

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.1058 of 2017
and CMP No.5100 of 2017

1.K.Ravichandran
2.A.P.Kumanan

...Petitioners

Vs

1.S.Ponnusamy
2.C.Subramaniam
3.U.R.Murugaswamy
4.K.N.Venkatachalam
5.P.Ponnusamy

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 15.09.2016 made in I.A.No.977 of 2012 in O.S.No.390 of 2012 on the file of the Subordinate Court, Tiruppur.

For Petitioners : M/s.AL.Ganthimathi

For Respondents : Mr.P.Valliappan

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 15.09.2016 made in I.A.No.977 of 2012 in

O.S.No.390 of 2012 on the file of the Subordinate Court, Tiruppur, thereby dismissing the petition filed for rejection of plaint on the ground of not paying the correct court fees.

2. The revision petitioners are the defendants in the suit filed by the respondents for declaration, declaring that the respondents are the absolute owners of the suit property and declaration that the sale deed dated 24.03.2010 in respect of the suit property as null and void. While pending the suit, the petitioners filed a petition for rejection of plaint under Order 7 Rule 11 of Civil Procedure Code, on the ground that the respondents had not properly valued the suit property and the plaint returned of paper insufficiently stamped. It is further stated that the defendants purchased the suit property for valid consideration of Rs.7,50,000/- by registered sale deed. As against the same, the respondents have allegedly claimed that the suit property for consideration of Rs.60,00,000/-, which is illegal. In the valuation column, the respondents hid the value of the suit property which is mentioned 3rd para of the plaint. Allegedly the suit property was purchased for value of Rs.60,00,000/- against their pleadings undervalued

the suit property of Rs.9,000/-. It cannot be valued or not assessed the property then only valued under 30 times of kist value of the property.

3. The learned counsel for the respondents would submit that the suit property is an agricultural land and as such, paid court fee by calculating 30 times of kist value and for the nominal value of the tiled house situated in the property. He further submitted that as per the Order 7 Rule 11 of Civil Procedure Code, on failure on the part of the plaintiffs to pay the deficit court fee in spite of a direction issued by the Court to pay the same and more over, the valuation of the suit is not an issue involving purely question of law and on the other hand, it is a mixed question of law and fact.

4. In support of his contention he relied upon the Judgment reported in **AIR 2010 SCC 2807** in the case of **Suhrid Singh @ Sardool Singh V. Randhir Singh and Ors**, the relevant portion of the Judgment is extracted hereunder :-

“Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a

non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently, 'A' wants to avoid the sale 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A' the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B' who is a non-executant, is in possession and sues for declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.

5. He also relied upon the Judgment of this Court reported in

2006 (5) CTC 255 in the case of **Siddha Construction (P) Ltd, rep by its Power Agent Vs. M.Shanmugam and others**, the relevant portion of the judgment 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 of 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 Section 25(d) of the Tamil Nadu Court Fees Act. It is also further averred in para 7 of the plaint that the plaintiffs 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.”

6. He also relied upon the Judgment of this Court reported in **2006 (5) CTC 255** in the case of **Siddha Construction (P) Ltd, rep by its Power Agent Vs. M.Shanmugam and others**, the relevant portion of the judgment is extracted hereunder :

“19. This proposition as well as the ratio laid down therein was a subject matter in a Civil Revision Petition in CRP. (PD) No. 2564 of 2018 [Paul Marie Josephine V. Louise Victorine Esperance Lafimtaine] and I had an occasion to deal

with the same in my order dated 11.04.2019, in the following lines:-

"9. The learned Senior counsel for the petitioner had placed reliance on certain decisions and submitted that the plaint averments do not disclose a cause of action substantiating that the sale deed is liable to be set aside on the ground of fraud and misrepresentation, which also amounts to an abuse of process of law. In the decision of the Hon'ble Division Bench of this Court in Cambridge Solutions Limited, Bangalore-560 095 V. Global Software Ltd., Chennai-18 and 4 others reported in 2017 (1) CTC 497, it was held that if the plaint averments on fraud is only illusory, the same can be struck down. For the same proposition, the decisions of this Court reported in 2010 (3) CTC 310 [Punjab National Bank, rep. by its Manager and Art Decors & Laminations & others rep. by Narender, No. 168, Sydenhams Road, Periyamet, Chennai-3 v. J. Samsath Beevi & 3 others] and 2017 (13) SCC 174 [Madanuri Sri Rama Chandra Murthy V. Syed Jalal] were also relied upon. The proposition the learned Senior counsel attempted to impress this Court is that the allegation of fraud in the plaint averments have been brought in through clever drafting, only to sustain the ground of fraud, which is only illusory. The ratio laid down in the aforesaid judgments is that, when the plaint averments regarding fraud and collusion are non existence and have been made through clever drafting, only to sustain the suit, such a plea of fraud is deemed to be only illusory and therefore, the plaint is liable to be struck down. It was also held therein that if a clever drafting of the plaint has created an illusion of a cause of action, the plaint requires to be struck off.

