

C.R.P.(PD).No.1463 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 29.06.2018

DELIVERED ON 02.03.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD).No.1463 of 2017

S.N.Navaneethan

Petitioner

Vs.

1.R.Mylsamy

2.Panneerselvam

3.K.Arumugam

4.K.G.Somasundaram

5.M/s. The Lakshmi Mills Company Limited

rep. By its Managing Director

1100, Avinashi Road

Pappanaickanpalayam

Coimbatore-641 037

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 28.11.2016 passed in I.A.No.576 of 2016 in O.S.No.358/2013 on the file of V Additional District Judge, Coimbatore.

For Petitioner : Mr.R.Vasudevan

For Respondents : Mr.G.P.Kothandaraman for R1 to 4

Mr.A.Saravanan for R5

ORDER

The Civil Revision petition is directed against the order passed by the Trial Court in rejecting the plaint.

2. The Revision petitioner is the plaintiff before the Trial Court. He filed a suit for declaration declaring the deed of assignment dated 07.12.2005 as null and void. The suit was valued for a sum of Rs.1000/- u/s. 27(c) of Tamil Nadu Court Fees and Suits Valuation Act, 1965(hereinafter referred to as the 'Act'). According to the plaintiff the 1st respondent had fraudulently obtained signatures in blank papers and in the deed of assignment without paying any money. He came to know of the fraudulent transaction when a suit for specific performance filed in O.S.No.709 of 2008 on the file of 5th Additional District Judge, Coimbatore. Since the deed of

assignment dated 07.12.2005 is obtained by fraud, the question of limitation will commence from the date of knowledge and since it is not supported by consideration, it is incapable of valuation and therefore it is rightly valued at Rs.1000/-.

3. Whereas the 1st respondent has filed the petition under Or.VII R.11 C.P.C for rejection of plaint on the ground that the plaint should have been valued u/s. 40 of the Act and a Court fee of Rs.9,37,500.50p should be directed to be paid.

4. After elaborate discussion, the Trial Court has found that the petitioner was a party to the deed of assignment and as such the suit should have been valued u/s. 40 of the Act. Since consideration of the assignment was for Rs.1.2 crores corresponding Court fee of Rs.9,37,500.50 was directed to be paid granting one month time for making payment of deficit Court fee. Aggrieved over the said order, the present revision has been filed.

5. Learned counsel appearing for the plaintiff would contend that the suit was valued u/s. 25(d) of the Act, but it was wrongly typed as one u/s. 27(c) of the Act and therefore, he sought for amendment. According to him the property is incapable for valuation. The valuation made in the plaint is proper. In so far as rejection of plaint u/s. Or.VII R.11 of C.P.C is concerned, the averments made in the plaint alone are germane for consideration and no documents other than plaint should not be considered. As such, on the face of the averments of the plaint, the suit is maintainable and cannot be rejected. Therefore, the order of the Trial Court is erroneous and liable to be set aside.

6. Learned counsel appearing for the respondents would vehemently contend that the deed of assignment is marked as plaint Document No.2. Entire suit is based on the assignment and hence, it shall be valued as per the value of the subject matter of the suit. The valuation of the assignment is 1.2 crores and therefore, court fee shall be paid corresponding to the value of the property, viz., Rs.1.2 Crores, when cancellation of

document is sought for by a party to the document. In that view of the matter, the order passed by the Trial Court is very much legal and does not suffer from any discrepancy.

7. I considered the rival submissions.

8. At the outset, the plaintiff prays for declaring the deed of assignment dated 07.12.2005 as null and void and to set aside the same. For declaring the assignment as null and void and for setting aside the same, it is very clear that the valuation of the assignment deed should be taken into consideration. The petitioner was the party to the document. A perusal of Sections 25 and 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, would be beneficial to decide the issue, which reads as under:

"25. Suit for declaration - In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under Section 26-

(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on rupees three hundred whichever is higher;

(b) 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 of the property or on rupees three hundred, whichever is higher.

(c) where the prayer relates to the plaintiff's exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on rupees five hundred, whichever is higher;

(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 on rupees four hundred, whichever is higher.

40. Suits for cancellation of decrees etc. - (1) In a suit for cancellation of a decree for money or other property having a money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be "

If the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed;

If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of a property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree whichever is less."

