

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(PD) No.1912 of 2015
and M.P.No.1 of 2015

1. Manish Agarwal
2. A.Deepak Modi

... Petitioners

Vs.

M/s.Chitra Construction Pvt. Ltd.,
Rep. by its Managing Director,
S.Govindarajan,
S/o. R.Gopalakrishnan,
Having office at Flat No.207,
Shopping Inn, Chitra Avenue,
Choolaimedu High Road,
Chennai - 600 094.
Now at No.9,
Choolaimedu,
Chennai - 600 094

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 13.08.2014 in I.A.No.2145 of 2013 in O.S.No.68 of 2013 on the file of the Additional District Munsif Court, Alandur.

For Petitioners : Mr.R.Subramanian
For Respondent : No appearance

ORDER

This revision petition has been filed challenging the fair and decreetal order dated 13.08.2014 made in I.A.No.2145 of 2013 in O.S.No.68 of 2013 on the file of the Additional District Munsif Court, Alandur, thereby dismissing the petition filed by the petitioners/defendants to reject the plaint.

2. The respondent is the plaintiff in the above suit. He filed the suit for declaration and injunction in respect of the suit properties. The case of the respondent/plaintiff is that the first petitioner/defendant is a money lender and he is known to the respondent/plaintiff for the past ten years. He used to lend money to the companies for financial requirements. While lending loan, the first petitioner/defendant used to get registered power of attorney, deposit of title deed and also agreement for sale in respect of the properties.

WEB COPY

3. Accordingly, while borrowing loan, the respondent/plaintiff executed power of attorney in favour of the second petitioner/defendant in

respect of plot Nos.96 & 97 viz., the suit schedule properties as directed by the first petitioner/defendant. Thereafter, the respondent/plaintiff sold out plot No.96, in favour of one K.Joseph George by a registered sale deed dated 30.07.2009 vide document No.2808 of 2009 and plot No.97 was sold out to one D.Raja Singh Prabahar & A.Packia Rani by a registered sale deed dated 08.01.2010 vide document No.68 of 2010. On the said sale consideration, the respondent/plaintiff settled the entire amount which was borrowed by him to the first petitioner/defendant with interest. In fact, by virtue of construction agreements dated 25.05.2009 & 05.11.2009, the respondent/plaintiff completed the construction and handed over possession to the said persons and they are in possession and enjoyment of the suit schedule properties.

4. After settling the entire amount, the first petitioner/defendant in order to grab the entire properties, executed a sale deed dated 26.07.2010 vide document No.3907 of 2010 in his favour, through the power of attorney viz., the second petitioner/defendant. Therefore, the respondent/plaintiff being the principal of the power of attorney executed in favour of

the second petitioner/defendant, filed a suit for declaration to declare the sale deed executed in favour of the first petitioner/defendant through the second petitioner/defendant is null and void along with the injunction prayer.

5. The learned counsel appearing for the petitioners/defendants would submit that even according to the respondent/plaintiff, he sold out the suit schedule properties by the registered sale deeds dated 30.07.2009 and 08.01.2010. Therefore, the respondent has no title or right over the suit schedule properties, as such there is absolutely no cause of action to the respondent/plaintiff to file the present suit against the petitioners/defendants herein. He would further submit that the suit is valued under Section 25(d) of the Tamilnadu Court Fees and Suit Valuation Act instead of valuing the suit properties under Section 40 of the Court Fees Act, since the properties are valued at Rs.12,80,000/- as per the sale deed dated 26.07.2010 vide document No.3907 of 2010. Therefore, the petitioners/defendants filed an application in I.A.No.2145 of 2013 to reject the plaint. The trial Court without considering the above facts dismissed the said application. Aggrieved by the same, the present Civil Revision Petition.

6. Though notice was served on the respondent/plaintiff herein and his name was printed in the cause list, none appeared on behalf of the respondent by person or through pleader.

