

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.12.2020

Delivered on: 17.02.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRP.(PD).No.4502 of 2015

and

M.P.No.1 of 2015

1.S.Gowsick
2.S.Punitha
3.Hariharamoorthy
4.S.Sivaprakash
5.S.Murugaiyam

...Petitioners

Vs.

1.K.P.Venkatachalam
2.Prabhavathi
3.Anand
4.T.Senthil
5.Samuvel Jasuva

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.10.2015 made in I.A.No.378 of 2014 in O.S.No.41 of 2014 on the file of the II Additional District Court, Erode.

For Petitioners : Mr.C.Ramaraj
for Mr.M.Guruprasad

For Respondents : Mr.N.Manokaran for R1 to R3
R4 and R5- No appearance

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants 3 to 7 against the dismissal of their application in I.A.No.378 of 2014 in O.S.41 of 2014 on the file of the II Additional District Court, Erode, dated 09.10.2015.

2. The petitioners herein had filed an application in I.A.No.378 of 2014 in O.S.No.41 of 2014 on the file of the II Additional District Court, Erode, under Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (hereinafter referred to as “TNCF Act”) to decide the valuation of the subject matter of the suit and sufficiency of the Court fee paid on the plaint. The learned II Additional District Judge, Erode, by the order dated 09.10.2015 had

dismissed the said application with costs. Feeling aggrieved, the Petitioners/defendants 3 to 7 have filed the present Civil Revision Petition.

3. Heard, Mr.C.Ramaraj for Mr.M.Guruprasad, the learned counsel for the petitioners/defendants 3 to 7 and Mr.N.Manokaran, the learned counsel for the respondents 1 to 3/plaintiffs.

4. The learned counsel for the petitioners has submitted that the respondents 1 to 3 herein had filed a suit in O.S.No.41 of 2014 on the file of the II Additional District Court, Erode, to declare the sale deeds vide Doc.Nos.2145/2013 to 2149/2013, Avalponduri, Sub Registrar Office executed by the defendants 1 and 2 in favour of the defendants 3 to 7 are liable to be set-aside as null and void and also permanent injunction restraining the defendants therein from interfering with their peaceful possession and enjoyment of the suit property. He further submitted that the respondents 1 to 3 had valued

the relief of declaration under Section 40 of the TNCF Act and as such, they should have paid the Court Fee for the value mentioned in the said documents but, they have valued the plaint by referring to the guideline value maintained by the Sub-Registrar and hence, the petitioners herein had raised objections in their written statement as the relief for declaration has not been properly valued and proper Court Fess has not been paid.

5. He further submitted that the petitioners herein, after filing of the written statement, had filed an application in I.A.No.378 of 2014 under Section 12(2) of the TNCF Act, to decide the valuation of the subject matter of the suit and sufficiency of the Court Fee paid but, the learned II Additional District Judge, Erode had erroneously dismissed the said application with costs and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned II Additional District Judge, Erode, in I.A.No.378 of 2014 in O.S.No.41 of 2014 and allow the said application.

6. The learned counsel for the petitioners in support of his contention, relied upon the decision in *Satheedevi Vs. Prasanna and another, (2010) 5 SCC 622*.

7. Per contra, the learned counsel for the respondents 1 to 3/plaintiffs has submitted that the respondents 1 to 3 have asked the relief of declaring the sale deeds as null and void and that being so, the said relief has to be valued by referring to the market value of the suit property and hence, the respondents 1 to 3 had valued the said relief by referring to the guide value maintained by the Sub-Registrar and paid the Court Fee accordingly. He further submitted that the first plaintiff entered into a loan agreement with the first defendant for getting the loan of Rs.3 lakhs under an oral agreement and at that time, the first defendant insisted the first plaintiff to hand over the title deeds and also obtained a document styled as General Power of Attorney deed. He further submitted that the first plaintiff had executed the said Power of

Attorney in favour of the first defendant only as a security for the loan availed by him, but by misusing the said Power of Attorney, the defendants 1 and 2 had fraudulently executed four sale deeds in favour of all the petitioners herein/ defendants 3 to 7 by mentioning fictitious higher values.

