



C.R.P.(PD).No.873 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.873 of 2016  
and C.M.P.No.4805 of 2016

A.Govindammal

.. Petitioner

Vs.

1.The Secretary,  
Sathyamoorthy Co-operative Housing Society Ltd.,  
New No.2, Old No.15, S.V.Chidambaram Road,  
Kattabomman Block, Jaffer Khanpet,  
Chennai 600 083.

2.V.Thiyagarajan

3.Vijayalakshmi

4.Premavathi

5.V.Sundaravadivelu (deceased)

6.S.Kalarani

7.S.Venkatasubramanian

8.Mohanapriya

.. Respondents

*(respondents 6 to 8 brought on record as LRs  
of the deceased 5<sup>th</sup> respondent vide Court  
order dated 03.07.2017 made in C.M.P.No.10776  
of 2016 in C.R.P.No.873 of 2016)*



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**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree dated 29.01.2016 made in I.A.No.7952 of 2015 in O.S.No.4100 of 2013 on the file of the IV Assistant City Civil Court, Chennai.

For Petitioner : Mr.L.Rajasekar

For Respondents : M/s.S.Veeraraghavan (For RR2 to 4)

### **ORDER**

(The matter is heard through 'video conferencing')

This Civil Revision Petition is filed to set aside the order and decree dated 29.01.2016 made in I.A.No.7952 of 2015 in O.S.No.4100 of 2013 on the file of the IV Assistant City Civil Court, Chennai.

2.Heard the learned counsel appearing for the petitioner as well as the respondents 2 to 4 and perused the materials available on record.

3.The petitioner is plaintiff in O.S.No.4100 of 2013 on the file of the IV Assistant City Civil Court, Chennai. Originally, he filed the said suit against one Venkatachala Patthar/1<sup>st</sup> defendant and 1<sup>st</sup> respondent, for



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a declaration, to declare the sale deed executed by her father viz., Chockalinga Naicker in favour of the 1<sup>st</sup> defendant and permanent injunction, restraining the 1<sup>st</sup> defendant from interfering with her peaceful possession and enjoyment of the suit schedule property. Pending suit, the 1<sup>st</sup> defendant died and the respondents 2 to 5 were brought on record as legal heirs of the deceased 1<sup>st</sup> defendant. In the suit, the petitioner valued the suit under Sections 25(d) and 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (hereinafter referred to as, 'the Act'). The respondents 2 to 5, who were brought on record as legal representatives of the deceased 1<sup>st</sup> defendant, filed I.A.No.7952 of 2015 under Order VII Rule 11 (b) of C.P.C, r/w Section 151 of C.P.C., to reject the plaint, alleging that the petitioner has not valued the suit properly under Section 25 (b) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 and suit is barred by limitation. The said I.A. was dismissed by the learned IV Assistant Judge, City Civil Court, Chennai, vide order dated 29.01.2016. While dismissing the application, the learned Judge directed the petitioner to value the suit under Section 25 (b) of the Tamil Nadu Court Fees and Suit Valuation Act within three



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weeks from the date of that order and pay the Court fee. The petitioner filed memo dated 09.02.2016, remitting the Court fee of Rs.4,500/-, by valuing the suit based on the value mentioned in the sale deed bearing Document No.802 of 1988. The learned Judge returned the said memo stating that *“the Court has ordered the plaintiff to value the suit under Section 25(b) as such how the Court fee can be paid at this stage is to be stated”*. On such return, the petitioner has come out with the present Civil Revision Petition, challenging the order of the learned Judge dated 29.01.2016, directing the petitioner to value the suit under Section 25 (b) of the Act within three weeks, in the application in I.A.No.7952 of 2015 in O.S.No.4100 of 2013 filed by the respondents 2 to 5. According to the learned counsel appearing for the petitioner that petitioner is not an executant of sale deed and therefore, the valuation under Section 25 (d) is correct and prayed for allowing the Civil Revision Petition.

