



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.3282 of 2016

and

C.M.P.No.16730 of 2016

1.K.Balasubramaniam
2.Kaliamma Devi
3.Saradha Devi
4.Uma Maheswari

.. Petitioners

Vs.

1.Kavitha
2.Sethu @ Senkaliappan
3.The Manager,
Indian Bank,
New Scheme Road,
Pollachi.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 08.08.2016 made in I.A.No.814 of 2013 in O.S.No.170 of 2013 on the file of the 1st Additional District and Sessions Court, Coimbatore.

For Petitioners : Mr.M.S.Krishnan, Senior Counsel
for Mr.R.Bharath Kumar



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C.R.P. (PD) .No.3282 of 20



For Respondents : Mr.V.Lakshmi Narayanan for
Mr.V.Raghavachari for R1 & R2
No appearance for R3

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decreetal order dated 08.08.2016 made in I.A.No.814 of 2013 in O.S.No.170 of 2013 on the file of the 1st Additional District and Sessions Court, Coimbatore.

2.The petitioners are the defendants 1 to 4, the respondents 1 and 2 are the plaintiff and 3rd respondent is the 5th defendant in O.S.No.170 of 2013 on the file of the 1st Additional District and Sessions Court, Coimbatore. The respondents 1 and 2 filed the said suit for declaration, injunction and other reliefs in respect of the suit property. In the said suit, the petitioners filed I.A.No.814 of 2013 under Order VII Rule 11 of Civil Procedure Code, to reject the plaint. In the affidavit, the petitioners denied the various averments and allegations made in the plaint. According to the petitioners, the respondents 1 and 2 filed the suit based on the Memorandum of Understanding or family arrangement dated 30.12.2011. In the said Memorandum of Understanding, there are default clauses and only when the



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conditions are complied with by the respondents 1 and 2, the same will be acted upon. The respondents 1 and 2 have not complied with the conditions within the prescribed time and violated the clauses of agreement. Hence, the said Memorandum of Understanding has become unenforceable. The petitioners by notice dated 18.10.2012 issued through their Advocate, have canceled the Memorandum of Understanding. In view of the same, the respondents 1 and 2 cannot seek any remedy in the suit based on the Memorandum of Understanding dated 30.12.2011. The respondents 1 and 2 are claiming right over the immovable property based on the Memorandum of Understanding, which is not stamped and registered. The respondents 1 and 2 cannot rely on the unstamped and unregistered documents for claiming right over the immovable property. The unregistered agreement dated 30.12.2011 is unenforceable and there is no legal value. Hence, the respondents 1 and 2 have no cause of action for filing the suit. The petitioners have mentioned various litigations between the parties and some of the judgments dismissing the suit filed by the 1st respondent. The petitioners further contended that the respondents 1 and 2 have undervalued the suit, not paid proper Court fee and prayed for rejection of the plaint.



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3.The respondents 1 and 2 have filed counter affidavit, denied all the averments and submitted that the petitioners have admitted the Memorandum of Understanding, but their contention is that the respondents 1 and 2 have not complied with the conditions imposed in the Memorandum of Understanding. Whether the Memorandum of Understanding is enforceable or whether the respondents 1 and 2 have breached the conditions imposed in the said Memorandum of Understanding are question of facts, which cannot be decided in the present application.

4.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed I.A.No.814 of 2013 holding that the plaint discloses cause of action and whether the Memorandum of Understanding is enforceable or not are question of facts and the same can be considered only by letting in evidence. Further, the learned Judge held that the petitioners have not produced any materials to show that the respondents 1 and 2 have undervalued the suit and whether the respondents 1 and 2 have not paid proper Court fee can be decided only along with the main suit.



5. Against the said order of dismissal dated 08.08.2016 made in I.A.No.814 of 2013, the petitioners have come out with the present Civil Revision Petition.

6. The learned Senior Counsel appearing for the petitioners contended that the trial Court ought to have allowed the application filed for rejection of plaint as respondents 1 and 2 deliberately undervalued the suit for unjust enrichment. The entire suit claim is based on an unregistered Memorandum of Understanding dated 30.12.2011 with regard to the immovable property, which requires compulsory registration under Section 17(1) of the Registration Act, 1908. The suit is barred by law. The respondents 1 and 2 filed the suit for the relief of mandatory injunction, directing the petitioners to hand over the property and discharge the mortgage created over the suit property. For the relief sought for in the suit, the respondents have not properly valued the suit and Court fee paid is not correct. The respondents 1 and 2 ought to have filed the suit for specific performance as per the provisions of Specific Relief Act, valued the suit under Section 42(c) of the Court Fee Act and paid correct fee. The learned Judge failed to see that allowing the frivolous and vexatious suit to be continued further would



certainly waste the precious time of this Court. The order of the learned Judge is liable to be set aside on the ground of error of law, mis-appropriation of the facts and for not considering the judgments relied on by the petitioners and prayed for allowing the Civil Revision Petition.