8. He further submitted that as per the guideline values maintained by the Sub-Registrar, the market value of the suit property is only Rs.23,67,000/- but in the said sale deeds, the defendants have mentioned an exaggerated value and hence, the respondents 1 to 3 had valued the suit for the relief of declaration by referring to the guideline values. He further submitted that the learned II Additional District Judge, Erode, after considering the aforesaid facts, had rightly dismissed the application filed by the petitioners herein and in the said order, this Court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

9. The learned counsel for the respondents 1 to 3 in support of his contentions, relied upon the following decisions:-

1) ***Kamaleshwar Kishore Singh Vs. Paras Nath Singh & Ors, 2001 (4) CTC 764;***

2) ***Suhrid Singh Alias Sardool Singh Vs. Randhir Singh and others, (2010) 12 SCC 112.***

10. A perusal of the typed set of papers filed by the petitioners shows that the respondents 1 to 3 herein had valued the relief of declaration under Section 40 of the TNCF Act. For proper appreciation under Section 40 (1) TNCF Act, is extracted hereunder:-

“40. Suits for cancellation of decrees, etc.-(1)

In a suit for cancellation of a decree for 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 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.

Explanation:- *A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section.”*

11. A bare reading of the aforesaid provision of law would show that in a suit for cancellation of a decree or document, Court Fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be the amount or value of the property for which the decree was passed or other document was executed. In this case, as already pointed out that the respondents 1 to 3 herein had decided to value the plaint for the relief of declaration under Section 40 of the TNCF Act, and as such, they should have paid the Court Fee for the amount or value of the property mentioned in the said documents.

12. In ***Kamaleshwar Kishore Singh Vs. Paras Nath Singh & Ors*** (cited supra) the Hon'ble Supreme Court has held as follows:-

“It is well settled that the Court Fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint the plaintiff has attempted at evading payment of Court Fee or unless there be a provision of

law requiring the plaintiff to value the suit and pay the Court Fee in a manner other than the one adopted by the plaintiff. The Court shall begin with an assumption, for the purpose of determining the Court Fees payable on plaint, that the averments made therein by the plaintiff are correct. Yet, an arbitrary valuation of the suit property having no basis at all for such valuation an made so as to evade payment of Court Fees and fixed for the purpose of conferring jurisdiction on some Court which it does not have, or depriving the Court of jurisdiction which it would otherwise have, can also be interfered with by the Court. It is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of Court Fee. The defence taken in the written statement may not be relevant for the purpose of deciding the payment of Court Fee by the plaintiff. If the plaintiff is ultimately found to have omitted to seek an essential relief which he ought to have prayed for, and without which the relief sought for in the plaint as framed and filed cannot be allowed to him, the plaintiff shall have to suffer the dismissal of the suit.”

13. From the aforesaid decision, it is clear that Court Fee has to be paid on the plaint as framed and not on the plaint as it ought to have been framed unless by astuteness employed in drafting the plaint, the plaintiff has attempted at evading payment of Court Fee or unless there be a provision of law requiring the plaintiff to value the suit and pay the Court Fee in a manner other than the one adopted by the plaintiff. It is also clear that the Court shall begin with an assumption, for the purpose of determining Court fees payable on plaint, that the averments made therein by the plaintiff are correct. It is also clear that an arbitrary valuation of the suit property having no basis at all for such valuation and made so as to evade payment of Court Fee, can also be interfered with the said valuation. It is also clear that it is the substance of the relief sought for and not the form which will be determinative of the valuation and payment of Court Fee.

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14. In this case, as already pointed out that the plaintiffs themselves had decided to value the relief of declaration under Section

40 of the TNCF Act. Once they decided to value the said relief under Section 40 of the TNCF Act, they have to pay the Court Fee as stated in the said provision. After deciding to value the said relief under Section 40 of the TNCF Act, they cannot request the Court to accept the value which was given by them. As per the said Section, the Court Fee shall be paid for the value mentioned in the said document. The plaintiffs cannot substitute their own value for the value is mentioned in the said documents. Therefore, the aforesaid decision will not help the respondents.

