

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.04.2021

PRONOUNCED ON: 30.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 871 of 2021

1. Mrs. B.Kavitha
2. Mr. B.Sathish Kumar
3. Mrs. B. Ramya ... Petitioners/Plaintiffs

-Vs-

1. Mr. Vinayak Acharya
2. Mr.P.Jahubar Ali
3. Mr. Dillibabu
4. Ms. Suganya
5. LIC Housing Finance Limited
Office at No. 27, Rajaji Salai,
West Tambaram, Chennai – 600 045.
... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, 1908 against the order passed by the District Munsif Court at Tambaram, dated 19.01.2021 in O.S.S.R.No. 1473 of 2020 returning the plaint filed by the petitioners and directing the petitioners to pay the Court fee under Section 40 of Tamil Nadu Court Fees and Suits Valuation Act

1955, in the above O.S.SR. No. 1473 of 2020 and also directing the petitioners to present the plaint to Court having jurisdiction.

For Petitioners : Mr. V.V.Giridhar

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed by the plaintiff in unnumbered O.S.SR. No. 1473 of 2020 pending on the file of the District Munsif Court, Tambaram, questioning the order dated 19.01.2021 on the maintainability of the suit and directing the petitioners herein to value the suit under Section 40 of Tamil Nadu Court Fees and Suits Valuation Act 1955 and present the suit before the jurisdictional Court.

2. The suit in O.S.SR. No. 1473 of 2020 had been filed by three plaintiffs seeking a Judgement and Decree, declaring a sale deed dated 31.03.2017 executed by the 1st defendant, in his capacity as power of attorney agent of the plaintiffs, in favour of the 2nd defendant as null and void and to declare the mortgage of deposit of title deeds executed by the 2nd defendant in favour of the 5th defendant as null and void and for a

permanent injunction restraining the 1st to 4th defendants from dealing with the suit schedule property in any manner whatsoever and for costs of the suit.

3. The plaintiffs claimed that they are the absolute owners of the suit property having obtained it by way of a settlement deed dated 20.09.2013 executed by their mother. The plaintiffs, in June 2016, had approached the 3rd and 4th defendants for financial assistance of Rs.6,00,000/-. They received an initial payment of Rs.3,00,000/-. The 3rd and 4th defendants wanted the plaintiffs to execute a power of attorney and a registered power of attorney was executed in favour of the 1st defendant on 22.06.2016. The plaintiffs also handed over the title deeds of the property to the 3rd and 4th defendants.

4. The plaintiffs claimed that they had settled the loan amount and they sought return of the title deeds. Thereafter, they found that the 1st defendant had, exercising the power under the power of attorney, sold the property to the 2nd defendant. The 2nd defendant had mortgaged the property with the 5th defendant.

5. It is claimed that while executing the sale deed, an obligation was there on the first defendant to produce the Life Certificates of the plaintiffs. Forged Life Certificates is alleged to have been produced by the first defendant. It is also stated that while disbursing loan, the 5th defendant had issued a cheque in the name of the plaintiffs and the defendants had opened a fictitious bank account in the name of the plaintiffs and deposited the amount and had taken away the said amount. After realising all this, the plaintiffs have instituted the said suit claiming the reliefs as stated above.

6. They valued the suit under Section 25(d) of Tamil Nadu Court Fees and Suits Valuation Act 1955 and paid a fixed Court fee. The learned District Munsif had examined the facts and stated that the suit should be valued under Section 40 of Tamil Nadu Court Fees and Suits Valuation Act 1955 and necessary Court fees should be paid. Questioning that order, this Civil Revision Petition has been filed.

7. The learned counsel for the petitioners had relied on **(2006) 5 CTC 255 [Siddha Construction (P) Limited., Vs. M.Shanmugam and Others]**. In that case, there was also an averment that the plaintiffs therein did not execute the sale deed and did not receive any sale consideration and therefore sought to set aside the sale deed and to declare the same as null and void. They had valued the suit under Section 25(d) Tamil Nadu Court Fees and Suits Valuation Act 1955.

8. The Trial Court had held that such valuation was correct. Questioning that the defendant had filed the Revision Petition before the High Court and a learned Single Judge of this Court had affirmed the valuation of the suit under Section 25(d) of Tamil Nadu Court Fees and Suits Valuation Act 1955.

9. In the present case, the reason given by the learned District Munsif Court is that the plaintiffs had not cancelled the power of attorney till the execution of disputed sale deed. It had therefore been stated that the plaintiffs were technically a party to the sale deed as it had been executed by their lawfully appointed agent. The reasoning by the learned District

Munsif is correct and hence the ratio laid down in (2006) 5 CTC 255 referred supra will not be applicable.

10. The learned counsel for the petitioners then relied on **(2016) 1 CTC 369 [Inspector General of Registration and Ors. Vs. Barathan]**, that was with respect to the seeking of a Life Certificate for registration of a sale deed and gift deed by power agents. That Judgement is not directly applicable to the facts of this case. At the matter of fact, it had been stated that the Life Certificate is not necessary.

11. The learned counsel for the petitioner also relied on **AIR 2010 S 2807 [Suhrid Singh alias Sardool Singh Vs. Randhir Singh and Others]**. The Hon'ble Supreme Court had distinguished Executant vis-a-vis non-executant. It was found that in that case, the plaintiff was the non Executant and therefore ad valorem court fees on market value was not applicable.

12. In the instant case, however, the first defendant had executed the sale deed in favour of the second defendant in his capacity as power of

attorney of the plaintiffs. In effect, he represented the plaintiffs and signed on behalf of the plaintiffs. If he had committed any act of fraud then, the plaintiffs should establish fraud, however, they cannot be considered as non Executant. Therefore, the order of the learned District Munsif calling upon the plaintiffs to pay Court fees under Section 40 of the Act is correct.

13. The learned counsel for the plaintiffs also relied on **(2007) 1 CTC 300 [K.Palaniswamy Vs. S.B. Subramani]**. That suit related to a sale deed executed by the power of attorney agent after the revocation of the power of attorney.

14. In the instant case, the power of attorney had not been revoked by the plaintiffs herein. Therefore, they cannot claim to value the suit under Section 25(d) of Tamil Nadu Court Fees and Suits Valuation Act 1955 with respect to the relief of declaration with respect to the document since technically the power of attorney agent represented them and they were parties to the document.

15. It must also be noted that the plaintiffs had to the extent possible averred fraud. They had also given a police complaint averring fraud.

16. The plaintiffs should have taken steps to immediately cancel the power of attorney. It is a registered document. It is binding on the principal and on the agent.

17. It is not the case of the plaintiffs that there was no clause in the said power of attorney that the first defendant/agent cannot deal or encumber with the property. Fraud is an aspect which the plaintiffs will have to prove during the course of trial.

18. I concur with the finding of the learned District Munsif. The Civil Revision Petition is dismissed.

vsg

30.04.2021

Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

Note: Registry is directed to return the original plaint to the counsel for the plaintiff in proper acknowledgement after retaining a copy as a record to this proceedings.

C.V.KARTHIKEYAN, J.

vsg



Pre-delivery Order made in
C.R.P. (PD) No. 871 of 2021

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