



CRP.No.1741 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 02.08.2022

Delivered On : 22.09.2022

CORAM

**THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P(NPD).No.1741 of 2021

K.Arokianathan @ Ravi

... Petitioner

Vs.

1.K.Krishnamurthy

2.K.Inbanila

... Respondents

**Prayer:** This Civil Revision Petition had been filed under Article 227 of Constitution of India to set aside the fair and final order in C.M.A.No. 03 of 2019 dated 03.02.2021 on the file of learned Additional Sub Judge at Puducherry confirming the Decree and Judgment in O.S.No.231 of 2001 on the file of learned I - Additional District Munsif at Puducherry.

For Petitioner : M/s.Sucharitha  
for Mr.S.Subramanian

For Respondents : Mr.K.S.Karthik Raja (for R.1)



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## **ORDER**

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This Civil Revision Petition had been filed by the Petitioner to set aside the fair and final order in C.M.A.No. 03 of 2019 dated 03.02.2021 on the file of learned Additional Sub Judge at Puducherry confirming the Decree and Judgment in O.S.No.231 of 2001 on the file of learned I - Additional District Munsif at Puducherry.

2. The learned Counsel for the Petitioner submitted her arguments. It is the submission of the learned Counsel for the Petitioner that the Petitioner is the Plaintiff before the learned I - Additional District Munsif, Pondicherry in O.S.No.231 of 2001. He invited the attention of this Court to the Plaint in O.S.No.231 of 2001, copy of which is enclosed in the typed set filed along with the Petition. It is the submission of the learned Counsel for the Petitioner that the Petitioner is one of the Plaintiffs. The first Plaintiff is the Kuppusami, the second Plaintiff is the youngest son Arokianathan @ Ravi. The first Defendant Krishnamoorthy is also the son of the first Plaintiff Kuppusami. The second Defendant is the alleged Power of Attorney created by the first Defendant Krishnamoorthy by obtaining signature of the first Plaintiff Kuppusamy. The first Defendant trespassed into the house of the



Plaintiff and forcibly taken away the first Plaintiff Kuppusamy to the residence of the first Defendant Krishnamoorthy, kidnapped and detained the Kuppusamy for 3 days and tortured him and obtained signatures from Kuppusamy by threat and coercion seeking to revoke the Will that he had already executed in favour of his younger son Arokianathan the second Plaintiff. And also executed alleged Power of Attorney by mis-using the signature of the first Plaintiff to create a Power of Attorney deed in favour of second Defendant. Therefore, the Plaintiffs 1 & 2, father and the younger son had sought declaration, declaring the perpetrated Power of Attorney dated 30.01.2001 allegedly executed by the first Plaintiff. The relevant portion of the Plaint in O.S.No.231 of 2001 is extracted hereunder:-

*"V.(i) The relief of Declarations as prayed in Paragraph VI (i) & (ii) of Plaint in Suit are incapable of any Monetary Valuation since they are prayed to be declared as Void. Consequently, first Plaintiff values the same at Rs.400/- for each of said Declarations and thus proportionate Court fee of Rs.30.50 + Rs.30.50 = 61.00 is affixed as under Section 25(d) of Pondicherry CF & SV Act of 1972.*

*(ii) The relief of permanent injunction as in Paragraph VI (iii) of Plaint is consequential to said main Reliefs of Declarations as in Suit and thus does not at all require any*



*Court-fee as per Proviso to Section. 6(1) of Pondicherry CF & SV Act of 1972. But, without prejudice to such legal position and since first Plaintiff is in possession and enjoyment of property in Suit, relief of injunction is an absolute equitable right and remedy under Law. Such relief is thus apparently incapable of any pecuniary valuation thus entitling first plaintiff to value the same as deemed fit. Thus, first plaintiff values same at Rs.400/- and thus proportionate Court-fee of Rs.30.50 is affixed as under Section 27(c) of Pondicherry CF & SV Act, 1972.*

