



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (PD) (MD) .No.845 of 2020

V.Amirthalingam

... Petitioner/ Plaintiff

Vs.

1.V.Andal
2.V.Sivakumar
3.R.Ramamirtham
4.Shalini @ Manjuparkavi
5.G.Suhashini
6.M.Saraswathi
7.R.Thirunavukarasu
8.J.Sasidharan
9.V.Kannan

... Respondents / Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and to direct the learned Principal Subordinate Judge, Kumbakonam to number the unnumbered O.S.No. / 2020.

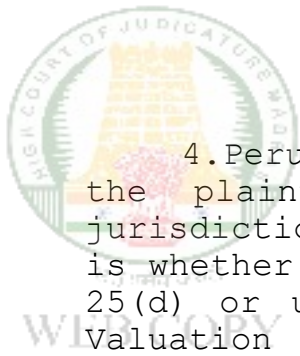
For petitioner : Mr.G.Karnan

ORDER

This civil revision petition has been filed to direct the learned Principal Subordinate Judge, Kumbakonam to number the unnumbered O.S.No. / 2020.

2.The learned counsel for the petitioner would submit that the respondents are the brothers and sisters. Since they sold the undivided properties, the petitioner filed the suit in unnumbered O.S. /2020 before the Principal Subordinate Judge, Kumbakonam, to declare the sale deed dated 02.11.2016 executed by the seventh defendant in favour of the eighth defendant as null and void, as the properties are undivided properties. The learned Judge has returned the plaint. Hence, the present Civil Revision Petition.

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



4.Perusal of record shows that the learned Judge has returned the plaint on the ground that the Court has no pecuniary jurisdiction. Therefore, the question that arises for consideration is whether the petitioner is required to pay Court fee under Section 25(d) or under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act. The learned counsel has relied on the Judgment reported in **(2011) 6 MLJ 399**, in the case of **G.Seethadevi Vs.R.Govindaraj and others** where this Court has held that a suit for declaration that a particular sale deed is null and void can be valued only under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act and not under Section 40, if averments in the plaint deny execution of sale deed by the plaintiff.

5.Therefore, the learned Judge has to number the plaint. If any defect is found out, the Court can always call upon the plaintiff to pay either the Court fee or return the plaint to be filed before appropriate forum. At this point of time, the Court should not return the plaint stating that Court fee has not been paid. In the present case, the suit was filed for declaration of sale deed as null and void where the petitioner is not a party to the said sale deed. Therefore, the learned Principal Subordinate Judge, Kumbakonam, is directed to number the unnumbered O.S. /2020 and to proceed with the same in accordance with law.

6. With the above direction, this Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar(Writ)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

msa

Issue order copy on 16.03.2021

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Principal Subordinate Judge,
Kumbakonam



2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai(2 copies).

3.The Record Keeper,
E.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.KARNAN, Advocate (SR-5434[F] dated 16/02/2021)

C.R.P (PD) (MD) .No.845 of 2020
16.02.2021

AC (CO)
TR(16.03.2021) 3P 6C