratory relief to declare the sale deeds as null and void and therefore, they notionally valued the suit at Rs.1,000/- and for the consequential relief of permanent injunction, they valued the suit at Rs.1,500/- as contemplated under Section 27 (c) of the Act.

11.In view of the above discussions, minors are *eo nomine* parties and in view of the prayer sought for, the Trial Court has rightly come to the conclusion that on the facts and circumstances of the case, the law governing the field is that, the Court fee has to be valued only under Section 37(1) and not under Section 37(2) and also directed the plaintiffs to pay the Court fee, accordingly.

12.The Court fee directed to be paid by the Trial Court is just and proper and it does not warrant any interference and the plaintiffs

are directed to pay the Court fee under Section 37(1) of the Act, on the calculation based upon within a period of eight weeks from the date of receipt of a copy of order.

13.With the above observations and directions, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

**05.12.2019**

Index : yes/no  
Internet : yes/no  
Speaking/Non-Speaking order

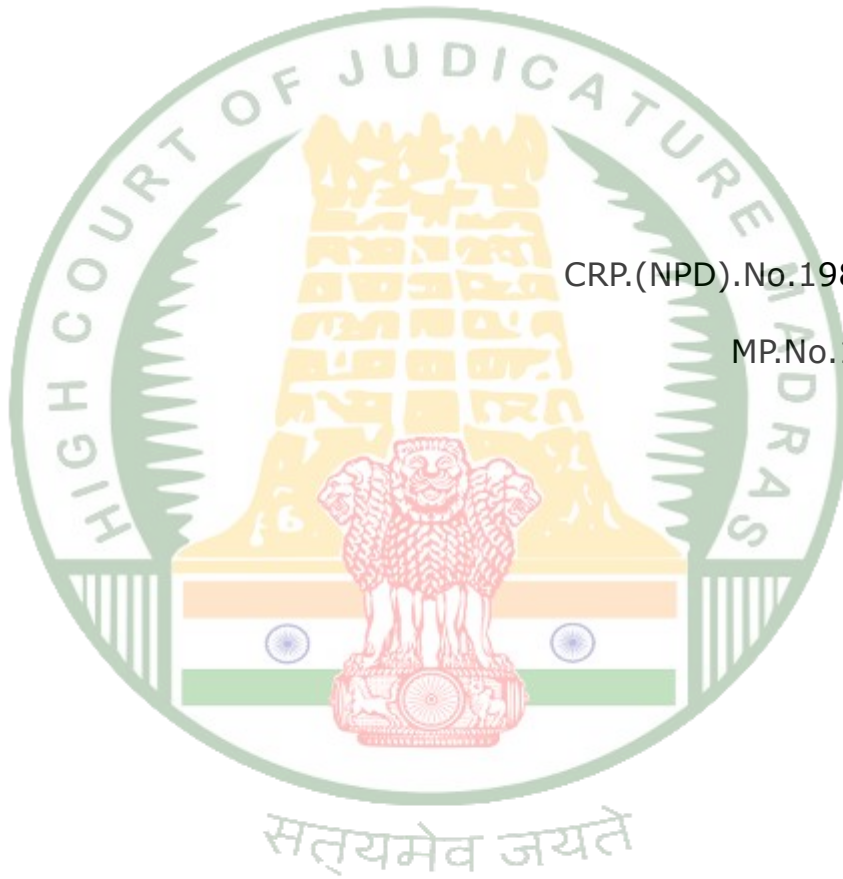
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To  
The First Additional District Court, Erode.

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**RMT.TEEKAA RAMAN,J.,**

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