*VI. Therefore, first Plaintiff prays that this Court may kindly be pleased to pass a Judgement and Decree in his favour.*

*(i) declaring that purported Power of Attorney dated 30.01.2001 allegedly executed by first Plaintiff to and in favour of second Defendant in respect of property described in Schedule "B" to Suit and registered as Document No.3 of 2001 at office of Sub - Registrar at Kandamangalam, Tamil Nadu is void abinitio and Non-est in eye of law and not legally binding on first Plaintiff for any purpose,*

*(ii) declaring that purported and alleged Sale Deed dated 31.01.2001 executed by second Defendant to and in favour of first Defendant in respect of property described in Schedule "B" to Suit and registered as Document No. 176 of 2001 at office of Sub-Registrar at Villianur, Pondicherry Territory is void abinitio and Non-est in eye of law and legally not binding on first*



*Plaintiff for any purpose.*

*(iii) consequently granting a Permanent Injunction restraining Defendants 1 & 2, their men, gents or any one claiming through them from disturbing or interfering with first Plaintiffs peaceful possession and enjoyment of property in Schedule : "B" to Plaint by acting in pursuance of suit - impugned purported Power of Attorney and purported Sale Deed in any manner for any purpose including by execution of any sorts of purported documents thereon to and in favour of third parties in any manner for any purpose and for Costs of Suit."*

3. It is the contention of the learned Counsel for the Petitioner that after filing of the Written Statement of the Defendants 1 & 2, they had stated that the Valuation of the Suit prayed had not been properly valued as per the Pondicherry Court fee and Suit valuation Act. Therefore, one of the issue regarding Court fee and Suit valuation was taken up as a preliminary issue and enquiry was conducted. In the enquiry the Valuation by the Plaintiff under 25 (d) for the prayers (i) and (ii) by the Plaintiff was rejected and the Valuation for the prayer (iii) injunction 27(c) accepted. The contention of the learned Counsel for the Defendants is that Section 14 of the Pondicherry Court fee and Suit valuation is attracted and was accepted. It is the



submission of the learned Counsel for the Petitioner that the first Plaintiff died during pending of the Suit. The first Plaintiff even though had not disputed the signature, he had disputed the documents. As it is executed by the Defendant No.1 by extorting threat and coercion on his father. The first Plaintiff /father was kidnapped from his own residence to the residence of the Defendant No.1. Therefore, the father himself had disputed the documents. As per the submission of the learned Counsel for the Petitioner, the Suit had been filed only to declare the documents as null and void, document No.1 cancellation of Will, execution of Power of Attorney, the execution of sale deed on the alleged have been executed by the first Plaintiff in favour of the Defendants 1 & 2. The deed alone is sought to be declared as void.

4. The learned Counsel for the Respondent objected to the arguments of the learned Counsel for the Petitioner stating that the Power of Attorney was executed and registered with the Sub Registrar Pondicherry. Therefore, at the time of execution of Registration, the first Plaintiff Kuppusamy was not aware of the Power of Attorney deed, it cannot at all be accepted. It is the further contention of the learned Counsel for the Respondent that in the

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Plaint no where it is stated that the signature of the first Plaintiff was obtained on blank papers and mis-used by the Defendants to create Power of Attorney deed and sale deed or at the time of affixing signature or at the time of executing Power of Attorney the principle had with an intention for the purpose for which Power of Attorney was given. The agent had mis-used the Power of Attorney. There is no such averment in the Plaint. Therefore, when the party to the document seeks to declare the document as null and void, he has to pay the Court fee as per Section. 40 of the Pondicherry Court fee and Suit Valuation Act. The relevant portion of the order passed by the learned Additional Sub Judge, Puducherry in C.M.A.No.03 of 2019 is extracted hereunder:-

*"15.1. This point is very important to decide this appeal because the trial court returned the plaint by holding that the plaintiff ought to have valued the Suit u/s 40 of Pondicherry Court Fees and Suit Valuation Act, instead of Section.25(d) of the said Act. Originally the plaintiff sought for the following relief in the plaint.*