4.The learned counsel appearing for the respondents 2 to 4 contended that the petitioner is seeking cancellation of sale deed as null and void. Hence, the petitioner has to pay Court fee on market value as



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per Sections 40 and 25 (b) of the Act. There is no reason to interfere with the order of the learned Judge. In support of his contentions, the learned counsel appearing for the respondents 2 to 4 relied on the following judgments:

(i) Judgment of this Court dated **27.09.2012** made in **C.R.P(PD).Nos.3620 of 2007, etc., [S.N.S.Sukumaran Vs. C.Thangamuthu]**:

*“15. Similarly, it is submitted, in the case of court fee also, if the enquiry requires evidence to be recorded as to valuation and nature of relief to be claimed, then it ceases to be an issue of law, but a mixed question of law and fact. Even though the issue regarding valuation may affect the jurisdiction of the court, it can be decided as a preliminary issue only if it is an issue of law alone and not a mixed question of fact and law. Invariably, all issues as to under-valuation involve an enquiry by the court on the contentions raised by the parties with reference to documents and hence, they cease to be an issue of law. Therefore, according to the learned counsel, in view of the amended provision of Order XIV, Rule 2 C.P.C., the question of court fee is not triable as a preliminary issue. It is the duty of the court to collect appropriate court fee*



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*which it can do so independently if it is satisfied that the subject matter had not been properly valued or has been under-valued and it cannot give a right to the defendant to decide the modality of a trial of the case, since as per the decision in Sri Rathnavaramaraja vs. Smt. Vimala, A.I.R. 1961 S.C. 1299, a defendant who is aggrieved by an order under Section 12(2) does not even have a right of appeal or revision. Therefore, according to the learned counsel, giving much importance to the enquiry in an application under Section 12(2) of the Act is without any basis since Section 12(2) only enables the defendant to draw the attention of the court to the under-valuation or improper valuation and it does not empower him to hold up the trial of the case on this ground.”*

(ii) Judgment of this Court dated 25.01.2002 made in **C.R.P.No.6922**

**of 2001 [V.R.Gopalakrishnan Vs. Andiammal and another]:**

*“5.....The 2nd defendant has further raised a plea that the plaintiff has to pay the court fee on the market value of the suit property as on the date of the suit as stated by the plaintiff, under [Section 40](#) of the Court fees Act and even according to the plaintiff, the suit property was worth Rs.1,00,000/- in 1993. Hence, the valuation of the suit for the purpose of court fee and jurisdiction is to be made on the basis of the allegations made in the plaint only.*



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.....

*15. The next question that arises for consideration is that when a decree is sought for, setting aside the sale, how the property has to be valued?; Is it the alleged sale consideration as could be found in the document relevant or the market value of the property on the date of the filing of the suit? It is settled law that when a suit is filed under [Section 40](#) of the Court Fees Act with a prayer to set aside the conveyance viz., in this case-sale, the value of the property on the date of filing of the suit alone is relevant (vide AIR 1971 Madras 380; AIR 1939 Madras 462 {[KUTUMBA SASTRI vs. SUNDARAMMA](#)} and AIR 1974 Madras 152 {[T.S.R.AMMAL vs. V.N.SWAMINATHAN](#)})*

.....

*19.....(i) The allegations in the plaint have to be taken as a basis and the claim must be read as a whole. The accepted Rule is that substance alone matters and not the form.*

*(j) When a suit is filed seeking a decree to set aside the sale, Court Fee has to be paid on the market value of the property on the date of filing of the suit.”*

5.From the materials on record, it is seen that the petitioner is seeking declaration to declare the sale deed as null and void and for consequential injunction. To decide the issue of Court fee payable in the



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present case, Sections 40 and 25 of the Act are to be considered. Both the

Sections are extracted hereunder for easy reference:

***“25. Suits for declaration. - In a suit for a declaratory decree or order, whether with or without consequential relief, not falling under section 26-***

*(a) where the prayer is for a declaration and for possession of the property to which the declaration relates, fee shall be computed on the market value of the property or on [rupees one thousand and five hundred], whichever is higher;*

