



C.M.S.A. No.25 of 2007

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATE: 24.08.2023

Coram:

**THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

Civil Miscellaneous Second Appeal No.25 of 2007

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N.Sait

... Appellant

Vs.

1. Idayathullah
2. G.Kumar
3. G.Sukumar
4. G.Sivakumar
5. G.Murugan
6. G.Jayakumar
7. G.Karthi
8. G.Vinodkumar

(Since the respondents 2 to 8  
remained exparte in the Courts below,  
notice may be dispensed with for them)

... Respondents

**PRAYER:** This Civil Miscellaneous Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.132 of 2003 dated 19.04.2006 on the file of the Court of Sub-ordinate Judge, Tiruvaru, in confirming the judgment and decree made in unfilled O.S.No. of 2002 on the file of the Court of District Munsif, Tiruvarur.



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C.M.S.A. No.25 of 2007

For Appellants : Mr.A.Muthukumar

For Respondents : Mr.B.Ramamoorthy for R1

R2 to R8-Set Ex-parte before the  
Court below

### **JUDGMENT**

This Civil Miscellaneous Second Appeal is filed against the judgment and decree passed in A.S.No.132 of 2003 dated 19.04.2006 on the file of the Court of Subordinate Judge, Tiruvarur, confirming the judgment and decree made in un-numbered O.S.No....of 2002 on the file of the Court of District Munsif, Tiruvarur.

2. The appellant herein filed an un-numbered suit for declaration to declare that the decree dated 25.09.2020 in O.S.No.229 of 2000 on the file of the Sub Court, Tiruvarur, obtained by the 1st respondent, against the respondents 2 to 8, is fraudulent, collusive, null and void, not binding and unenforceable against the appellant herein. The suit was valued and Court fees were paid under Section 25(d) of Tamil Nadu Court Fees and Suits Valuation Act whereas, the trial Court directed to value the suit under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act. Since the



appellant failed to comply with the order, the learned District Munsif, Tiruvarur, rejected the plaint.

3. Challenging the said decree of rejection, the appellant herein filed an appeal before the Sub Court, Tiruvarur, in A.S.No.132 of 2003. The learned Subordinate Judge, after hearing the appeal, dismissed the same, by order dated 19.04.2006 and confirmed the rejection order and decree passed by the District Munsif, Tiruvarur.

4. Challenging the said dismissal order, the appellant has filed the present Second Appeal.

5. This Court, while admitting the present Second Appeal on 06.11.2007, formulated the following substantial questions of law;

1. Whether the court below erred in law in holding that the suit is to be valued under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act when the plaintiff is not a party to be decree passed in O.S.No.229 of 2000 filed by his tenant?

2. Whether the court below erred in law in holding that the valuation of suit is not proper under Section 25(d) of the Court Fees Act when the plaintiff claims that the relief of declaration that the decree obtained by his tenant against him is null and void and by fraud and the same can be attacked even in collateral proceedings also?



C.M.S.A. No.25 of 2007

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6. The learned counsel for the appellant would submit that the suit property was valued under Section 25(d) of Tamil Nadu Court Fees and Suit Valuation Act (hereinafter referred to as the 'Act'). Therefore, the question of payment of Court Fees under Section 40 of the Act does not arise. Further, he would submit that the appellant is not a party to the suit in O.S.No.229 of 2000. Therefore, the valuation of the suit under Section 25(d) of the Act is in order. He further submitted that only the party to the suit or the parties to the documents alone have to seek the relief of setting aside the decree or document based on the value of the suit under Section 40 of Act and the person who is not a party to the suit or document, need not value the suit under Section 40 of the Act. The relief sought for in the suit with the prayer for declaring the decree in O.S.No.229 of 2000 on the file of the Sub Court, Tiruvarur as fraud, collusive and null and void and not for setting aside the decree and therefore, the valuation of the suit under Section 40 of Act would not arise. The Court below erroneously directed the appellant to value the suit under Section 40 of the Act and to pay the deficit Court fees which is contrary to the various decisions of this Court. If the suit is required to be valued under Section 40 of Act, the Court of first instance ought not to have rejected the plaint, but should have returned the plaint for re-presenting



before the proper forum. Therefore, the rejection of the plaint is erroneous.

The learned counsel also placed reliance of the following Judgements;

*1. G.Seetadevi Vs. R.Govindaraj and Others reported in (2011) 6 MLJ 399*

*2. Siddha Construction (P) Ltd. rep. by its Power Agent Anjay Sharma Vs. M.Shanmugam and Others reported in 2006 (5) CTC 255*

7. The learned counsel for the 1st respondent would submit that the appellant has filed the suit for setting aside the decree. Therefore, as per Section 40 of the Act, the suit has to be valued and amount has to be paid as per the said Act. The Court below rightly rejected the plaint since the appellant had not properly valued the suit and paid the correct Court fees. Once the suit is filed seeking the relief of cancellation of decree on the ground of collusion, the suit has to be valued and amount has to be paid under Section 40 of the Act. Both the Courts at the first instance and also the appellate Court have rightly held that the suit has not been properly valued and the correct Court fee has not been paid and accordingly, the Courts below rejected the plaint. Therefore, there is no substantial question of law involved in this appeal and the appeal is liable to be dismissed.

8. Heard the learned counsel for the appellant and the learned



C.M.S.A. No.25 of 2007

counsel for the 1st respondent and perused the records.

