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CRP.No.4132 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4132 of 2017

and

CMP.No.19374 of 2017

1. R. Ganesh
2. G. Rajalakshmi,
3. G. Saravanan
Petitioners

..

Versus

K. Sambasiva Rao,
...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 15.09.2017 made in I.A.No.16686 of 2015 in O.S.No.3283 of 2015 on the file of I Assistant Judge City Civil Court, Chennai.

For Petitioners : R. Manickavel

For Respondent : S. Ramesh



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ORDER

This Civil Revision Petition has been filed by the petitioners seeking to set aside the fair and decretal order dated 15.09.2017 made in I.A.No.16686 of 2015 in O.S.No.3283 of 2015 on the file of I Assistant Judge City Civil Court, Chennai.

2. The petitioners are the defendants and the respondent is the plaintiff in the original suit.

3. The case of the petitioners is that the respondent/plaintiff filed the suit in O.S. No.3283 of 2015 on the file of the 1st Assistant Judge, City Civil Court, Chennai, seeking for relief of declaration of sale deed as null and void and permanent injunction against the defendants/petitioners herein. During the pendency of the suit, after receipt of the notice, the defendants/petitioners herein have filed I.A. No.16686 of 2015 in O.S. No.3283 of 2015 under Order VII Rule 11(b) and (d) of C.P.C. seeking to reject the plaint filed in O.S. No.3283 of 2015 on the ground of pecuniary jurisdiction under Section 12(2) of the Tamilnadu Court Fees and Suit



Valuation Act while the market value of the suit properties as per the document which comes near two crores, the plaintiff/1st respondent herein has not paid proper Court fee and filed the aforesaid suit before the Trial Court underestimating the value of the suit properties. The Trial Court having considered the submissions of the learned counsel for both parties, dismissed the same by order 15.09.2017 holding that there is a mixed question of law and it can be decided only by conducting Trial. Being aggrieved by the aforesaid dismissal order, the defendants/petitioners herein have filed the present Civil Revision Petition to set aside the same.

4.The learned counsel for the petitioners would submit that the suit property as per the two separate Sale Deeds dated 18.02.2015 which has been challenged in the suit, is registered for the total value of Rs.1,98,82,500/- (Rupees One Crore Ninety Eight Lakhs Eighty Two Thousand and Five Hundred Only) and therefore, the Trial Court has no pecuniary jurisdiction to try the suit and according to the value of the property, the suit has to be filed only before the Hon'ble High Court which has pecuniary jurisdiction over the same. Further, the plaintiff/respondent herein is a party to the transaction and document and therefore, he cannot



file the suit for declaration under Section 25(d) of Tamil Nadu Court Fee and Suit Valuation Act without paying the Court Fee under Section 25(b) of the Act and fee shall be computed on one half of the market value of the property. However, without considering the value of the property, the Trial Judge dismissed the application in I.A. No.16686 of 2015 on the ground of determination of Court fee under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act or under Order 7 Rule 11(b) CPC is a mixed question of law which is an erroneous conclusion and the order passed on the above ground is liable to be set aside.

5. It has been further submitted that the Trial Court has erroneously dismissed the application without taking note of the fact that the plaintiff has filed the aforesaid suit seeking for declaration of sale deeds as null and void executed by the 1st petitioner in favour of their family members based on the General power of Attorney executed by the plaintiff/respondent herein. While being so, the plaintiff/respondent herein has to pay Court Fee as per the valuation of the Sale Deeds which has been registered for a sum of Rs.1,98,82,500/- (Rupees One Crore Ninety Eight Lakhs Eighty Two Thousand and Five Hundred Only). The same has been challenged by



the plaintiff against the defendants. However, the plaintiff filed the aforesaid suit under Section 25(d) of Tamil Nadu Court Fee and Suit Valuation Act without paying the Court Fee under Section 25(b) of the Act. As per the valuation of the Suit, the Trial Court cannot entertain the said suit and the suit has to be filed before this Hon'ble Court. Hence, the determination of issue of valuation is mixed question of law and fact cannot be accepted and liable to be set aside since it is a preliminary issue to take up the matter before the Trial Court.

6. The learned counsel for the respondent would submit that in the present case, the documents created by the petitioners are challenged on the ground of being fraudulent one, created without any authority and not supported by consideration. The plaintiff/respondent herein borrowed a sum of Rs.1 crore from the 1st defendant/1st petitioner herein with interest @72% per annum and taking advantage of the docile nature of the respondent/plaintiff and his health condition, the plaintiff/respondent herein was forced to execute a power of attorney in favour of the persons identified by the 1st petitioner who were all his family members. The power of attorney was merely a security for repayment of the loan



borrowed by the plaintiff/respondent herein. After the loan was repaid, the defendants/petitioners herein with an idea of grabbing the valuable property of the plaintiff/respondent herein has created alienations. The documents which are challenged in the suit are not supported by any consideration and the agent did not have power to create certain documents. As the documents are vitiated by fraud and created without any authority, the plaintiff/respondent herein had valued the same in appropriate manner and paid the Court Fee accordingly. In this case, the issue of valuation is mixed question of law and fact which requires trial and cannot be decided in preliminary manner. Hence, the Trial Court has rightly dismissed the application filed by the petitioners herein.

7. Heard the learned counsel for the petitioners and the learned counsel for the respondent as well as perused the material available on record.

8. On a perusal of the records, it is seen that the plaintiff has filed the suit seeking for declaration of sale deeds dated 18.02.2015 as null and void which are said to have registered for a sum of Rs.1,98,82,500/-



(Rupees One Crore Ninety Eight Lakhs Eighty Two Thousand and Five Hundred Only). However, the learned counsel for the plaintiff/respondent herein would submit that the plaintiff borrowed a loan of Rs.1 Crore from the 1st petitioner herein for which security, the Power of attorney has been executed in favour of the 1st petitioner by the plaintiff/respondent herein. On the pretext of Power of Attorney, the suit property was alienated in favour of his family members in a fraudulent manner without obtaining the consent of the plaintiff/respondent herein. As the documents are vitiated by fraud and created without any authority, the plaintiff/respondent herein had valued the same in appropriate manner and paid the Court Fee accordingly. While being so, the Trial Court has to be decided the payment of Court Fee after considering the core issue of the suit arose between the plaintiff and the defendants. Hence, the Trial Court rightly dismissed I.A.No.16686 of 2015 in O.S.No.3283 of 2015 by order dated 15.09.2017 by assigning the reasons which is mixed question of law and facts which requires trial and cannot be decided in a preliminary manner. Further, the Trial Court empowers to decide the value of the properties as preliminary issue and pass orders as per ratio laid down in the rules and regulation of the Tamil Nadu Court Fee and Suit Valuation Act with regard



to payment of Court Fee. Accordingly, the Trial Court shall direct the plaintiff/respondent herein to pay necessary Court Fee in the suit and to file the same before the proper forum. Thus, the Civil Revision Petition is liable to be dismissed as there is no merit.

9. When the matter is taken up for hearing, the learned counsel for the respondent brought to the knowledge of this Court that the sole respondent died. Hence, the learned counsel for the parties shall take up appropriate steps to bring on record the legal heirs of the deceased sole respondent before the Trial Court to proceed the Trail in the manner known to law.

10. In the result, the Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

16.11.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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To

1. The I Assistant Judge City Civil Court, Chennai.
2. The Section Officer, V.R.Section

High Court, Madras.



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T.V.THAMILSELVI, J.

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