10 . There is no quarrel on the propositions laid in the aforesaid three decisions. But to adopt such a ratio, would depend on the facts and circumstances of each case. While laying down the ratio in the aforesaid three decisions, the Courts had taken into consideration the facts of the entire case as revealed in the plaint averments and thus came to the

conclusion, while analysing the scope of Order 7 Rule 11 of CPC. No doubt, such astute drafting is prevalent. But the ratio, as such, is precarious and requires to be exercised with circumspection. For, all averments in the plaint can be discarded as astute and clever drafting, if the entire plaint is not read as a whole. Reading between the lines in the plaint, in order to discard the same, may not be judicious.

11. With the premise in mind and in order to ascertain as to whether such clever averments have been made in the present plaint, only for the purpose of sustaining the suit, the plaint was perused. Therein, it is seen that the respondent herein and her family members are alleged to be in possession and enjoyment of the suit property for more than a century. The plaintiff/respondent herein has claimed that she had looked after the defendant/petitioner herein from the childhood like a daughter. On 04.03.2016, when the respondent herein had claimed right over the suit property, their relationship became hostile. On 23.04.2016, the respondent herein had given a criminal complaint against the petitioner and during the course of investigation in the police station, the execution of the Sale Deed dated 22.07.2005, was revealed to the respondent herein.

12. The plaint averments also goes to say that the execution of the sale deed was through a fraud played upon the respondent herein. According to her, she had brought up the petitioner like her own daughter and on her request, she had signed in all the papers shown by the petitioner before several authorities honestly believing that it was only for the sake of conferring power upon the petitioner to look after the suit property. It is her further averment that there was no necessity for her to sell away their ancestral property to the petitioner herein at any point of time and her sister also has no such intention. She had also stated that there was no consensus ad-idem between the parties to the document and that there was no free consent therein. During the year 2005, the petitioner herein had cunningly and secretly prepared all the documents and

informed the respondent and her sister that a deed is required to be executed in favour of the petitioner herein, granting powers to look after the maintenance works in the suit property. Reposing full confidence and reliability, the respondent herein and her sister had signed the papers without knowing its contents. The document was also prepared in tamil language, which the plaintiff/respondent herein and her sister were not acquainted with, since they could read and write English and French language only. The respondent herein and her sister had never received any sale consideration towards sale transaction and that the petitioner herein had colluded with a named person for committing the fraud for the purpose of fraudulently having the sale deed registered. In such a detailed manner, the plaint averments have been made with an attempt to establish that the sale deed was executed through fraud and misrepresentation. These averments cannot be termed to be "clever drafting" or "an illusionary cause of action" for the plea of fraud. When the respondent herein had come out with certain facts stating that the parties were in good relationship that there were not conversant with the tamil language and they were made to believe that they were called upon to execute a document of power deed and thereby had the same duly executed, the possibility of a fraud having committed, could be made out from such averments.

13. What requires to be kept in mind from reading of these plaint averments is that the petitioner herein now seeks to have the suit proceedings struck off, without the necessary issues being framed or by conduct of a trial. When there is a semblance of indication of the existence of fraud from the plaint pleadings, this Court would not be justified in exercising its power to strike off the suit proceedings. As stated earlier, the manner which the plaint averments indicate the possibility of fraud, such pleadings requires to be tested only through framing of issues and through a proper trial."

The above discussions are self explanatory. By looking into the averments of the entire plaint and in view of

my earlier observations that the plaint, when read as a whole, discloses a cause of action, it cannot be said that the averments therein have been made through clever and astute drafting. Hence, this ground raised by the learned counsel for the petitioner cannot be sustained.”

