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C.R.P.No.85 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.85 of 2023

1.Mrs.Kathiramma

2.Mrs.Lakshmi

... Petitioners

Vs.

1.Pasavaraj

2.Raniamma

3.Thimarayan

4.Ramakrishnappa

5.Thimarayappa

6.Muniappa

7.Narayanaamma

8.V.Muniraj

9.Pasappa

10.Thiyagaraj

11.Markondan

12.Pasappa



13.Venkatesh @ Chinnapaiya

14.Srinivasan

15.Kathirvel

16.Revathy

17.Minor.Lakshminarayanan

S/o.Pasumaraj

Represented by his Mother/Natural Guardian

Bakiyamma

18.Minor.Sowmiya

S/o.Pasumaraj

Represented by his Mother/Natural Guardian

Bakiyamma

19.Chandrasekaran

20.M/s.Kongan Aggregates Pvt., Ltd.,

Represented by its Director,

Thangavelu

Pasthapalli Village,

Kalingavaram Post, Shoolagiri Taluk,

Krishnagiri District.

21.Pazhaniappan

22.Saravanan

23.Bank of Baroda

Head Office at

C-26 'G' Block,

Bandra Kurla Complex, Bandra (East)

Mumbai – 400 051.

24.Pasamma

25.Erpittamma



26.Thimakka

27.Palamma

28.Neelamma

29.Palamma

30.Mayilappa

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to direct the Principal Sub-Ordinate Judge, Hosur to number the suit in O.S.SR.No.1193/2022 (CNR No.TNKR050008262022) and to take the suit on file.

For Petitioners : Ms.R.Divyapreathika

ORDER

The Civil Revision Petition has been filed to direct the Principal Sub-Ordinate Judge, Hosur to number the suit in O.S.SR.No.1193/2022 (CNR No.TNKR050008262022) and to take the suit on file.

2. The revision petitioners instituted a Suit for partition. In the said suit, they have sought for the relief of Declaration to declare the sale deeds as null and void. The Principal Sub Court, Hosur, returned the plaint on the ground that the Court fee is to be paid under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.



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3. The learned counsel for the revision petitioners mainly contended that the sale deeds, which all are under challenge in the Unnumbered Suit, the revision petitioners are not parties and the sale deeds were executed behind their back and thus, they have opted to challenge the sale deeds. Since the revision petitioners are not parties to the sale deeds, they can pay Court fee under Section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, which the petitioners have already complied with.

4. In respect of the defect noted down by the Sub Court, Hosur, the revision petitioners / plaintiffs submitted a compliance report, by stating that in respect of Document Nos.8, 9, 12 and 17, the revision petitioners are not parties and therefore, they have valued the suit under Section 25(d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955.

5. In this regard, the Courts have settled the principles in the case of ***Siddha Construction (P) Ltd., Vs. M.Shanmugam and Ors. reported in 2006 LW 176.*** Relevant paragraphs are extracted hereunder:

"11.For deciding the value of the court Fee payable by the plaintiff the averments in the plaint alone are to be considered. In O.S. No.13/2002, the prayer sought for is to



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declare the sale deed executed by the 1st defendant (the 5th respondent herein) in favour of the 3rd defendant (Revision Petitioner) as null and void and not binding on them. It is averred at para 10 of the plaint that since they are not party to the sale deed dated 31.10.2001, which is to be declared as null and void, the plaintiff valued the suit for the purpose of the Court Fee under Sec.25(d) of the Tamil Nadu Court Fees Act. It is also further averred in para 7 of the plaint that the plaintiff's did not execute the sale deed and they did not receive any sale consideration. It is the further case of the revision petitioner that they did not make any alienation to and in favour of any one till today in respect of the suit schedule property.

12. In the light of the averments made in the plaint, the trial court is right in coming to the conclusion that the suit has been rightly valued and the trial court has pecuniary jurisdiction to try the suit.”

*and in the case of **G.Seethadevi Vs. R.Govindaraj and Ors., reported in 2002-1-LW925**. Relevant portion reads as:*

“In the case on hand, it is to be seen that the case of the Petitioner is that she has not executed Power of Attorney in favour of one Bhaskaran so as to execute the sale deed in favour of third parties. That apart, it is contended that the said Bhaskaran is unknown to the Petitioner and he an employee of the first Respondent in his petrol bunk. When such statement has been made in the plaint, court fee that



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has to be payable on the relief that has been sought for by the Petitioner viz., for declaration that the sale deed dated 25.04.2008 is null and void and not binding on the petitioner, under Section 25(d) of the Act and not under Section 40 of the Act. The Petitioner has not admitted the execution of Power of Attorney. The court below is not justified in directing the petitioner to pay the court fee under Section 40 of the Act. In the case relied on by the Respondents, the Power of Attorney was admitted by the Respondents/Plaintiffs therein and hence, this Court in the said decision has directed the party to pay the Court Fee under Section 40 of the Act.”

6. The above judgments would reveal that when the plaintiff, who instituted a Suit is not a party to the document, which is sought to be declared as null and void, the Court fee should be paid under Section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and it is not necessary to insist the plaintiff to pay Court fee under Section 40 of the said Act.

7. In the present case, the revision petitioners/plaintiffs have already paid Court fee under Section 25 (d) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and the said factum shall be verified by the Principal



Sub-Court, Hosur and if the papers are otherwise in order, the suit is to be numbered and taken on file for adjudication.

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8. Accordingly, the Principal Sub Court, Hosur, is directed to verify the suit papers filed by the revision petitioners in O.S.SR.No.1193 of 2022 (CNR No.TNKR050008262022) and number the suit, if it is otherwise in order and without insisting the plaintiffs to pay Court fee under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and consequently, proceed with the adjudication by following the procedures as contemplated.

9. Accordingly, the Civil Revision Petition stands allowed. No costs.

02.02.2023

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Index : Yes

Speaking order

Neutral Citation : Yes

Note: Registry, High Court of Madras is directed to return the original copy of the plaint to the learned counsel for the revision petitioners on record within a period of one month.

To

The Principal Sub-Judge,



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S.M.SUBRAMANIAM, J.

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