



C.R.P. No. 3476 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 01.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3476 of 2018
and
C.M.P. No. 19453 of 2018

- 1 D.Shanmugam
S/o. Late Duraisamy
 - 2 S.Shanthi
S/o Late D.Shanmugam
 - 3 S.Dharani
D/o. Late D.Shanmugam
 - 4 S.Dhayanandan
S/o Late D.Shanmugam
- ... Petitioners

Vs

- 1 V.Ponnusamy
S/o. Late.Veerappagounder
 - 2 S.Selvaraj
S/o. Siddhagounder
 - 3 S.Shamugam
S/o. Siddhagounder
- ... Respondents



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PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and final order in I.A.No. 797 of 2017 in O.S.No.108 of 2013 dated 20.07.2018 on the file of Sub-Court, Bhavani.

For Petitioners : Mr.MA.P. Thangavel

For Respondents : Mr.S.Lakshmanasamy
for R1 to R3

ORDER

The Revision Petitioners herein are the plaintiffs in the suit in O.S.No.108 of 2013, on the file of Sub-Court, Bhavani for the relief of declaration to declare the sale deed dated 07.03.2013 as null and void on the ground that it was fraudulently created by the 1st defendant colluded with the 3rd defendant and other reliefs.

2. The said suit was contested by the defendants by filing their written statement. Issues were framed and evidences were examined on the side of plaintiffs and on the side of defendants, D.W.1 and 2 were examined. At that time, the plaintiffs filed an application in I.A.No. 797 of 2017 under Order 6 Rule 17 of C.P.C. praying to amend the pleadings, more



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particularly, with regard to payment of court fee. The said application was strongly objected by the defendants stating that even at the time of filing written statement, he disputed the prayer claimed by the plaintiffs, but after completion of examination of witnesses, they filed this application to amend the prayer, as such is not maintainable in law and also contended that no reason assigned by the plaintiff for filing the said application belatedly. On considering submissions of both sides, the trial court dismissed the application holding that after completion of evidence, the said application was filed and if the said application is allowed, there may be a change in the character of suit. Challenging the said findings, the plaintiffs preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioners submitted that the trial court failed to take note of the fact that in a suit for declaration, the plaintiffs have to prove their title over the property by adducing their evidence, because these plaintiffs are not parties to the document and the present application was filed only to amend the court fee because at the time of filing of the suit, he paid a court fee under Sec.27(c) of Tamil Nadu Court



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Fees and Suit Valuation (Amended) Act, 2003 (hereinafter called as 'Act')

due to lack of due diligence. Considering the prayer in the plaint, the plaintiffs have to pay court fee under Sec.40 of the said Act, however, if he is not permitted to pay the said court fee, his valuable right with regard to the property will be defeated. Furthermore, amending the plaint with regard to court fee would not change the character of the suit. But, without appreciating those legal aspects, the trial court erroneously dismissed the application. Hence, he prayed to set aside the same.

4. The learned counsel appearing for respondents/defendants submitted that even at the time of filing written statement itself, they categorically stated the payment of court fee paid by the plaintiffs is incorrect, but the plaintiffs not taken any steps to amend the court fee and only after completion of evidence on both sides, they come forward with the said application, as such, is highly belated one, besides no reason assigned for filing the said application. Hence, the trial court rightly appreciated the said fact, which needs no interference. Therefore, he prayed to dismiss this Civil Revision Petition.



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5. Heard and considered rival submissions made by learned counsel for revision petitioners as well as respondents and perused the records.

6. On considering submissions of both sides and on perusal of records, it reveals that the plaintiffs filed the suit for the relief of declaration to declare the sale deed as null and void and paid court fee under Sec.27(c) of the Act. Admittedly, as per the contention of plaintiffs, the sale deed said to be executed by the 1st defendant with 2nd defendant is not a valid sale deed. Relying the ratio laid down in the case of ***J.Vasanthi and others vs. N.Ramani Kanthammal (dead) rep. by legal representatives and others*** reported in ***2017 (11) SC 852 : 2017 (5) SCC (Civ.296 : 2017 SCC Online SC 901***, wherein the Hon'ble Apex Court held as follows :-

"A. Court fees – T.N. Court Fees and Suit Valuation Act, 1955 (14 of 1955) – S.40 or S.25 (d) – Suit for declaration that sale deeds were fabricated and hence void – Held, in suit for declaration for treating documents null and void, which basically amounts to seeking relief of cancellation of



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documents, and where original plaintiff was party to such transaction, as if instant case, the court fee is to be computed on value of subject matter of suit i.e. under Sec.40 – Impugned judgment affirming order of trial court rejecting defendant-applicant's application praying for directing plaintiffs to pay court fee under S.40, unsustainable – Trial Court directed to grant three months' time to plaintiff to pay requisite court fees – Specific Relief Act, 1963. S.31.”

the plaintiffs contend that they are not parties to the document, which is sought to be declared as null and void, they have to necessarily pay court fee under Sec.40 of the Act. Therefore, the application filed by the plaintiffs, as such is maintainable. At the same time, as argued by the learned counsel for revision petitioners that they must be given due diligence to aware this fact at the time of filing the plaint itself. But, no reason assigned in the affidavit. On seeing the facts of the case, the plaintiffs approached the court to declare the sale deed as null and void. Admittedly, they are not parties to that document and the main relief



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claimed in the suit is to declare the sale deed as null and void. So, the plaintiffs have to pay necessary court fee under Sec.40 of the Act. Now, the evidence was completed. But with regard to payment of court fee, it is a mixed question of law and facts. The plaintiffs may be directed to pay deficit court fee at any point of time, if the Court finds necessary. Now, on seeing the prayer of the plaint, necessarily the plaintiffs have to pay the court fee under Sec.40 of the Act. Furthermore, the authority relied on by the learned counsel for plaintiffs is squarely applicable to the facts of the present case. Admittedly, there is some lacuna in the procedures to be followed, due to which, the right of parties should not be affected. Hence, the findings of the learned trial judge is liable to be set aside.

7. In the result, this Civil Revision Petition is allowed and the order passed by the learned trial judge in I.A.No. 797 of 2017 is set aside. The plaintiffs are directed to amend the plaint accordingly and they have to pay necessary court fee. Liberty is granted to the respondents/defendants to file their additional written statement if any. However, as there is no reason assigned for the payment of court fee, the plaintiffs are directed to pay a



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cost of Rs.10,000/- payable to the learned counsel for respondents within a period of two weeks from the date of receipt of copy of this order.

Thereafter, after making necessary amendment, the trial court is directed to proceed with the trial and dispose the case within a period of three months.

No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

Sub-Judge,
Bhavani.



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T.V.THAMILSELVI, J.

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