

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

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THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(NPD) No.1614 of 2021

1. M. Sujatha
2. S. Thirunavukkarasu ...Petitioners

Vs.

1. P. Jayanthi
2. Sofia Rani
3. P. Ajay Kumar
4. The Sub-Registrar,
Registration Department,
Kundrathur, Chennai – 600 069

5. The Tahsildar,
Maduravoyal Taluk,
Maduravoyal, Chennai – 600 095

6. The District Registrar,
Chennai-South,
Registration Department,
Nandanam, Chennai – 6000 035

7. The Inspector General of Registration,
Santhome High Road,
Chennai – 600 004

8. The District Collector,
Chennai District
SingaravelarMaaligai,
RajajiSalai, Chennai – 600 001

...Respondents.

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Docket order dated 22.07.2021 in O.S.S.R.No. 2884 of 2021 passed by the Learned District Munsif, Poonamallee and to direct the learned District Munsif, Poonamallee to number the suit.

For Petitioners : Mr. M.V. Seshachari

ORDER

This Civil Revision Petition is filed, to set aside the docket order dated 22.07.2021 made in O.S.S.R.No.2884 of 2021 passed by the learned District Munsif, Poonamallee.

2.The petitioners filed a suit in O.S.SR.No.2884 of 2021 against the respondents for the following reliefs,

"a. Declaration that the registered deed of release dated 14.02.2020, registered as Doc.No.2541 of 2020, SRO-Kundrathur executed by the Defendants 1 and 2 in favour of the 3rd Defendant as null and void and not binding on the Plaintiffs in so far as the suit "C" and "D" schedule property is concerned.

b. For a Permanent injunction restraining the Defendants 1 to 3, their men, agents, servants, etc from in any manner interfering with Plaintiffs' possession and enjoyment of the suit "C" schedule property together right of way over the suit "D" schedule property.

c. For a Permanent Injunction restraining the 3rd Defendant, his men, agents, servants, etc from in any manner alienating or encumbering the suit "C" schedule property.

d. Directing the Defendants to pay costs of the suit.

e. For such other relief or reliefs the Court thinks necessary and fit in the facts and circumstances of the case."

3.The case of the petitioners is that the property originally owned and possessed by one A.Durairaj, having purchased from S.Rajendran. The said, Durairaj executed a Will dated 05.09.1988 and as per the terms of the said Will, "A" schedule property was divided into 2 lots and the portion abutting the main road was bequeathed to D.Premkumar and portion situate to the south of the property bequeathed to Mr. D.Premkumar was bequeathed to Ms.D.Ramani. The Property bequeathed to D.Premkumar is described as

“B” scheduled property and the property bequeathed to Ms.D.Ramani is described as “C” Scheduled property. The “D” scheduled property was kept as a passage to enter into the suit “C” schedule property.

4.Ms. D. Ramani was a spinster. The said Mr.A.Durairaj died on 27.08.1990. The Will had come into force and the beneficiaries of the Will was in possession and enjoyment of the suit property. D.Ramani executed a Will dated 29.06.2010 in favour of the 1st plaintiff. The 1st Plaintiff's mother is Mrs.Renuka and the 2nd Plaintiff's mother Mrs.Swarna are sisters of Ms.D.Ramani. After the death of Ms.D.Ramani on 14.02.2018, the Will came into force. The plaintiffs/petitioners are in absolute possession and enjoyment of the "C" schedule property.

5.Premkumar filed a suit in O.S.No.131 of 2015 and the same was dismissed for default on 26.10.2018. Thereafter, the defendants 1 to 3 tried to dispose of the "A" schedule property in a hurried manner. On verification, it came to be known that the defendants 1 to 3 created a release deed dated 14.02.2020 in their favour and on the basis of the release deed, the 3rd

defendant got patta No.3281. The release deed shows that the defendants 1 and 2 released their undivided 2/3 share in favour of the 3rd defendant in respect of the "A" schedule property. Further, the defendants 1 and 2 claimed that after the death of Mr.D.Premkumar, the "C" schedule property was inherited by the legal heirs of the said Premkumar. This release deed has been created without any right and the defendants 1 to 3 have no manner of right or interest in respect of the suit "C" and "D" schedule property. Therefore, the suit was filed by the petitioners for the reliefs aforesaid.

6.The learned District Munsif, Poonamallee, returned the plaint under Order 7 Rule 10 of CPC, stating the following reasons:

"..... On perusal of the documents filed by the petitioner, the release deed (which is sought to be declared as null and void) is showing the market value of the property as Rs.25,00,000/- as in the year 2020. The plaint was filed and returned by this Court for want of filing under proper Section of law (i.e.,) 25(b) of Court Fee & Suit Valuation Act. Since the prayer seeks declaration with a consequential injunction and for another injunction the Court Fees paid by the petitioner

shows that the petitioner had valued the suit for Rs.5,000/- + Rs.1,000/- + Rs.1,000/- =Rs.7,000/- and paid the Court Fee of (Rs.150/- + Rs.30/- + Rs.30/- =Rs.210/-) according to Section 25(d) and 27(c). This Court finds that, since the prayer in this petition is seeking a declaration and consequential injunctions, the proper section to file this plaint is section 25(b) and 27(c) for another injunction under the Court Fee & Suit Valuation Act and not Section 25(d) and Section 27(c). Further the section 25(b) of Court Fee & Suit Valuation Act requires the Guide Line value of the property for payment of Court Fee. However, on perusal of the Guide Line Value, the present value of the suit property exceeds the pecuniary jurisdiction of this Court. Therefore, this plaint is returned under Order 7 Rule 10 of CPC for payment of proper Court Fee and for filing before the proper Court having pecuniary jurisdiction within a period of one month."