7. The Hon'ble Supreme Court of India as well as this Court held that the plaint can be returned to the plaintiff under Order 7 Rule 10 of the Code of Civil Procedure, in which the plaint is filed and prosecuted, suffers from lack of territorial or pecuniary jurisdiction. If a Court of law has no jurisdiction, it must return the plaint although the claim is not properly valued or undervalued, as the case may be. A Court of law returning the plaint has no jurisdiction on correcting the valuation in regard to the demand of additional Court fee or has to dismiss the suit for default under Order 7 Rule 11 of the Code of Civil Procedure.

8. The ingredients of Order 7 Rule 11(b) of the Code of Civil Procedure clearly shows that the Court of law has come to a conclusion that a relief claimed has been undervalued which necessarily means that it is able to decide and specify proper and correct valuation of the relief, and after

determination of the correct value of the relief requires the plaintiff to correct his valuation within a time to be determined by the Court. Inasmuch as undervaluation of a suit to the crux of maintainability of suit, the defendant is entitled to raise objections irrespective of the nature of the suit. If a plaintiff has valued a suit, based on the value mentioned in the sale deed, the plaint cannot be rejected on the ground that the property was not correctly valued on the basis of the fact that while furnishing description of the property in the sale deed. An issue regarding adequacy of court fee is not a mere issue. It is well settled principle in law that in appealable cases, all issues arising in the suit, ought to be ordinarily tried together and decided.

9. The ground of undervaluation is concerned, the Trial Court is of the view that the objection can be decided by the Trial Court by the evidence in regard to the subject to the provision of Section 12 (2) of the Tamil Nadu Court Fee and Suit Valuation Act. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below. The suit is of the year 2012. The Trial Court is directed to dispose of the suit within a

period of six months from the date of receipt of a cop of this order.

10. With the above direction, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

22.03.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

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To
The Subordinate Judge,
Tiruppur.

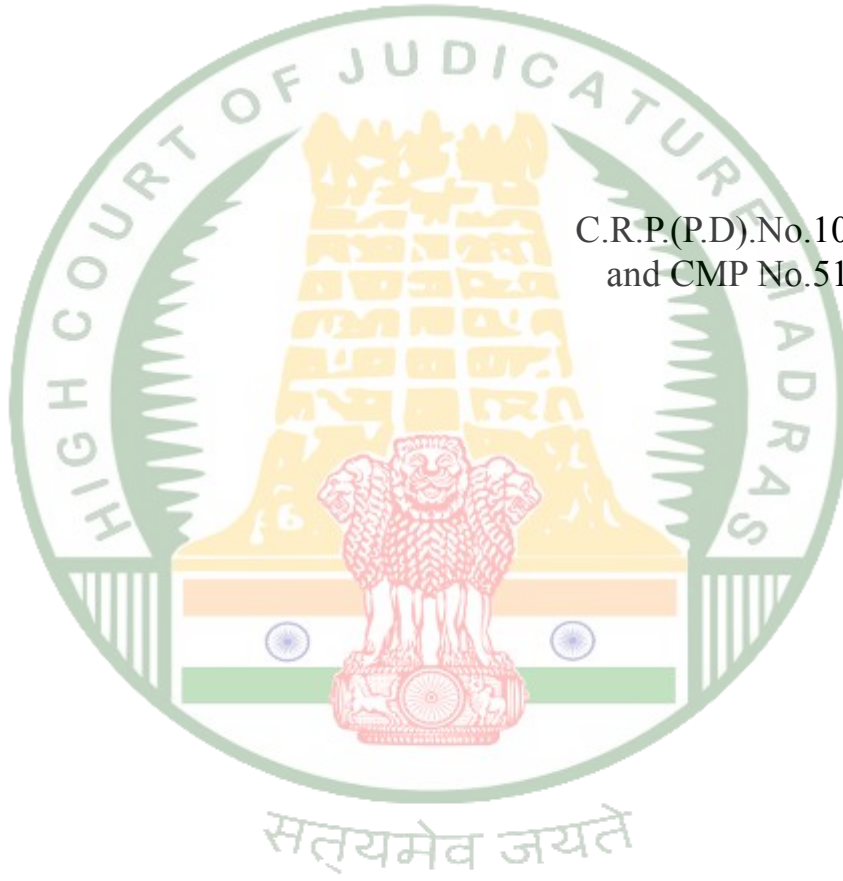


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