7. Admittedly, the respondent was the absolute owner of the properties comprised in Plot Nos.96 and 97 viz., suit schedule properties. According to the respondent/plaintiff while availing loan, he executed power of attorney in respect of the suit schedule properties in favour of the second petitioner/defendant as directed by the first petitioner/defendant. Even after settling the entire loan after selling the properties by the registered sale deeds dated 30.07.2009 and 08.01.2020, the second petitioner/ defendant executed sale deed in favour of the first petitioner/defendant. Though the suit schedule properties were sold out in favour of one K.Joseph George, D.Raja Singh Prabahar & A. Packia Rani, if there is any encumbrance in the properties, the respondent/plaintiff has to clear the encumbrance according to the sale deed. Therefore, the respondent/plaintiff is constrained to file the present suit to declare the sale deed executed in favour of the first defendant by the second defendant as

null and void. Therefore, the trial Judge rightly rejected the contention that there is no cause of action arose for the respondent/plaintiff to file the suit.

8. In respect of the another contention that the suit should have been valued under Section 40 of Tamilnadu Court fees and Suit Valuation Act instead of Section 25(d) of the said Act is concerned, the learned counsel appearing for the petitioners/defendants relied upon the judgment reported in 2014(6) CTC 67 in the case of **Sri Krishnaswamy Education Trust Vs. Jabely Edward & others**, in which this Court held as follows :-

"14.Per contra, the learned counsel for the revision Petitioners relied on two decisions in support of their contentions.

1.AIR 1974 Madras 152(Rajam Ammal .vs. V.N.Swaminathan and others), in which , para 4 reads as follows:

4..... In view of this, the question for consideration will be whether the Full Bench Judgement inferred to above construing Section 7(iv-A) of the Court Fees Act, 1870, as amended by the Madras Court Fees(Amendment) Act, 1922, can be overlooked or ignored for construing Section 40 of the Madras Court fees and Suits

Valuation Act, 1955. In the Full Bench Decision also the suit was for a decree setting aside a conveyance which the plaintiff had executed and for possession of the land covered by the deed, pleading that he had been induced to sign the instrument as a result of undue influence and fraud. The question was whether that has to be valued under Section 7(iv-A) for the purpose of the court fee and court fee should be paid on the market value of the properties involved as on the date of the plaint. The arugment that was advanced on behalf of the plaintiff in that case was that since a prayer for possession of the properties had been made the suit had to be valued under Section 7(v) and not under Section 7(iv-A).The Full Bench negated the contention and agreed with the view of Venkatasubba Rao,J., in Bali Reddi .vs. Khatipulal Sab, ILR 59 Mad 240:(AIR 1935 Mad 863) and held that the court fee has to be paid on the market value of the properties as on the date of the plaint. The Full Bench held that--

The Court fee is to be calculated on the amount or the value of the properties and to give the

wording of para (iv-A) its plain meaning the valuation must be the valuation based on the market value of the properties at the date of the plaint.

2. Another decision reported in 2005(5) CTC 190(Chellakannu .vs.Kolanji), in which, para 15 reads as follows:

15. The allegation on the Plaint in substance amounts to cancellation of the document. Though the prayer is couched in the form of seeking declaration that the document is not valid and not binding, the relief in substance indirectly amounts to seeking for cancellation of the Sale Deed. Learned District Munsif was right in ordering payment of Court Fee under Section 40 of the Act. This Revision petition has no merits and is bound to fail.

15. In view of the above said observations in the above said decisions, in the instant case, from the entire pleadings and prayer sought for in the plaint, respondents 1 to 6 should have value and to be paid the court fee under Section 40 of the Act. As rightly pointed out by the learned counsel for the revision Petitioners, the trial Court

has not at all considered the pleadings in the plaint and contention raised by the revision Petitioners. Therefore the findings of the trial Court are perverse and illegal as rightly pointed out by the learned counsel for the revision Petitioners.

16. In the result, the order passed by the trial Court in I.A.No. 1551 of 2002 in O.S.No.269 of 2002 on the file of the Principal District Munsif Court, Cuddalore is set aside and the respondents 1 to 6 are directed to represent the plaint and also directed to pay the court fee under Section 40 of the Act within one month from the date of order before the concerned Court which is having the jurisdiction to try the suit. Failing which, directed to reject the plaint immediately and the Civil Revision Petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed. No order as to costs."

