



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:19.09.2019

CORAM:

WEB COPY

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

CRP. (MD) .No.504 of 2012 (PD)
and
M.P. (MD) .No.1 of 2012

B.G.S.Rajam @ Paul Rajendran

...Petitioner / Petitioner /
Defendant

Vs.

1.Moses Ravindran
2.Geetha Prisilla

... Respondents /Respondents /
Plaintiffs

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 23.12.2011 passed in I.A.No.73 of 2011 in O.S.No.75 of 201 on the file of the Additional District Judge, Fast Track Court No.1, Thoothukudi.

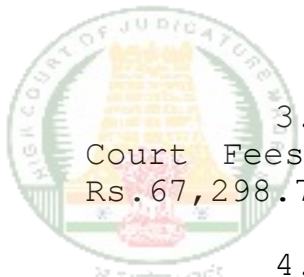
For Petitioner : Mr.M.Saravanan

For Respondents : Mr.M.P.Senthil

O R D E R

This Civil Revision Petition has been filed challenging the order passed by the court below dismissing the application filed by the petitioner to direct the respondents to pay the court fee of a sum of Rs.67,298.75/- insofar as relief (b) in the plaint is concerned.

2.The petitioner is the defendant in the suit. The respondents filed a suit seeking for the relief of partition and separate possession of 1/3rd share in the property and to declare release deed dated 29.11.2005 as null and void and nonest in the eye of law. This relief was sought for on the ground that the first plaintiff is a man of unsound mind and he is incapable of entering into any contract and therefore, the release deed that was executed by him in favour of the petitioner is null and void and nonest in the eye of law. The petitioner took an application in I.A.No.73 of 2011 under Section 12 (2) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 to direct the respondents to pay the Court fee under Section 40 of the Court Fees Act.



3.If the Court fee is calculated under Section 40 of the Court Fees Act, the respondents will have to pay Court fees of Rs.67,298.75/-.

4.The Court below after considering the entire facts and circumstances of the case and also the specific pleadings that were made in the plaint, came to the conclusion that the document that has been sought to be declared as null and void and nonest can be valued under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act and accordingly, the said application was dismissed.

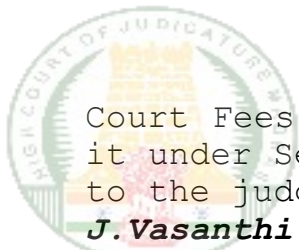
5.The learned counsel appearing for the petitioner submitted that the respondents are ultimately seeking for relief of cancelling the release deed executed by the first plaintiff in favour of the defendant. Therefore, the court fee has to be necessarily paid under Section 40 of the Court Fees Act. The learned counsel further submitted that the Court below went wrong in finding that the Court fee is payable only under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act.

6.The learned counsel appearing on behalf of the respondents submitted that the Court fee has to be determined only based on the pleadings and the relief sought for in the plaint. The Court below has given a categorical finding that a plain reading of the pleadings and the relief sought for requires the Court fee only to be paid under Section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act and therefore, there is no requirement to interfere with the order passed by the Court below.

7.This Court has carefully considered the submissions made on either side and the materials available on record.

8.It is the specific case of the respondents that the release deed was executed by the first plaintiff, who is a person of unsound mind and not competent to enter into any contract and therefore, the document said to have been executed by him, is void *ab initio* and nonest in the eyes of law. The Court below has carefully taken note of this specific pleading in the plaint. Therefore, the Court below has come to a conclusion that the document is not sought to be cancelled and it is only sought to be declared as nonest in the eye of law and therefore, the payment of the Court fee under Section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act is perfectly in accordance with law. The Court below has supported its order by relying upon the judgement of the Hon'ble Supreme Court reported in the case of ***V.R.Gopalakrishnan Vs. Andiammal*** in **2002 (2) CTC 513**.

9.It is now well settled principle of law that a document which is sought to be declared as sham and nominal or nonest in the eyes of law, can be valued under Section 25(d) of the Tamil Nadu



Court Fees and Suits Valuation Act and it is not necessary to value it under Section 40 (1) of the Act. An useful reference can be made to the judgment of the Hon'ble Supreme Court reported in the case of **J.Vasanthi And Others Vs. N.Ramani Kanthammal** in **2018 (1) LW 351**. This Court does not find any illegality or infirmity in the order passed by the Court below and accordingly, the fair and final order passed by the Court below in I.A.No.73 of 2011 dated 23.12.2011 is hereby confirmed. Accordingly, this Civil Revision Petition is dismissed and there shall be a direction to the Court below to complete the proceedings in O.S.No.75 of 2010 within a period of three months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Additional District Judge,
Fast Track Court No.1, Thoothukudi.

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-88476[F] dated 23/09/2019)

CRP. (MD) .No.504 of 2012(PD)

19.09.2019

tsg

JM/09.10.2019/3P/5C