*(b) where the prayer is for a declaration and for consequential injunction and the relief sought is with reference to any immovable property, fee shall be computed on one-half of the market value of the property or on [rupees one thousand], whichever is higher;*

*(c) where the prayer relates to the plaintiffs exclusive right to use, sell, print or exhibit any mark, name, book, picture, design or other thing and is based on an infringement of such exclusive right, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees two thousand], whichever is higher;*

*(d) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint or on [rupees one thousand], whichever is higher.*

***40. Suits for cancellation of decrees, etc. - (1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree was passed or other document was executed; if a part of the decree***



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*or other document is sought to be cancelled, such part of the amount or value of the property.*

*(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.*

*Explanation. - A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section."*

As per Section 40 of the Act, if suit is filed for cancellation of a decree for money or other property having money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right or title or interest in money, movable or immovable property, the Court fee has to be computed on the value of subject matter of the suit. In the present suit, the petitioner is seeking for declaration to declare the sale deed dated 17.05.1988, executed by her father in favour of the 1<sup>st</sup> defendant as null and void. The petitioner is seeking cancellation of sale deed by seeking the relief of declaration that the said sale deed is null and void. In view of the said relief sought for in the present suit, the petitioner has to pay the Court fee on the value of the subject matter of the suit i.e., immovable property. The petitioner is seeking declaration and consequential injunction.



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6.As per Section 25 (b) of the Act, when the plaintiff seeks for declaration and consequential injunction in respect of immovable property, the Court fee shall be computed on one half of the market value of the property or on Rs.1,500/-, whichever is higher. In view of the petitioner seeking declaration in respect of immovable property and consequential injunction, the Court fee is payable only under Section 25(b) of the Act. The valuation of the petitioner under Section 25(d) of the Act is not correct. The petitioner is claiming title through her father viz., Chockalinga Naicker. The petitioner is not denying execution of the sale deed by her father, but claiming that it is only a sham and nominal sale deed executed by her father as a security document for loan obtained by him from the 1<sup>st</sup> defendant. In view of the claim of the petitioner through her father and not alleging any fraud being played by the 1<sup>st</sup> defendant, the contention of the learned counsel for the petitioner that petitioner is not an executant of the document and therefore, she has properly valued the suit as per Section 25(b) of the Act, is not correct. When declaration and injunction is sought for in respect of the



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immovable property, the Court fee payable is only as per Sections 40 and 25 (b) of the Act. Hence, there is no error in the order of the learned Judge warranting interference by this Court. The petitioner has to pay the Court fee on the market value of the property as on the value of date of filing of the suit.

7.The order of this Court dated **25.01.2002** made in **C.R.P.No.6922 of 2001** and judgment of the Division Bench of this Court dated **27.09.2012** made in **C.R.P.Nos.3620 of 2007, etc.** relied on by the learned counsel for the respondents 2 to 4 are squarely applicable to the facts of the present case. The petitioner has to pay the Court fee on the market value of the property as on the value of date of filing of the suit. The petitioner is directed to value the suit based on the value of immovable property involved in the suit as on the date of filing of the suit along with proper Court fee, within four weeks from the date of receipt of copy of this order. The learned Judge is directed to receive the Court fee so paid, if immovable property is properly valued as on the date of filing of the plaint and paid Court fee as per Sections 40 and



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25(b) of the Act and proceed further to dispose the suit on merits and in accordance with law. If the petitioner fails to pay the Court fee as per the market value of the suit property as on the date of filing of the suit, within four weeks from the date of receipt of this order, the learned Judge is directed to reject the plaint.

With the above direction, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The suit is of the year 2013. The learned IV Assistant Judge, City Civil Court, Chennai is directed to proceed further, if the petitioner pays the Court fee within time fixed by this Court, in any event, within six months from the date of receipt of payment of the Court fee.

**06.01.2022**

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To

The IV Assistant Judge,  
City Civil Court, Chennai.

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**V.M.VELUMANI, J.**

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