*i) Declaring that purported power of attorney dated 30.01.2001 allegedly executed by plaintiff to and in favour of second defendant in respect of property described in schedule B to suit and registered as document No.3 of 2001 ( in pages - 43 to*



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45 of volume, 4 book, IV) at office of Sub Registrar at Kandamangalam, Tamil Nadu is void ab-initio and non-est in eye of law and not legally binding on plaintiff for any purpose.

ii) Declaring that purported and alleged sale deed dated 31.01.2001 executed by second defendant 9 as alleged power agent of plaintiff to and in favour of first defendant in respect of property described in schedule B to suit and registered as document No.176/2001 in pages - 249 to 251 in volume - 839 and book I at office of Sub-Registrar at Villianur, Pondicherry Territory is void ab-initio and non-est in eye of law and legally not binding on plaintiff for any purpose.

iii) Consequently granting permanent injunction restraining defendant 1 and 2, their men, agents or any one claiming through them for disturbing or interfering with first plaintiff peaceful possession and enjoyment of property in schedule B to plaint by acting in pursuance of suit impugned purported power of attorney and purported sale deed in any manner for any purpose including by execution of any sorts of purported documents thereon to and in favour of third parties in any manner and for costs.

Therefore, the plaintiff sought for two main reliefs that are to declare power of attorney said to have been executed by him in favour of the second defendant Inbanila and declare the sale deed executed by the second defendant in favour of first defendant on the capacity of power agent of the first plaintiff as null and void.



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*Generally declare the particular deed as null and void is concerned the suit to be valued under two provision one is Sec.25(d) another one is Section.40 of the Court fees Act.*

*15.2. A bare reading of the above two sections of the Pondicherry court fee and suit valuation Act. It is seen that when a third party to the particular document sought for the relief to declare the document as null and void in the position he was not party to document he can value the suit u/s. 25(d) of the said Act. Whereas any person who was a party in that document which was sought for the cancellation the document the court fee shall be calculated u/s 40 of above said Act. At the time of arguments the learned counsel for the appellant would submit that the first plaintiff who filed the suit clearly stated that although the document which was registered as power of attorney in favour of the second defendant as if it was executed by him he does not know the content of the document because of the signature was obtained from him by kidnapping and threatening so he cannot be deemed as a party to that document so he rightly valued the suit u/s. 25(d) of Pondicherry Court Fee and Suit Valuation Act. Unfortunately, before recording of evidence in the lower court the plaintiff was died so his evidence was not available. The main contention of the appellant is that the first plaintiff was kidnapped by the first defendant and under the coercion his signatures were obtained by the first defendant making use of that signature the*



*first defendant created the power of attorney as if it was executed by the first plaintiff in favour of the second defendant.*

*15.3.At this juncture it would be fruitful to go through the power of attorney allegedly executed by first plaintiff in favour of the second defendant that document originally was not marked before the trial court however the certified copy marked as Ex.A8. On careful perusal of the power of attorney it was executed on 29.01.2001 and on 30.01.2001 it was registered and two witnesses put their signatures as identification witnesses apart from that another two witnesses available for that document. Further it is seen that the first plaintiff signature available in each and every pages. It is an admitted fact that the first plaintiff never disputed the signature and his only objection is that his signature was obtained by the first defendant by coercion. In plaint para No.7 the first plaintiff alleged that the first defendant and his son Anand forcibly trespassed and kidnapped him also obtained his signature in various papers including stamp papers also threatened him to put the signature at Kandamangalam Sub Registrar office on 30.01.2001 so his wife was lodged complaint at Villianur police then he was saved on 02.02.2001 and found that a power of attorney was created by the first defendant by using that signatures."*

After due enquiry, the learned District Munsif had rejected the contention of the learned Counsel for the Plaintiff. The Plaintiff had preferred the appeal



against the order passed by the learned I - Additional District Munsif, Pondicherry. After hearing the arguments in the appeal, the learned Additional Sub Judge by order dated 03.02.2021, dismissed the appeal of the Plaintiff.