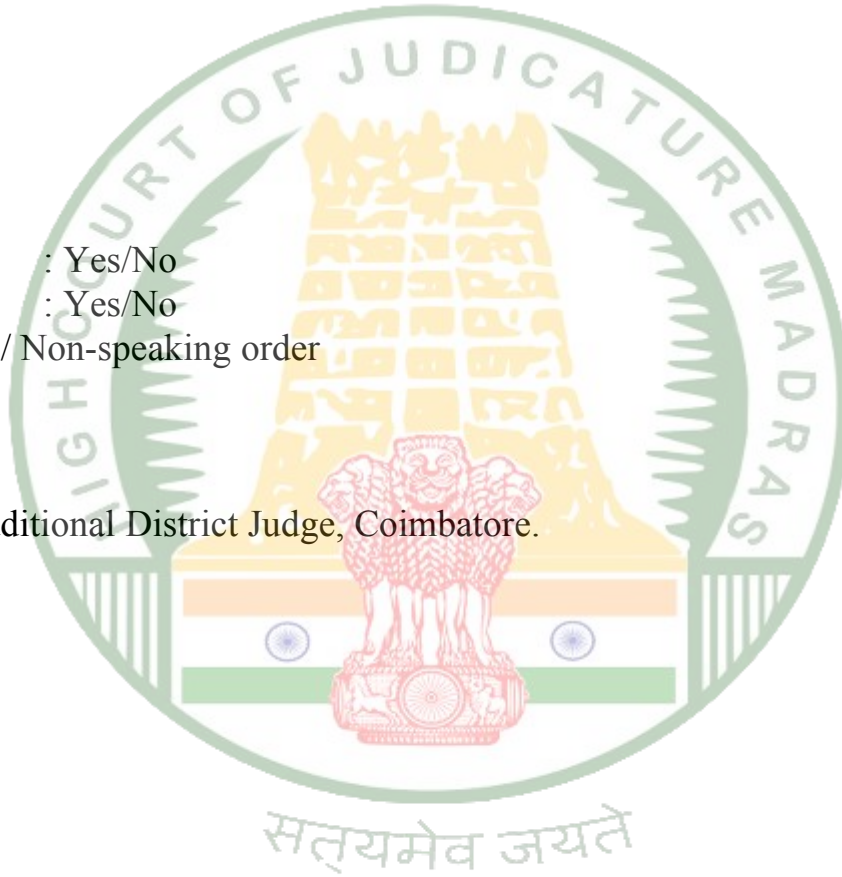
9. In a suit for declaration of title or right on a movable or immovable property with a consequential prayer of possession or injunction or infringement of rights are concerned, they are valuable under Clause (a)-(c). After declaration, it shall be valued under Clause (d) of Section 25 of the Act. But in the instant case, the petitioner, through declaratory decree, seeks to cancel a document. In so far as cancellation of a document, which assign, create or extinguishes the right, title or interest in money in a movable or immovable property, court fee shall be computed on the value of the property. The subject matter in this suit the deed of assignment for a value of Rs.1.2 Crores. Whether the consideration had actually passed or not fraud was played on the parties is matter for evidence. Therefore, the Trial Court has rightly found that whether it was fraudulent or supported by money it can be decided only at the time of Trial. In so far as valuation is concerned, it shall be valued as per the value of deed which is the subject matter of the suit sought to be set aside. Admittedly, the said assignment deed said to have been executed for a sum of Rs.1.2 crores. In that view of the matter, it cannot be said that it is incapable for valuation and therefore the valuation of the suit

shall be computed u/s. 25(d) of the Act is not sustainable. On the other hand, as rightly decided by the Trial Court, it shall be valued u/s. 40 of the Act. Therefore, I do not find any discrepancy in the order passed by the Trial Court. Accordingly, the Civil Revision petition is dismissed. No costs.

02.03.2020

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
KPR/TK

To
The V Additional District Judge, Coimbatore.



WEB COPY

C.R.P.(PD).No.1463 of 2017

M.GOVINDARAJ, J.

kpr/tk



Pre-Delivery order
in
C.R.P.(PD).No.1463 of 2017

WEB COPY

02.03.2020