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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 19.03.2019
DELIVERED ON : 16.04.2019
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No. 2436 of 2015

and

M.P. (MD) No. 1 of 2015

and

C.M.P. (MD) No. 10938 of 2016

M/s.N.S.N.Educational Trust,
Represented by its Chairman P.Selvam,
Having office at,
No.54, Ramakrishnapuram-50 ft., road,
Karur Town. .. Petitioner/Petitioner/16th Defendant

Vs.
Vijayalakshmi .. Respondent/Respondent/Plaintiff

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order passed by the learned Additional Subordinate Judge, Karur in I.A.No.177 of 2013 in O.S.No.128 of 2013 dated 02.09.2015.

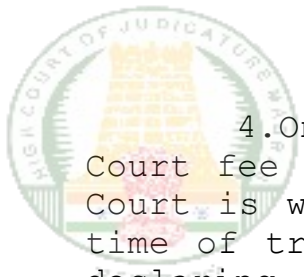
For Petitioner	: Mr.E.K.Kumaresan
For Respondent	: Mr.P.Dhanasekaran

ORDER

Heard Mr.E.K.Kumaresan, learned counsel appearing for the petitioner and Mr.P.Dhanasekaran, learned counsel appearing for the respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.177 of 2013 in O.S.No.128 of 2013 dated 02.09.2015 on the file of the learned Additional Subordinate Judge, Karur.

3.The petitioner herein is the 16th defendant and the respondent herein is the plaintiff in the suit. The respondent herein has filed a suit in O.S.No.128 of 2013 for a prayer of declaration and for declaring the general power of attorney dated 24.10.2005 as null and void and for a decree of declaration declaring the registered sale deeds dated 20.03.2006, 01.07.2010, 30.08.2010, 12.09.2011, 24.06.2011 is not binding upon the plaintiff and for granting a decree for partition and for injunction. This petitioner has filed a petition in I.A.No.177 of 2013 to reject the plaint and the petition was dismissed by the trial Court. Against that order of dismissal, the petitioner has come forward with this revision petition.



4. On the side of the petitioner, it is stated that when the Court fee is questioned, it has to be decided first and the trial Court is wrong in deciding that this issue can be decided at the time of trial. It is stated that the respondent filed a suit for declaring general power of attorney as null and void and for declaring various sale deeds as not binding upon him. Hence, the respondent has to pay the Court fee on the value of the sale deeds. It is stated that in the plaint itself, the plaintiff has himself admitted that he is residing in the suit village separately in contrary to the statement that the petitioner is said to be in the joint possession of the property. There is a construction of two floors in the suit property and the value of the construction is not taken into account by the trial Court. Even in the plaint, the plaintiff has admitted that the petitioner is in joint possession and has constructed a building in the suit property and that the market value of the property is to be decided first.

5. On the side of the respondent, it is stated that rejection of the plaint is filed under three grounds and that under Section 40 of the Court Fee Act, the petitioner has claimed rejection of plaint only on the ground that Court fee has to be paid for the market value of the suit property, on the basis of the value in the general power of attorney and on the basis of the value stated in the sale deeds and that the claim of the respondent is that the signature in the general power of attorney is a forged one and that there is no need to pay Court fee on the basis of a forged power deed.

6. On the side of the respondent, it is further stated that already expert has filed a report stating that the signature in the general power of attorney is forged one and paying Court fee under Section 40 will amount to admission of that document and there is no necessity for the respondent to pay Court fee under Section 40 of the Court Fees Act.

7. On the side of the petitioner, it is stated that a relief for cancellation of sale deed would attract Section 40 of the Act. In support of his contention, the Judgment passed by this Court in the case of **Chellakannu v. Kolanji** reported in **2005 (5) CTC 190** is cited.

8. On the side of the respondent, it is stated that this citation is regarding a case where the contesting party is a party to the document and that this citation is not applicable to the facts of the case.

9. The second point raised by the petitioner is that the Court fee is to be paid under Section 70 of Court Fees Act and the plaintiff is not in possession of the property. On the side of the



respondent, it is stated that in the plaint, it is clearly stated the plaintiff is in joint possession of the property along with the petitioner and that as the plaintiff is in joint possession, the Court fee paid under Section 37(2) of the Act is correct.

10. On the side of the petitioner, it is stated that for declaring a deed as null and void, the Court fee had to be paid under Section 40 of the Court Fee Act and not under Section 25(a) of the Act. In support of his contention, the Judgment passed by this Court in the case of **M. Abdul Muthalip v. M. Samsudeen** reported in **2009 4 L.W. 650** is cited.

11. On the side of the respondent, it is stated that the petitioner paid Court fee under Section 27(b) Court Fee Act, based on the notional value as the documents are not admitted by the plaintiff and the plaintiff is not a party to the above deeds. On the side of the respondent, it is stated that trial is going on in the case and the stay already granted was vacated and only to drag on the proceedings, the petitioner has filed this petition.

12. The claim of the petitioner is that the plaint is to be rejected on the ground of deficit Court fee. The claim of the petitioner is that the Court fee has to be paid under Section 40 of Court Fee Act and under Section 25(d) of Court Fee Act. The contention of the respondent is that the respondent is not a party to the document and the general power of attorney is a forged document and the Court fee paid is correct. Whether the plaintiff is in joint possession ?, whether the general power of attorney is a forged document ? and whether the sale deeds are valid ? are issues to be decided in this case. To decide the above issues, a detail enquiry is necessary. This points can be decided only after the completion of the trial.

13. In the above circumstances, the lower Court is directed to frame an issue on the correctness of the Court fee paid and to decide the same as a preliminary issue and if needed to give sufficient opportunity for the plaintiff to pay the additional Court fee.

14. With the above direction, this Civil Revision Petition is **disposed of**. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //



To

The Additional Subordinate Judge, Karur.

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+1 CC to M/s.P.DHANASEKARAN, Advocate (SR-61417[F] dated 16/04/2019)

MRN

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16.04.2019

KM/ (27.04.2019) 4P 3C