15. In *Suhrid Singh Alias Sardool Singh Vs. Randhir Singh and others* (cited supra) the plaintiff in that suit had not executed the sale deeds and hence, he did not seek cancellation of the sale deeds. On the contrary he sought to declare the sale deeds executed by his father as null and void qua the rights of the “coparcenary”, as they were not for legal necessity or for benefit of the family. Under the said circumstances, the Hon'ble Supreme Court has held that the plaint

which was valued under Section 7(iv) (c) of the Punjab Court Fee Act, 1870 is correct. But, in this case, as already pointed out that the plaintiffs themselves decided to value the said relief under Section 40 of the TNCF Act and as such, they have to pay the Court Fee for the value mentioned in the said documents and therefore, the aforesaid decision will not apply to the facts of this case.

16. In *Satheedevi Vs. Prasanna and another*, (cited supra) the Hon'ble Supreme Court in para-19 has held as follows:-

“19. The deeming clause contained in the substantive part of Section 40(1) makes it clear that in a suit filed for cancellation of a document which creates any right, title or interest in immovable property, the Court fee is required to be computed on the value of the property for which the document was executed. To put it differently, the value of the property for which the document was executed and not its market value is relevant for the purpose of Court fee. If the expression

“value of the subject-matter of the suit” was not followed by the deeming clause, it could possibly be argued that the word “value” means the market value, but by employing the deeming clause, the legislature has made it clear that if the document is sought to be cancelled, the amount of Court fee shall be computed on the value of the property for which the document was executed and not the market value of the property. The words, “for which” appearing between the words “property” and “other documents” clearly indicate that the Court fee is required to be paid on the value of the property mentioned in the document, which is the subject-matter of challenge.”

17. From the aforesaid decision it is clear that if the document is sought to be cancelled, the amount of Court fee shall be computed on the value of the property for which the document was executed and not the market value of the property. Therefore, the respondents 1 to 3 herein ought to have paid the Court fee for the value mentioned in the said sale deeds.

18. Even though, the respondents 1 to 3 herein have prayed to declare the impugned sale deeds as null and void and not binding on them, it appears, they felt that the said sale deeds should be cancelled and that is why they valued the said relief under Section 40 of the TNCF Act.

19. As already pointed out that the respondents 1 to 3 herein had chosen to value the relief of declaration under Section 40 of the TNCF Act and as such they have to pay the Court fee for the value mentioned in the said sale deeds. They cannot pay the Court Fee by substituting market value. The learned II Additional District Judge, Erode, without considering the aforesaid facts had dismissed the application filed by the petitioners and hence, the said order is liable to be set aside.

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20. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

The order passed by the learned II Additional District Judge, Erode, in I.A.No.378 of 2014 dated 09.10.2015 is set aside and the said application is allowed. The trial Court is directed to give a reasonable time to the respondents 1 to 3 herein/plaintiffs to value the relief of declaration as contemplated under Section 40 of the TNCF Act and pay the Court Fee accordingly. If the respondents 1 to 3 herein/plaintiffs failed to pay the Court Fee as aforesaid, the trial Court has to reject the plaint as contemplated under Order 7 Rule 11 of the Code of Civil Procedure.