7.The learned counsel appearing for the respondents 1 and 2 reiterated the averments made in the counter affidavit and contended that the petitioners filed the present I.A.No.814 of 2013 only on the ground that the plaint does not disclose the cause of action and the suit is undervalued. The learned Judge considering the averments made in the plaint and documents filed along with the plaint, held that the plaint discloses cause of action and whether the suit is undervalued or not can be decided only along with the main suit. The learned Judge has given valid reason for dismissing the I.A.No.814 of 2013 and prayed for dismissal of the Civil Revision Petition.

8.Though the 3rd respondent entered appearance through counsel, there is no representation for them, when the matter is taken up for hearing.



9. Heard the learned Senior Counsel appearing for the petitioners as well as the learned counsel appearing for the respondents 1 and 2 and perused the entire materials available on record.

10. From the materials available on record, it is seen that the respondents 1 and 2 have filed the suit for declaration, injunction and other reliefs in respect of the suit property based on the Memorandum of Understanding dated 30.12.2011 executed between the petitioners and the respondents 1 and 2. The execution of Memorandum of Understanding is admitted by the petitioners. In the Memorandum of Understanding, certain conditions were imposed on the respondents 1 and 2 i.e., the respondents 1 and 2 have to withdraw the suit and the appeal filed by them within the time limit and also to give consent for sale of the trust property. The respondents 1 and 2 have failed to comply with the said conditions and therefore, the Memorandum of Understanding cannot be enforced and the petitioners by notice dated 18.10.2012 issued through their Advocate, have canceled the Memorandum of Understanding. The further case of the petitioners is that the respondents 1 and 2 filed the suit claiming declaratory relief of title with regard to the immovable property based on an unregistered and unstamped



Memorandum of Understanding, which is not maintainable as the document has to be registered compulsorily. The respondents 1 and 2 have undervalued the suit and Court fee paid is not correct. It is well settled that while considering the application filed under Order VII Rule 11 of Civil Procedure Code, the averments in the plaint and the documents filed along with the plaint alone can be taken into consideration for deciding the application. The averments in the written statement, documents and affidavit filed in support of the application filed under Order VII Rule 11 of Civil Procedure Code cannot be considered at this stage. Even though the petitioners have made averments in the affidavit filed in support of the above I.A before the trial Court, that plaint does not disclose cause of action in the grounds raised in the present Revision, there is no averments with regard to the cause of action.

12.The main contention of the learned Senior Counsel for the petitioners is that the suit is undervalued and Court fee paid is not proper and correct. According to the learned Senior counsel for the petitioners, the respondents 1 and 2 ought to have filed the suit for specific performance and paid court fee under Section 42(c) of Tamil Nadu Court Fee and Suit Valuation Act, 1995. It is not for the petitioners/defendants 1 to 4 to dictate



the terms to the plaintiffs to what relief they should claim in the suit filed by them. It is for the respondents 1 and 2 to decide the nature of relief sought for, make necessary averments in the plaint and substantiate the same in the trial by letting in oral and documentary evidence.

13.As far as the undervaluation of suit is concerned, it is the case of the petitioners that as per the Memorandum of Understanding, the respondents 1 and 2 are claiming right over the immovable property. In view of such relief, they have to pay the Court fee for the value of the suit property especially when they seek declaration that mortgage deed is 'null' and 'void'. Whether the respondents 1 and 2 acquired title over the suit property on the date of Memorandum of Understanding or they will acquire right on future dates, the said Memorandum of Understanding is binding on the petitioners or the respondents 1 and 2 have violated the conditions imposed in the Memorandum of Understanding are question of facts and the same can be decided only by letting in oral and documentary evidence during Trial. The said issue cannot be decided in the application under Order VII Rule 11 of CPC for rejection of plaint.



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14.Further, the learned Judge has taken note of the fact that the petitioners have not produced any materials to prove their case with regard to undervaluation and held that the said issue will be decided along with the other issues in the suit. The learned Judge considering all the materials and documents, dismissed the I.A.No.814 of 2013 by giving cogent and valid reason. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

15.The learned Senior Counsel appearing for the petitioners submitted that liberty may be given to the petitioners to raise the question of undervaluation of the suit and payment of deficit Court fee as preliminary issue. It is open to the petitioners to raise such a plea before Trial Court by filing appropriate application and if any such application is filed by the petitioners, the learned Judge is directed to consider and pass orders in accordance with law after giving opportunity to the respondents, without being influenced by the order dated 08.08.2016 made in I.A.No.814 of 2013 and order of this Court passed in the Civil Revision Petition.



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16. With the above direction, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

15.11.2021

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Index : Yes / No

Internet : Yes / No

To

I Additional District and Sessions Judge,
Coimbatore.



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V.M.VELUMANI, J.

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