

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD)No.1625 of 2016
and CMP No.8775 of 2016

S.Ponnusamy ... petitioner

Vs.

1. S.Boopathi
2. Kaliannan ... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order of the Sub Court, Namakkal dated 09.12.2014 in IA.No.155 of 2013 in OS.No.129 of 2012.

For Petitioner : Mr.P.Valliappan
For Respondents : No appearance.

ORDER

(This case has been heard through video conference)

This civil revision has been filed seeking to set aside the fair and decreetal order passed by the Sub Court, Namakkal in IA.No.155 of 2013 in OS.No.129 of 2012 dated 09.12.2014.

2. The revision petitioner herein is the plaintiff in OS.No.129 of 2012.

3. The brief facts is that the revision petitioner/plaintiff had lend a sum of Rs.3lakhs to the second respondent/first defendant-Kaliannan on 01.06.2008 for his urgent family expenses. In pursuance to which he executed a promissory note in favour of the revision petitioner on the same day for the said amount agreeing to repay with interest at 1.50per Rs.100/-p.m. The first defendant did not paid any amount or interest in spite of plaintiff's several request. The revision petitioner demanded to repay the loan amount, whereas the second respondent/first defendant without repaying the amount attempted to alienate his immovable properties. Thereby the revision petitioner was constrained to file suit for recovery of money against the second respondent/first defendant in OS.No.206 of 2009 on the file of Sub Court, Namakkal. In the suit, revision petitioner filed IA.No.924 of 2009 to furnish security and notice was ordered by the trial Court. The first defendant was served with the notice and he furnished some other security and since it was not acceptable, the plaintiff objected to it. During the pendency of the said

application, the first defendant sold the suit property to the second defendant/first petitioner on 27.01.2010. Whiles, after full fledged enquiry, the trial Court in IA.No.924 of 2009 in OS.No.206 of 2009 ordered attachment of the property. Aggrieved against the said order of attachment, the second respondent/first defendant filed an appeal in CMA.No.1 of 2011 before the District Judge, Namakkal. After detailed enquiry the said appeal was also dismissed on 30.11.2011 by the District Judge, Namakkal. Thereafter, the second respondent/first defendant did not pursue with the matter further. Since, the sale deed executed by the second respondent/first defendant in favour of the first respondent/second defendant was only with an intention to defeat the rights of the plaintiff, the revision petitioner filed the present OS.No.129 of 2012 before the Sub Court, Namakkal to declare the sale deed dated 27.01.2010 executed by the first defendant in favour of the second defendant in respect of the suit property as null and void being a fraudulent transfer and to consequentially restrain the defendants and their men from in any manner altering the nature of the suit property.

4. The respondents filed their written statement and the first respondent/second defendant filed petition under Order 7 Rule 11 CPC in IA.No.155 of 2013 in OS.No.129 of 2012 seeking to reject the plaint. Though several grounds were raised by the first respondent/second defendant, the trial Court by an order dated 09.12.2014, while dismissing the petition to reject the plaint observed that the suit had been wrongly valued and directed the revision petitioner/plaintiff to pay the Court fee in accordance with Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 [herein after referred to as “Act”]. The present revision has been filed seeking to set aside the order with regard to the direction to pay the Court fee in accordance with Section 25(d) of the Act.

5. The learned counsel for the petitioner would submit that though IA.No.155 of 2013 in OS.No.129 of 2012 has been ordered in favour of the revision petitioner. The revision petition has been filed challenging the limited aspect in the order of the trial Court directing the revision petitioner to pay the Court fee in accordance with Section 25(d) of the Act. He would further submit that though the prayer in the suit is

for declaration, the claim of the revision petitioner/plaintiff is only to limited extent of exercising his right creating a charge over the property, only with an object of securing the money which was lent to the second respondent/first defendant and thereby the revision petitioner is liable to pay the Court fee invoking Section 50 of the Act and not under Section 25(d) of the Act. Whereas, the trial Court while dismissing the petition to reject the plaint had directed the revision petitioner/plaintiff to pay the Court fee in accordance with Rule 25(d) of the Act while is not warranted. However, the learned counsel would fairly submit that the prayer in the plaint is only seeking for a declaration.

6. Heard the learned counsel for the revision petitioner and perused the materials available on record.

7. Though notice had been served on the respondents, there is no representation. The matter relates to a clarification with regard to the payment of the Court fee and the issue and subject matter is in between the petitioner and the court and thereby there is no requirement of hearing the respondents.

8. While perusing the prayer in the suit, the prayer at paragraph 11 reads as under :-

“11. Therefore, the plaintiff prays that this Honourable Court may in the interests of justice be pleased to :-

a) declare that the sale deed dated 27.01.2010 executed by the 1st defendant in favour of the 2nd defendant in respect of the suit property is null and void being a fraudulent transfer and consequentially restrain the defendants and their men from in any manner altering the nature of the suit property either by putting up any construction in it or otherwise by means of permanent injunction;

b) awarding costs of the suit to be paid by the defendants;

c) granting such other relief or reliefs that this Honourable Court may deem fit and proper in the circumstances of the case and render justice.”

9. The Court fees in respect of the the suit for declaration is referred to at Section 25 of the Act. Section 25 of the Act reads as under:-

“25. Suits 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 five thousand], 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 five thousand], whichever is higher;

(c) where the prayer relates to the plaintiff's exclusive right to use, shall, 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 thousand], 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 five thousand], whichever is higher.”

