



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

C.R.P.(MD)No.1990 of 2010

and

M.P.(MD)No.1 of 2010

A.Muthusamy : Revision Petitioner/Respondent/Plaintiff

Vs.

1.Srinivasan @ Vellaiyyan

2.Meenakshi Vellaiyan : Respondents/Petitioners/Defendants

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order, dated 09.08.2010 made in I.A.No.916 of 2009 in O.S.No.854 of 2009 on the file of the I Additional District Munsif Court, Tiruchirapalli.

For Petitioner : Mr.K.S.Sankhar Murali

For Respondents : Mr.K.S.Kathiravan

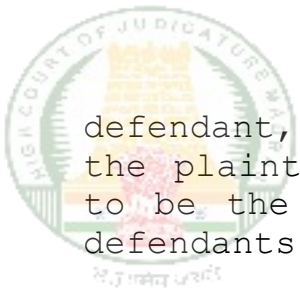
for Mrs.AL.Ganthimathi

ORDER

This revision is directed against the order passed in an application filed under Order XIV Rule 2 of Code of Civil Procedure seeking determination of the valuation and Court fee as preliminary issue.

2.The suit was filed by the plaintiff seeking declaration of his title to the property and for a consequential injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the property.

3.The plaintiff valued the suit property as agricultural land and paid a Court fee of Rs.75.50/- based on Section 7 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, as it stood on the date of the presentation of the plaint. The case of the plaintiff was that he had borrowed certain monies from the first defendant and had executed a power of attorney as security for such borrowing. The plaintiff would further plead that misusing the power of attorney, which was given as security, the first defendant had created a sale deed in favour of the second



defendant, who happens to be his wife. Therefore, according to the plaintiff, the sale deed itself is invalid and he continuous to be the owner of the property. The suit was resisted by the defendants on various grounds.

4.The defendants filed an application in I.A.No.916 of 2009 seeking determination of the Court fee payable. The defendants also raised the plea of maintainability of the suit for declaration of title, without a prayer for cancellation of or setting aside of the sale deed, dated 25.06.2007.

5.The learned trial Judge, who heard the application, agreed with the defence contention that the suit for declaration of title will not lie without a prayer for setting aside of or cancellation of the sale deed. The trial Court relied upon the well settled position of law that once there is a cloud on the title of the plaintiff, the plaintiff cannot seek declaration of his title without seeking to remove the cloud. The plaintiff seeks to avoid the sale deed, dated 25.06.2007 on the ground that it is vitiated by fraud. The document is not a void document, but it is voidable at the option of the plaintiff. Therefore, the plaintiff has to necessarily sue for cancellation of the document prior to seeking declaration of his title. On the above conclusion, the trial Court gave liberty to the plaintiff to amend the prayer and include the relief of cancellation of sale deed and pay Court fee under Section 40 of the Court Fees Act. It is this order is subject matter of the challenge in this revision.

6.I have heard Mr.K.S.Sankhar Murali, learned Counsel appearing for the petitioner and Mr.K.S.Kathiravan, learned Counsel for Mrs.AL.Gandhimathi, learned Counsel for the respondents.

7.Mr.K.S.Sankhar Murali, learned Counsel appearing for the petitioner would vehemently contend that the property being agricultural land, he has the luxury of valuing it under Section 7 of the unamended Court fees Act and pay a lesser Court fee.

8.May be he is right, if he is seeking declaration of title simplicitor. But in the case on hand, he wants the Court to ignore a sale deed executed by his agent and grant a declaration of title in his favour. He has questioned the validity of the sale deed. Once the validity of the sale deed is questioned and it is found that the document is only a voidable instrument and not a void instrument, unless the plaintiff seeks cancellation of the instrument, he cannot seek a declaration of his title. If the declaration of title cannot be granted without setting aside the instrument, the prayer for setting aside the instrument becomes

<https://hcservs.hcservs.gov.in/hcserv/Pls> The trial Court has rightly held that, on the given



facts, the plaintiff must have sought for cancellation of the instrument. I do not see any error of law or any material irregularity in the order of the trial Court. Therefore, the revision is dismissed.

9. Mr. K. S. Sankhar Murali, learned Counsel appearing for the petitioner seeks time to amend the plaint as directed by the Court below. Considering the said request, two months time from today is granted subject to the law of limitation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

1. The I Additional District Munsif, Tiruchirapalli.

2. The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai (2 copies).

+1 CC to M/s. K. S. SANKAR MURALI, Advocate (SR-8082[F] dated 02/03/2021)

+1 CC to M/s. AL. GANTHIMATHI, Advocate (SR-8092[F] dated 02/03/2021)

C.R.P. (MD) No. 1990 of 2010

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ES (CO)

TR(04.03.2021) 3P 6C