

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1641 of 2019

ORDER :

This Revision is directed against the docket order dt.26-06-2019 in O.S. S.R.No.7048 of 2019 of the Chief Judge, City Civil Court at Hyderabad.

2. Petitioners herein are plaintiffs in the suit.
3. They filed the said suit for the following reliefs:

“a) grant a decree and judgment in favour of the plaintiffs and against the defendants declaring the registered deed of sale bearing document No.1335 of 2007 dated 9-3-2007 executed by the 11th defendant in favour of 16th defendant in respect of suit schedule property i.e., land admeasuring 6753.51 sq. yds in Survey No.162 (old), Survey No.10 (new) bearing H.No.11-4-645, T.S.No.5, A.C.Guards at Mallepally village, Asif Nagar Mandal, Hyderabad and all other consequential proceedings relating to the suit schedule property are not binding upon the plaintiffs and also the suit schedule property by declaring the registered deed of sale bearing document No.1335 of 2007 dated 9-3-2007 as null and void and not binding upon the plaintiffs and over the suit schedule property.

b) by granting permanent injunction restraining the defendants or other servants, agents, workers or whosoever claiming through them from alienating, creating 3rd party interest and also changing the nature of the land whatsoever manner in respect of suit schedule property consisting of land admeasuring 6753.51 Sq. yds in Survey No.162 (old), Survey No.10 (new) bearing H.No.11-4-645, T.S.No.5, A.C.Guards at Mallepally village, Asif Nagar Mandal, Hyderabad,

c) to award costs of the suit, and

d) granting such other relief or relieves as this Hon'ble Court deems fit and proper in the interest of justice."

4. They valued the suit for the purpose of Court fee at Rs.20,00,000/- and paid Court Fee of Rs.22,426/- under Section 24(d) of the Telangana State Court fee and Suits Valuation Act, 1956 (for short 'the Act'). They stated specifically that since they are third parties and are not parties to the deed of sale bearing Doc.No.1335 of 2007 executed by 11th defendant in favour of 16th defendant in respect of the plaint schedule property and since they are contending that the said document is null and void and not binding on them, they have notionally valued the relief of permanent injunction at Rs.10,000/-, on which they have paid Court Fee of Rs.786/- under the Act.

5. The Court below made the impugned endorsement dt.26-06-2019 that as per the sale deed dt.09-03-2007, the value of the property is more than Rs.84.00 crores, hence the valuation is enhanced to 10% of Rs.84,41,95,504/- i.e. the sale consideration value and the plaintiffs are directed to pay the same within 7 days.

6. Assailing the same, this Revision is filed.

7. Learned counsel for petitioners placed reliance on the judgment of this Court in **Nande Ali Mirza and others Vs. Khalida Mohammed Salim Dawawala and others**¹ wherein this Court had held that if the plaintiffs are not parties to the document which they seek to be declared as null and void and not binding on them, they are

¹ 2016(1) ALD 318

not bound to seek relief of cancellation and compute the Court Fee on the market value of the land comprised therein.

8. Learned counsel for petitioners refers to prayer in the plaint, and contends that it is the specific contention of the plaintiffs/petitioners that they are not parties to the sale deed dt.09-03-2007 executed by 11th defendant in favour of 16th defendant, and they are only seeking declaration that the said sale deed is not binding on them by declaring it to be null and void.

9. In the above decision, this Court held that a plaintiff, who is not a party to a sale deed, is not bound to seek cancellation of it in view of the decision of the Supreme Court in **Suhrid Singh Vs. Randhir Singh**². It held:

“27. Admittedly, in the present case, the petitioners are not parties to the 107 documents which they seek to be declared as null and void and not binding on them. Therefore, in view of the above decision, it cannot be said that they are bound to seek relief of cancellation of the 107 documents and compute Court-fee on the market value of the land comprised therein.”

10. This Court interpreted Section 37 of the A.P.Court Fees and Suits Valuation Act, 1956 also and held that when the plaintiffs are not seeking relief of cancellation of any document mentioned in the plaint, the said provision of law is not attracted and they are not bound to pay Court-fee as computed under the said provision of law.

² AIR 2010 SC 2807

11. This Court relied on the judgment in **Mohd Ikramuddin Vs. Sangram Bosle and others**³ and held:

“39. In Mohd. Ikramuddin (3 supra), the plaintiff had filed a suit for declaration of title and recovery of possession of plaint schedule properties. He also sought a declaration that a sale deed executed by 2nd defendant in favour of 1st defendant is null and void. Since it was a suit for declaration of title and recovery of possession, he paid court fee under Section 24 (d) of the Act.

40. The said provision states :

24. Suits for declaration : -

(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 at which such relief is valued by the Court whichever is higher.

41. The trial court took an objection about the payment of court fee and directed him to pay court fee under Section 37 of the Act since he is asking for declaration that a registered sale deed was null and void and not binding on him. This was questioned in Revision before this Court. This Court held that since the plaintiff was not a party to the registered sale deed, he need not ask for cancellation of it and he is perfectly justified in asking for consequential relief of declaration that the sale deed is not binding on him. It held that merely because, to be on the safe side, the plaintiff sought for the relief for declaration that the sale deed is null and void and paid the court fee under Section 24 (d) of the Act, it did not mean that the suit falls under Section 37 and not Section 24 (d). It further held that such a prayer for declaration or cancellation could as well be ignored and court fee need not be paid thereon. It held that according to the plaint, when the plaintiff is not a party to the sale deed, he need not ask for cancellation of the sale deed as the cancellation implies that the person suing should be an actual or constructive party to a valid or operative document. It held that a third party like the plaintiff is not bound by a document of the description in question and is not obliged to sue for cancellation. It set

³ 2007(5) ALD 863

aside the order of the court below directing the plaintiff to pay court fee under Section 37 of the Act but not under Section 24 (d) and held that since according to the plaintiff it is a sham transaction, he need not pray for its cancellation and even if such a prayer is made, he need not pay court fee.”

12. In the instant case also, since the petitioners contended that the title to the plaint schedule property belongs to them, and since they are not parties to the sale deed dt.09-03-2007, and they have asked for declaration that the sale deed is null and void, they are not bound to pay any Court fee on the said relief.

13. Therefore, the Civil Revision Petition is allowed; the impugned order is set aside; and the Court below is directed to number the suit and proceed to decide it in accordance with law without raising any other objections as to Court Fee paid. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-08-2019

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