5. The learned Counsel for the Respondent also invited the attention of this Court where the Appellate Court relied on the rulings of the Hon'ble Supreme Court reported in **2009 CJ (SC) 1955**. The relevant portion of the said order is extracted hereunder: -

*"There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption."*

6. Therefore, in the C.M.A.No.03 of 2019 the finding given by the learned I - Additional District Munsif, Pondicherry was confirmed and the appeal was dismissed. Aggrieved by the same, this Revision Petition had been filed. The learned Counsel for the Respondent submitted that there is no merit in this case.



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7. On perusal of the order passed by the learned I - Additional District Munsif, Pondicherry regarding the issues, the reasoning of the learned District Munsif is found acceptable as the Plaintiff had let in evidence as P.W.1 and marked documents exhibit A.1 to A.32. The first Defendant had examined as D.W.1 and marked documents B.1 to B.9. On appreciation of the evidence only the learned I - Additional District Munsif, Pondicherry had pronounced the judgment regarding the issues 1 and 2 answer the same against the Plaintiffs as per Judgment dated 27.04.2018. The Additional Sub Juge, Puducherry in Judgment in C.M.A.No.03 of 2019 had re-assessed the same and arrived at the conclusion that the Appeal lacks merit as per the Judgment in C.M.A.No.03 of 2019 dated 03.02.2021. When the first Plaintiff is a party to the document and the first Plaintiff himself had appeared before the Registry concerned and registered those documents, then the presumption available is, it is a valuable document. In the light of the said observation, the Valuation by the Plaintiff before the learned I - Additional District Munsif, Puducherry that the Declaration for the (i) & (ii) regarding the Power of Attorney deed and the sale deed to be declared as null and void under Section 25(d) was rejected based on the evidence.



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Therefore, this Revision Petition has no merits. The Provision of Section 40 of Puducherry Court Fee and Suit Valuation Act is found attracted in this case and no violation as mentioned by the Plaintiff in the Plaint. Therefore, the submission of the learned Revision Petitioner is rejected and submission of the learned Counsel for the Respondent/ Defendant is accepted by this Court. This Civil Revision Petition has no merit. Hence, dismissed. It is to be noted that the party who had affixed signature had disputed the document but the Plaint does not contain averments that the Plaintiff was not aware of the nature of the documents. Under those circumstances only the Court had rightly come to the conclusion that Section 40 is attracted and not Section 25 as claimed by the Plaintiff. Therefore, nothing is found unreasonable in the Judgment of the learned I - Additional District Munsif, Puducherry or in the finding by the Appellate Judge, learned Additional Sub Judge warrant interference by this Court. The reliance placed by the learned Counsel for the Petitioner in *Shanmugam Vs. Hema* reported in **2011-1-L.W.927** is not applicable to the facts of this case on the ground as the facts are 2011- 1-L.W. 925 even though, the facts are similar in the case before this Court there was evidence let in by the Second Plaintiff based on that evidence only the Court had arrived at the conclusion that the Section 25(d) is not attracted



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instead Section 40 alone is attracted also Kuppusamy had executed the Power of Attorney deed. Therefore, the Sub Registrar registered the document. Therefore, it is treated as the bonafide Power of Attorney deed. There is a presumption that the Registered document is validly executed. Under those circumstances, the reliance placed by the learned Counsel for the Petitioner reported in **2011-1-LW-925** in the case of **Seethadevi Vs. R.Govindaraj** and others will not be helpful to the case of the Petitioner. Hence, rejected.

In the result, **this Civil Revision Petition is dismissed** as having no merits.

**.09.2022**

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Internet : Yes / No  
Speaking Order/Non-Speaking Order  
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To

1.The Additional Sub Judge  
Puducherry.

2.The I - Additional District Munsif,

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**SATHI KUMAR SUKUMARA KURUP, J.**

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**Order in**  
**C.R.P(NPD).No.1741 of 2021**

22.09.2022