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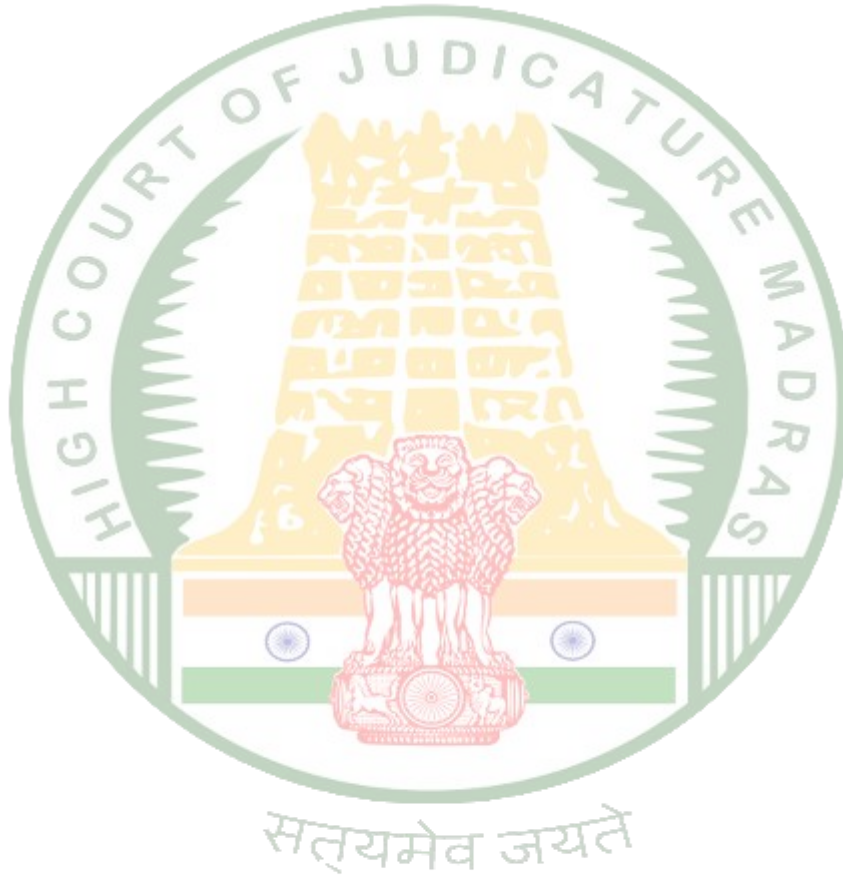
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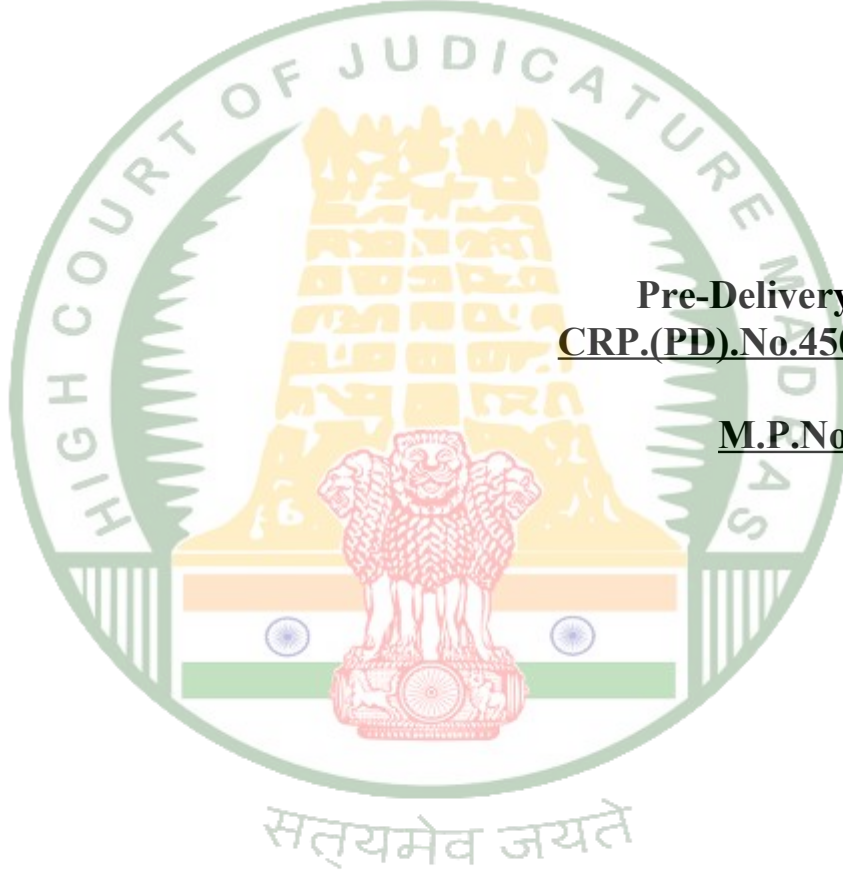
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P.RAJAMANICKAM.J.,
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