

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P.(PD) No.2100 of 2015
and M.P.No.1 of 2015

1. Mrs.Mercy David
2. Mr.R.Sydney David

... Petitioners/Petitioners/D17 & D18

-VS-

K.K.R.Town Welfare Association,
Rep. by its Secretary, Mr.Ravi Murugan,
No.G-7201, K.K.R. Town, Kodungaiyur,
Chennai - 118.

... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India,
against order and decretal order passed in I.A.No.16236 of 2014 in
O.S.No.5353 of 2011 on the file of the I Assistant City Civil Court, Chennai
dated 27.04.2015.

For Petitioners : Mr.S.Arokia Maniraj
For Respondent : Mr.J.Kannan

ORDER

The respondent, who is the Plaintiff in the suit in O.S.No.5353 of 2011,
sought for the following relief in the suit:

"a) for declaration to declare that the sale deed vide
Doc.No.8483/2008 dated 5.11.2008, on the file of S.R.O.
Sembium, executed by the 16th defendant herein in his capacity
as the Power Agent of defendants 1 to 15, to and in favour of the
17th defendant herein is null and void, fraudulent and non-est in
the eyes of law.

b) for declaration to declare that the settlement deed vide
Doc.No.2227/10, dated 19.3.2010, on the file of S.R.O. Sembium,
executed by the 17th defendant herein to and in favour of the 18th
defendant is null and void fraudulent and non-est in the eyes of
law.

c) for declaration to declare that the plaintiff association is the absolute owner of the property bearing Door No.7201 & 7202 in "G" Block having total extent of 200 sq.ft. together with common areas and as well as the staircase.

d) for a permanent injunction restraining the 17th and the 18th defendants their men, agents, servants, or any person or any body claiming under or through them from alienating the property bearing Door No.7201 & 7202 in G Block, K.K.R. Town, 4th cross street, jambuli village, fort-thondiarpet tk. Comprised in S.Nos.22, 24/1, 25 & 26/2, which is more fully described in the schedule of property.

e) directing the defendants to pay the cost of the suit."

During pendency of the suit, the petitioners herein / D17 & D18 had filed an application in I.A.No.16236 of 2014 before the I Assistant City Civil Court, Chennai for rejection of the plaint on the ground of improper valuation of Court Fee by the plaintiff. Learned I Assistant Judge, City Civil Court, Chennai, after hearing both parties, directed the Plaintiff to value the relief in respect of prayer (c) and (d) under Section 25(b) of the Tamil Nadu Court Fees and Suit Valuation Act on or before 08.06.2015. Aggrieved by the same, the petitioners are before this Court.

2. Learned counsel for the petitioners has submitted that insofar as third prayer sought for is concerned, the issue had already been decided in favour of the petitioners herein in A.S.No.279 of 2014 and that the same cannot be re-agitated once again before this Court, when they have a favourable order in the said appeal suit. Therefore, the order of the Trial Court in permitting the plaintiff to value the property under Section 25(b) of

the Act, instead of Sections 25(a) and 40 of the Act, is apparently erroneous and the same needs to be set aside.

3. This Court cannot go into those aspects in the present petition, as the issue to be decided in this case is, as to whether the plaintiff had paid the correct Court Fee as contemplated under Section 25(b) of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 or not, as directed by the Trial Court.

4. According to the learned counsel for the petitioners, the calculation made by the Trial Court in Paragraph No.6 itself is wrong and the court fee, in respect of the prayer regarding declaration of the sale deed and settlement deed to be null and void, should have been valued under Section 40 of the Tamil Nadu Court-Fees and Suits Valuation Act, 1955 based on the market value of the property prevalent as on the date of filing of the suit. It is also stated that for the relief of declaration of title of the property, the plaint should have been valued under Section 25(a) of the Act.

5. Learned counsel for the petitioners pointed out that the court fee has been paid on the basis of the calculation made by the defendants in the suit with regard to the settlement deed. Without taking all these factors into account, the lower Court simply directed the court fee to be paid before 08.06.2015.

6. It is true that the Court fee will have to be paid in terms of Section 25(b) of the Act mentioned supra. Since the plaintiff / respondent was not a party to the sale deed or the settlement deed, the finding of the lower Court in paragraph No.6 is valid in accordance with the provisions of the Act. For the sake of convenience, paragraph No.6 is extracted hereunder:

"6)Further, the plaintiff also seek to declare the Association as the owner of the property and also for permanent injunction not to alienate or encumber the property as reliefs in (C) and (D) of the plaint. But has not valued the suit u/s.25(b) of the Tamil Nadu Court Fees and Suit Valuation Act. The said section says 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 plaintiff has valued the suit u/s.25(d) at Rs.4000/- for all the reliefs and be declared as null and void is produced as Document No.10 and 11 in the plaint. Under Plaint Doc.No.10 the property is sold for Rs.18,774/-. Therefore, the market value of the property is to be reckoned as Rs.18,774/- to get a declaration relief under(C) and (D) of the plaint. The plaintiff ought to have valued the relief (C) and (D) of the plaint u/s.25(b) of the Tamil Nadu Court fees and Suit Valuation Act. The valuation adopted under Document No.11 is shown as Rs.4,50,000/-. But the same was not taken as a market value as it is the guideline value of the property. Therefore, the plaintiff must value the relief under (C) and (D)of the plaint u/s.25(b) of the Tamil Nadu Court fees and Suit valuation Act. Half of the market value of Rs.18,774/- comes to Rs.9,387/- and a court fee of Rs.704.25/- is to be paid for reliefs (C) and (D). Already the plaintiff has paid a court fee of Rs.302/- adopting Sec.25(d) of the Tamil Nadu Court fees and Suit valuation Act for all the reliefs deducting Rs.151/- from Rs.704.25/- balance to be paid by the plaintiff is Rs.553.25. The plaintiff has to take steps to amend the valuation para in the plaint and has to pay the correct court fees."

7. According to the plaintiff / respondent herein, the Court Fee with regard to prayers (c) and (d) was erroneously calculated and paid by the

respondent and the liability to pay the Court Fee is only under Section 25(b) of the Act. Therefore, the Court below has rightly granted time to pay the Court Fee under under Section 25(b) of the Act, which is perfectly valid. It is further stated by the respondent herein that due to the pendency of the proceedings of the interim order, it was not proceeded further. The contention of the respondent is that with regard to court fees falling under Section 25(b), the petitioners have not produced any documentary evidence to show about the market value.

8. It is pertinent to mention here that generally, it proceeds on the basis that the market value will be more than the guideline value and sometime the guideline value will also be more. In case the guideline value is more, the computation of court fee cannot be lesser on the ground that there is no market value produced. As stated supra, the lower Court has rightly directed the plaintiff to pay the correct court fee in terms of Act. Insofar as the relief prayer (c) and (d) are concerned, the plaintiff / respondent herein will have to pay court fee based on the computation under Section 25(b) and if there are no market value, the guideline value prevalent on that date of filing of the suit has to be taken into account and same has to be paid. To that extent, the order of I Assistant Judge is clarified. For valuation of the suit property and payment of proper court fee by amending the valuation para, this Court grants four weeks' time from the date of receipt of a copy of this

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order to pay the difference in court fee and on such payment, the matter can be proceeded further.

9. Since the matter is of the year 2015, the trial Court is directed to take up the matter on day-to-day basis without adjourning the matter beyond 15 working days at any point of time and this Court expects that the Trial Court to dispose of the matter as early as expeditiously, preferably within a period of one year, from the date of receipt of a copy of this order.

10. With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

03.03.2020

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
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To:

The I Assistant City Civil Court, Chennai.

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