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7.The learned counsel for the petitioners submitted that the petitioners are not a party to the release deed, which is now challenged and they have rightly paid paid the Court Fee, under Section 25(d) of the TNCF Act. However, the learned trial Judge has wrongly returned the plaint and

therefore, it has become necessary for the petitioners to file this Civil Revision Petition. In support of their contention, the learned counsel for the petitioners relied upon the following judgments,

(i)in the case of ***Siddha Construction (P) Ltd., Vs. M.Shanmugam and Ors.*** reported in 2006 LW 176. Relevant paragraph is extracted hereunder:

"11.For deciding the value of the court Fee payable by the plaintiff the averments in the plaint alone are to be considered. In O.S. No.13/2002, the prayer sought for is to declare the sale deed executed by the 1st defendant (the 5th respondent herein) in favour of the 3rd defendant (Revision Petitioner) as null and void and not binding on them. It is averred at para 10 of the plaint that since they are not party to the sale deed dated 31.10.2001, which is to be declared as null and void, the plaintiff valued the suit for the purpose of the Court Fee under Sec.25(d) of the Tamil Nadu Court Fees Act. It is also further averred in para 7 of the plaint that the plaintiff's did not execute the sale deed and they did not receive any sale consideration. It is the further case of the revision petitioner that they did not make any alienation to and in favour of any one till today in respect of the

suit schedule property.

12. In the light of the averments made in the plaint, the trial court is right in coming to the conclusion that the suit has been rightly valued and the trial court has pecuniary jurisdiction to try the suit.”

and in the case of **G.Seethadevi Vs. R.Govindaraj and Ors.**, reported in **2002-1-LW925**. Relevant portion reads as:

“In the case on hand, it is to be seen that the case of the Petitioner is that she has not executed Power of Attorney in favour of one Bhaskaran so as to execute the sale deed in favour of third parties. That apart, it is contended that the said Bhaskaran is unknown to the Petitioner and he an employee of the first Respondent in his petrol bunk. When such statement has been made in the plaint, court fee that has to be payable on the relief that has been sought for by the Petitioner viz., for declaration that the sale deed dated 25.04.2008 is null and void and not binding on the petitioner, under Section 25(d) of the Act and not under Section 40 of the Act. The Petitioner has not admitted the execution of Power of Attorney. The court below is not justified in directing the petitioner to pay the court fee under Section 40 of the Act. In the case relied on by the

Respondents, the Power of Attorney was admitted by the Respondents/Plaintiffs therein and hence, this Court in the said decision has directed the party to pay the Court Fee under Section 40 of the Act.”

8. Reading of these judgments show that when a party is not a party to the document, the relief claimed to declare the document as null and void, the Court Fee should be paid under Section 25(d) of the Tamil Nadu Court Fee Act and it is not necessary to insist that Court fee should be paid under Section 40 of the Tamil Nadu Court Fee Act. These cases are squarely applicable to the facts of this case.

9. The petitioners are not a party to the release deed dated 14.02.2020 and they challenged the said document to declare it as null and void and not binding on them. As per Section 7 of the Tamil Nadu Court Fee Act, "the fee payable depends on the market value of any property, such value shall be determined as on the date of presentation of the plaint. The assessment made by the plaintiff shall be accepted by the Court at the initial stage of numbering the suit, subject to objection that may be raised by the other party to the litigation". Therefore, this Court finds that the order

returning the plaint is not in accordance with law and therefore, the Docket order dated 22.07.2021 in O.S.S.R.No. 2884 of 2021 passed by the Learned District Munsif, Poonamallee, is liable to be set aside and accordingly, set aside.

10.The Learned District Munsif, Poonamallee, is directed to take the valuation adopted in the plaint and number the plaint and once the defendants/respondents entered appearance, it is for them to make their challenge, on the valuation adopted and the Court fee paid.

11.In this view of the matter, this Civil Revision Petition is allowed.
No costs. Consequently connected miscellaneous petition is closed.

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

Note: Registry is directed to return the original plaint to the learned counsel for the petitioners.

To

1.The District Munsif, Poonamallee,

2.The Section Officer

VR Section

High Court of Madras.

3.The Sub-Registrar,

Registration Department,

Kundrathur, Chennai – 600 069.

4. The Tahsildar,

Maduravoyal Taluk,

Maduravoyal, Chennai – 600 095.

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