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C.R.P. No.2848 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 2848 of 2017

A.Imthathul Basheer,
S/o. A.V.Ibrahim

... Petitioner

Versus

1. Nallammal,
W/o. Late N.C.Angannan
2. B.Mahadevi,
W/o. Late A.Balasubramani
3. B.Chandru,
S/o. Late A.Balasubramani
4. The Commissioner of Treasuries
and Accounts,
Coimbatore.

(R4 impleaded suo motu vide order of
court dated 10.03.2020 made in
C.R.P. (PD) No. 2848 of 2017)

.. Respondents

PRAYER : Civil Revision Petition is filed under Art.227 of Constitution of
India, praying to set aside the fair and decreetal order dated 03.10.2016



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made in I.A.No.505 of 2016 in O.S.No.651 of 2012 on the file of the learned

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V Addl. District Judge, Coimbatore.

For Petitioner : Mr.N.Manoharan

For Respondents : No appearance for R1 to R3

Mr.B.Tamilnidhi
Addl. Govt. Pleader for R4

ORDER

Challenging the impugned order dated 03.10.2016 passed in I.A.No.505 of 2016 in O.S.No.651 of 2012 passed by the learned V Addl. District Judge, Coimbatore, the present Civil Revision Petition has been filed.

2. The plaintiff filed a suit in O.S.No.651 of 2012 on the file of V Addl. District Judge, Coimbatore seeking for the relief of specific performance and consequential relief of injunction against the defendants based on the alleged power of attorney said to be executed by one Balasubramani on 09.05.2011 and after the death of the said Balasubramani, the defendants are legal heirs, but they refused to convey the



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property as per the terms. Hence, the plaintiff filed a suit for specific performance. Subsequently, he came to know that he has got irrevocable power of attorney and also having vardhanamana agreement, so, he has interest in the subject matter, but he mistakenly understood that due to the death of principal, the power of attorney would automatically terminated in the event of his death. So there is no necessity to file a suit, but mistakenly he filed a suit. Hence, he wanted to not to press the suit and also prayed to return the court fee. The said application was strongly objected by the respondents/defendants 1 and 2 stating that the plaintiff has played a fraud upon the court by producing fabricated document like power of attorney as if the said Balasubramani has executed the same in favour of him, but in fact no such irrevocable power of attorney was executed in favour of plaintiff by the said Balasubramni and about the fabrication of document, already a complaint was lodged against him, which is pending before the police. Therefore, the plea of ignorance claimed by the plaintiff, as such, is false and he is not entitled to get refund of court fee. Accordingly, they prayed to dismiss the suit.



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3. On hearing both sides, the trial judge held that since the suit has not been settled out of court, he is not entitled to get a refund of court fee, however, it is evident that due to mistake, he filed a suit before the court as such he is not entitled to receive full court fee. Accordingly, the application was dismissed. Challenging the said findings, the present Civil Revision Petition has been filed.

4. The learned counsel for Revision Petitioner argues that the plaintiff was put into suffering due to the mistake committed by his counsel for the reason that the suit was filed inadvertently without knowing the consequence of irrevocable power of attorney and later he realised the mistake. So, he is entitled to withdraw the suit. But, the trial court failed to appreciate the said aspect and dismissed the application as such is totally unfair and liable to be set aside.



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5. On perusal of records, it reveals that the suit was filed seeking for specific performance and consequential injunction against the defendants based on the power of attorney as well as varadhamana oppantham. The defendants appeared and submitted their objections stating that the plaintiff fabricated the document and created a power of attorney as if the said Balasubramani has executed an irrevocable power of attorney in his favour, but in fact all the documents are fraudulently created. However, a complaint was lodged and F.I.R. was also registered against the plaintiff in Crime No.6 of 2013 under Sec. 120(B), 423, 465 r/w 468, 471 and 506(ii) I.P.C. Relying all these facts, the learned counsel for contesting respondents would submit that the plaintiff is not an innocent person and knowingly well, he approached the court for a false claim and after filing the written statement, he wanted to withdraw the suit for the reason that he has mistakenly approached the court.

6. On considering both side submissions and on perusal of records, it reveals that the plaintiff filed a suit against the defendants, who are legal



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heirs of Balasubramani contending that during the life time of Balasubramani, he has executed an irrevocable power of attorney and vardhamana agreement in his favour in respect of the suit property. So, he filed a suit for specific performance to get the sale deed executed from the defendants. The defendants denied the plaintiff's claim and also contended that those documents are fraudulently created by the plaintiff. However, they have lodged a complaint and based on that, a F.I.R. in crime No.6 of 2013 was registered for fabrication of documents and other malpractice against the plaintiff and others. Now, the plaintiff filed an application praying not to press the suit and also prayed to refund the court fee. The reasons assigned by the plaintiff was not accepted by the trial judge for the reason that the suit was not settled out of court nor he is entitled to court fee for inadvertence.

7. To support his contentions, he relied on the ratio laid down in the case of *Factors (P) Ltd. vs. Amalgamated Commercial Traders (P) Ltd.* reported in *1970 (1) MLJ 529*, wherein it has been held that under Sec.70 of the Court Fees Act, if the court fee paid by mistake inadvertently, it shall be



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ordered to be refunded. Further, as per the ratio laid down in the case of

Zahoorunnissa Begum Sahiba vs. T.Mohammed Ali Sabit, reported in

1974 L.W. P. 745, also reiterated the fact that Sec.70 of the Court Fees Act is mandatory in form and directs a refund of court fee whenever it is paid by mistake or inadvertence. Therefore, coming to facts of instant case, the plaintiff approached the court for the relief of specific performance by paying the court fee of Rs.9,00,000/- and subsequently he wanted to withdraw the suit. Hence, he prayed for refund of court fee, but the suit was not settled out of court, and now the submissions of plaintiff that without knowing the consequence of irrevocable power of attorney and vardhamana agreement, by mistake he filed a suit for specific performance against the defendants. But, the fact remains that based on a fabrication of documents by the plaintiff, the suit was filed and based on that, a F.I.R. was also registered against plaintiff for fabrication of document. Therefore, as already a criminal case is pending against the plaintiff about fabrication of document, thus no prejudice will be caused to the defendants. But, the trial judge erroneously considered that the plaintiff is not entitled for refund of court fee as if he filed a suit by mistake and inadvertently. As discussed



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above, Sec. 70 of the Court Fees Act permits the party to get the refund of court fee. Accordingly, the plaintiff is entitled for refund of court fee, but not in entirety, only less 25% of court fee, because he has already used the service of the court and before commencement of the trial, he preferred an application to withdraw the suit. Therefore, the findings of the trial judge in I.A.No. 505 of 2016 is set aside. Due to the mistake committed by the counsel, the plaintiff ought not to have suffered. Accordingly, this Civil Revision Petition is allowed and the application filed by the plaintiff in I.A.No.505 of 2016 is partly allowed. The trial court is directed to refund the court fee less 25%. No costs.

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Index: Yes/No
Internet: Yes/No
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To

V Addl. District Judge,
Coimbatore.



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T.V.THAMILSELVI, J.

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