9. In the case on hand, even according to the respondent/plaintiff, the second petitioner/defendant executed sale deed in favour of the first petitioner/defendant for the sale consideration of Rs.12,80,000/-. Though

the second petitioner is the power of attorney, the respondent is the principal of the said power of attorney. Therefore, the properties originally stand in the name of the respondent herein and the respondent executed power of attorney in favour of the second petitioner. On the strength of the said power of attorney, the second petitioner executed sale deed in favour of the first petitioner herein. Therefore, the respondent is also a party to the sale deed which is under challenge in the suit. Therefore, the respondent ought to have valued the suit according to the value of the sale deed.

10. Unfortunately, the Court below erred in holding that the respondent is not a party to the document which is under challenge in the suit and as such the respondent paid nominal fee and valued the suit under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act. Therefore, the respondent should have valued the suit under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act. The above case cited by the learned counsel appearing for the petitioners is squarely applicable to the case on hand and as such the finding of the trial Court in respect of the valuation of suit is perverse and illegal and the trial Court has no pecuniary

jurisdiction to try the suit.

11. In view of the above discussion, the order dated 13.08.2014 passed by the learned Additional District Munsif, Alandur in I.A.No.2145 of 2013 in O.S.No.68 of 2013 is hereby set aside. The respondent/plaintiff is directed to value the suit under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act and re-present the plaint before the jurisdictional Court, which is having pecuniary jurisdiction to try the suit, within a period of 30 days from the date of receipt of copy of this Order, failing which the trial Court is directed to reject the plaint forthwith.

12. Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

04.01.2021

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
rts

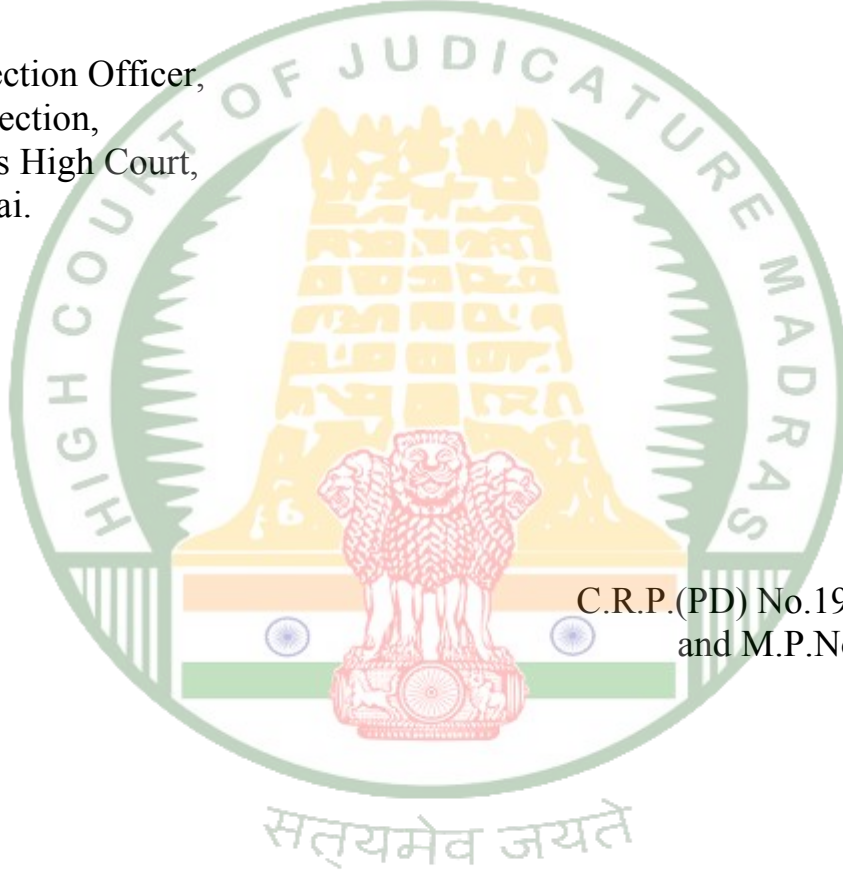
WEB COPY

G.K.ILANTHIRAIYAN, J.

rts

To

1. The Additional District Munsif,
Alandur
2. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.



C.R.P.(PD) No.1912 of 2015
and M.P.No.1 of 2015

WEB COPY

04.01.2021