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9. Admittedly, the appellant filed the suit before the District Munsif, Tiruvarur, for declaring the decree dated 25.09.2000 in O.S.No.229 of 2000, on the file of the Sub Court, Tiruvarur as fraud, collusive and null and void and not binding and unenforceable as against the appellant herein and valued the suit under Section 25(d) of the Act and paid the Court fees under the said Section. The learned District Munsif rejected the plaint on the ground that the suit was not properly valued and the correct Court fee was not paid under Section 40 of the Act. The said rejection order was challenged before the Sub Court, Tiruvarur, in A.S.No.132 of 2003 and the appellate Court also confirmed the decree and dismissed the appeal, against which, the present second appeal is filed.

10. A careful reading of the entire averments in the plaint shows that appellant had already filed an application under Section 47 CPC, in E.A. No.37 of 2004 in E.P.No.38 of 2002 in O.S.No.229 of 2000, on the file of the Court of Subordinate Judge, Tiruvarur, to declare that the decree dated 25.09.2000 in O.S.No.229 of 2000 is null and void, inexecutable and not binding on the appellant herein and the said application was dismissed by order dated 04.03.2005 on the ground that the appellant is not a party to



C.M.S.A. No.25 of 2007

the said suit in O.S.No.229 of 2000. The appellant has also challenged the said order by way of Civil Revision Petition in CRP (NPD) No.2300 of 2008 which is pending before this Court, which is also dealt with by this Court today and separate order is being passed.

11. In this case, the appellant had not directly sought for the relief of cancellation of the decree, but has cleverly drafted and challenged the decree on the ground that the decree was obtained by fraud, collusion and null and void and not binding and unenforceable against him. However, Section 40 of the Act is clear that for the suit for declaration of decree etc., the Court 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 or other document is sought to be cancelled, such part of the amount or value of the property.

12. Therefore, the intention of the appellant is to obtain a declaratory decree that he is the owner of the property and to cancel the decree as if it would not bind him. Therefore, the suit has to be valued under Section 40 of the Act and not under Section 25(d) of the said Act. Therefore,



C.M.S.A. No.25 of 2007

the Court of first instance as well as the appellate Court, based on the averments made in the plaint, rightly rejected the plaint. Though the appellant raised objection before the appellate Court that the Court of first instance even assuming that the suit was not properly valued and paid the correct Court fee, if it is properly valued and the correct Court fee was paid, it would exceed the jurisdiction of the Court of first instance and ought to have returned the plaint to present it before the Court which has got the pecuniary jurisdiction, whereas, the appellant has only valued the suit under Section 25(d) of the Act and paid the Court fee and not valued the suit under Section 40 of the Act. Unless he values the suit under Section 40 of the Act and pays the Court fee, the Court cannot come to the conclusion as to whether it has got the pecuniary jurisdiction or not. Therefore, the contention of the petitioner is not acceptable. The appellate Court has rightly rejected his contention.

13. However, as far as the 1st substantial question of law formulated by this Court is concerned, i.e., whether the court below erred in law in holding that the suit is to be valued under Section 40 of the Tamil Nadu Court Fees and Suit Valuation Act when the plaintiff is not a party to be decree passed in O.S.No.229 of 2000 filed by his tenant?, it is to be noted



that Section 40 of the Act does not say that only the party to the suit or the parties to the documents alone have to seek the relief of setting aside of the decree or document on the value of the suit under Section 40 of Act and the person who is not a party to the suit or document need not value the suit under Section 40 of the Act. Therefore, the contention of the learned counsel for the appellant is not acceptable and the citations referred to by the learned counsel for the appellant are not applicable to the facts of the present case on hand.

14. As far as the 2nd substantial question of law is concerned, i.e., Whether the Court below erred in law in holding that the valuation of suit is not proper under Section 25(d) of the Court Fees Act when the plaintiff claims that the relief of declaration that the decree obtained by his tenant against him is null and void and by fraud and the same can be attacked even in collateral proceedings also? Whether the appellant is a party to the suit or not, once the appellant sought the relief of cancellation of decree, in other words, for declaration that the decree dated 25.09.2020 passed in O.S.No.229 of 2000 on the file of the Sub Court, Tiruvarur, obtained by the 1st respondent is fraudulent, collusive, null and void, not binding and unenforceable against the appellant herein, then he has to value the suit and



C.M.S.A. No.25 of 2007

pay the Court fee only under Section 40 of Act and not under Section 25(d) of the Act.

15. While answering the substantial questions of law as above, this Court of the view that there is no perversity or illegality in the observations made by the trial Court. There is no merit in the appeal and the same is liable to be dismissed.

16. However, since the suit was rejected only on the ground of not valuing the suit properly and non-payment of correct Court fee under the correct provisions of law, in order to give an opportunity to the appellant, the trial Court is directed to return the plaint to the appellant herein to enable him to value the suit and pay the correct Court fee under the correct provision of law i.e., under Section 40 of the Act and to present the plaint/suit before appropriate forum.

17. The appellant is at liberty to value the suit and pay correct Court fee in accordance with law i.e. under Section 40 of the Act. After valuing the suit under Section 40 of the Act, if the appellant finds that the suit value is beyond the pecuniary jurisdiction of the trial Court, the appellant shall present it before the proper Court which has got the pecuniary as well as territorial jurisdiction, within a period of one month



C.M.S.A. No.25 of 2007

from the date of receipt of a copy of this order. However, in order to value the Court fees under Section 40 of the Act, the trial Court is directed to take the plaint if it is otherwise in order and proceed the matter in accordance with law.

18. With the above observations and directions this Civil Miscellaneous Second Appeal is dismissed. There shall be no order as to costs.

24.08.2023

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To

1. The Subordinate Judge, Tiruvarur.
2. The District Munsif, Tiruvarur.
3. The Section Officer,  
VR Section,  
High Court,  
Madras.



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C.M.S.A. No.25 of 2007

**P.VELMURUGAN, J.**

ksa-2

**C.M.S.A. No.25 of 2007**

**24.08.2023**