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C.R.P.(NPD)No.2994 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

C.R.P(NPD)No.2994 of 2015
and M.P.No.1 of 2015

Mohamed Junaithu

... Petitioner

Vs.

1.Jainutheen

2.Birthavur Begum

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the judgment and decree passed in O.S.No.18 of 2012 dated 16.02.2015 by the learned District Munsif, Thiruthuraipoondi and direct the said Court to decide all the issues together.

For Petitioner : Mr.D.Vairamoorthy

For Respondents : No Appearance for R1

ORDER

The plaintiff has filed this Civil Revision Petition challenging the fair and decreetal order passed by the learned District Munsif, Thiruthuraipoondi, dated 16.02.2015, returning the plaint under Order VII Rule 10 CPC to be



C.R.P.(NPD)No.2994 of 2015

presented before the appropriate Court.

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2. The petitioner filed the suit in O.S.No.18 of 2012 seeking for the relief to declare the release deed dated 22.02.2011 as sham and nominal and non-est in the eye of law and for permanent injunction. When the suit was filed, the petitioner had valued the suit and paid the Court fees under section 25 (d) of Tamil Nadu Court Fees and Suits Valuation Act, 1955.

3. The pleadings were completed and issues were framed and the case was at the stage of trial. At this point of time, a plea was raised to the effect that the plaintiff / petitioner ought to have paid the Court fees under section 40 of the Tamil Nadu Court Fees and Suits Valuation Act. The Court below decided this issue and came to the conclusion that the petitioner ought to have paid the Court fees under Section 40 of the Act and if the same is done, the value of the suit will be Rs.4,80,000/- and the same will go beyond the pecuniary jurisdiction. Hence, the Court below through order dated 16.02.2015 returned the plaint to be presented before the appropriate Court. Aggrieved by the same, the present civil revision petition has been filed.



C.R.P.(NPD)No.2994 of 2015

WEB COPY

4. Heard the learned counsel for the petitioner.

5. In the considered view of this Court, the Civil Revision Petition itself is not maintainable, since an order passed under Order VII Rule 10 is appealable order under Order XLIII Rule 1(a) C.P.C. Hence, the petitioner ought to have filed an appeal and worked out his remedy, instead Civil Revision Petition has been filed before this Court under Article 227 of Constitution of India.

6. The learned counsel appearing on behalf of the petitioner submitted that the petitioner is willing to properly value the suit and pay the appropriate Court fees and liberty must be granted to the petitioner to complete this process and to present the plaint before the concerned Court.

7. In view of the submissions made by the learned counsel for the petitioner, the same is recorded and liberty is granted to the petitioner to properly value the suit and pay the appropriate Court fees and present before the concerned jurisdictional Court. This process shall be completed by the



C.R.P.(NPD)No.2994 of 2015

petitioner within a period of four (4) weeks from the date of receipt of a copy of this order. If the petitioner fails to comply with the direction issued in this Civil Revision Petition, the provision of Order VII Rule 1(b) C.P.C., will come into force and the plaint itself will be deemed to be rejected.

8. This Civil Revision Petition is disposed of accordingly. Consequently, the connected Civil Miscellaneous Petition is also closed.

12.12.2022

rpl

Index : Yes/No

Internet : Yes / No

Speaking /Non Speaking

To

The District Munsif Court
Thiruthuraipoondi

N.ANAND VENKATESH, J.

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4/5



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C.R.P.(NPD)No.2994 of 2015

C.R.P(NPD)No.2994 of 2015
and M.P.No.1 of 2015

12.12.2022