10. It is relevant to refer to the judgment of this Court reported

in **Kancheepuram Murugan Silk v. Kancheepuram Murugan Silk**
(1991) 2 MLJ 178, paragraph 11 is extracted hereunder :-

11. It is seen from the plaint that the suit has been valued at Rs. 30, 500 and court-fee is paid under Section 50 of the Tamil Nadu Court-fees and suits [Valuation Act](#) 14 of 1955. I have already referred to the prayer in the suit which is one for declaration and consequential injunction. Section 50 of the Tamil Nadu Court fees and [Suits Valuation Act](#) 14 of 1955 is a residuary provision and it will come into play only if there is no other provision under the Act. The section begins with the words "Suits not otherwise provided for". [Section 25](#) is a specific provision for suits for declaration and consequential relief. Clause (a) deals with a suit for declaration and for possession; Clause (b) relates to a suit for declaration and for consequential injunction with reference to immovable property and Clause (c) pertains to a right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and the entirety thereof. Clause (d) of this section reads thus : "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". According to learned Counsel for the first respondent Clause (d) would apply only to cases relating to immovable property which are not covered by Clauses (a) and (b). I do not agree with this contention. There is no warrant for introducing such words in Clause (d). Clause (d) is wide enough to cover all cases which are not governed by Clauses (a), (b) and (c). Hence any suit in which a prayer for declaration and any other consequential relief is made, will be governed by Clause (d) if it does not attract Clause (a) or (b) or (c). Consequently,

the present suit is one falling squarely under [Section 25\(d\)](#) of Tamil Nadu Act 14 of 1955. The plaintiff-first respondent having valued the suit at Rs. 30, 500 ought to have paid court-fee under [Section 25\(d\)](#) of the said Act and there is absolutely no scope to invoke [Section 50](#) and to pay fixed court-fee. The plaint ought not to have been numbered by the trial Court.

11. As stated above, the suit filed by the petitioner is for declaration and consequential relief, [Section 25\(d\)](#) is the specific provision in respect of suit for declaration and consequential relief and thereby the value has to be calculated in accordance with [Section 25\(d\)](#) of the Act. The trial Court rightly finding that the suit is for declaration had directed the suit to be valued in accordance with [Section 25](#) of the Act. There is no error in the order passed by the Sub Court, Namakkal and the order needs no interference.

12. At this juncture, the learned counsel for the petitioner would submit that the matter may be remitted back to the Court below and the revision petitioner may be permitted to correct the mistake and to pay the Court fees in accordance with [Section 25\(d\)](#) of the Act within a specified time and he may be permitted to get along with the suit.

13. In the result, the civil revision petition stands disposed of, with a direction to the revision petitioner to pay the Court fees in accordance with Section 25(d) of the Act within a period of eight (8) weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petition is closed. No costs.

23.04.2021.

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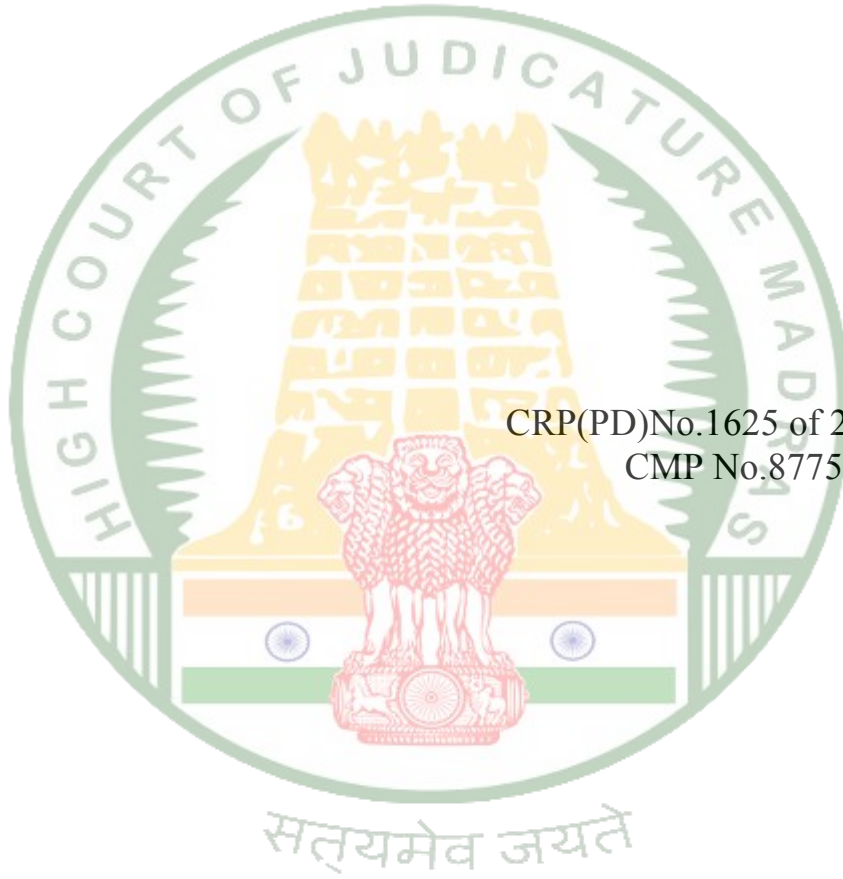
To
The Sub Court, Namakkal.



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A.D. JAGADISH CHANDIRA, J.,

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