



CRP(MD)No.2620 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

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Deva Sivarajan

: Petitioner

Vs.

1.M.Saroja

2.Deva Sivasakar

: Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the order dated 07.12.2022 passed in unnumbered plaint in F.No.OS/127/2022 (CNR.No.TKK1700072022) on the file of the District Munsif, Eraniel, Kanyakumari District and quash the same, insofar as it relates to payment of additional Court fee is concerned and for a direction to take the plaint on file.

For Petitioner : Mr.G.Aravinthan

ORDER

The petitioner has proposed to file a suit before the District Munsif Court, Eraniel, Kanyakumari District, for declaring a settlement deed executed by the



first defendant in favour of the second defendant as null and void and also for a permanent injunction. The petitioner has also paid the Court fee u/s.25(d) of the Tamil Nadu Court Fees and Suit Valuation Act. But the trial Court returned the plaint for payment of Court fee as per the decision in ***J.Vasanthi v. N.Ramani Kanthammal*** [2017 (11) SCC 852]. Aggrieved over such return, the petitioner has moved the present revision petition.

2. According to the petitioner, the first respondent is his mother and the second respondent is his younger brother. The suit schedule property originally belonged to his father, Thangaswamy. The said Thangaswamy executed a settlement deed in respect of the suit property in favour of his wife / the first respondent herein. The petitioner, the first respondent and the said Thangaswamy have jointly decided to construct a residential house in the suit property, with an arrangement to hand over the ground floor to the second respondent and the first floor to the petitioner. Accordingly, they have invested and have also constructed a residential house. In the meantime, Thangaswamy passed away. The petitioner along with his wife is residing in the first floor and the respondents 1 & 2 are residing in the ground floor.



3.The grievance of the petitioner is that the first respondent, after the demise of Thangaswamy, has executed a settlement deed dated 23.06.2022 in favour of the second respondent in respect of the entire property and on the strength of the settlement deed, the respondents are disturbing the peaceful possession of the petitioner. Therefore, he has preferred the suit for declarating the settlement deed dated 23.06.2022 as null and void and also for permanent injunction.

4.Learned Counsel for the petitioner submitted that since the petitioner is not a party to the settlement deed dated 23.06.2022 executed by the first respondent in favour of the second respondent, he has paid the Court fee as per Section 25(d) of the Act, however, the trial Court has returned the plaint for want of additional Court fee. Therefore, he prayed for appropriate orders.

5.This Court paid it's anxious consideration to the submissions made by the petitioner's Counsel and also to the materials placed on record.

6.In the decision in *J.Vasanthi*'s case (supra), the plaintiff therein sought for declaring a sale deed as null and void, which was fraudulently executed in her name. Therefore, on the question of payment of Court fee, the Hon'ble Supreme



Court has held that the plaintiff is liable to pay the Court fee under Section 40 of the Act and not under Section 25(d) of the Act. The Court further held that declaration of a sale deed executed by the plaintiff as null and void, even if it is forged, amounts to cancellation of the deed and that the Court fee has to be paid as per Section 40 of the Act.

7. In the case on hand, the petitioner / plaintiff is not the executant of the settlement deed. Nor he is a party to the settlement deed. Therefore, this Court feels that the ratio laid down in **J. Vasanthi's** case (supra) would not apply to the facts of the present case. In this regard, this Court feels it appropriate to refer to the decision of this Court in **Chellakannu v. Kolanji** [2005 (4) CTC 197], wherein, it has been held as follows:-

“11. It is not as if the Plaintiff alone has executed the above Sale Deeds. Regarding Item No. 4, the Plaintiff has executed the Sale Deed along with his Daughter ? Jayanthi and Arjunan and Shanmugam, Son of Poomalai. Likewise, Sale Deed regarding Item No. 3 was executed by the Plaintiff Arjunan and Shanmugam, who are the sons of Poomalai. Thus, the Plaintiff himself is a party to the Sale Deed; when the Party himself seeks to get rid of the Sale Deeds in substance it amounts to Cancellation of Decree. The Plaintiff might seek to avoid the Sale Deeds if he is not a party to the Sale Deeds. But, since the Plaintiff himself is a



party to the Sale Deeds before he is suing for any relief, the Plaintiff must first obtain the cancellation of the Sale Deeds.

12. The word “Cancellation” implies that the persons suing should be a party to the document. Strangers are not bound by the documents and are not obliged to sue for cancellation. When the party to the document is suing, challenging the document, he must first obtain cancellation before getting any further relief. Whether cancellation is prayed for or not or even it is impliedly sought for in substance, the Suit is one for cancellation in the present case, when the Plaintiff attacks the Sale Deeds as having been obtained from him under fraud and misrepresentation the Plaintiff cannot seek for any further relief without setting aside the Sale Deeds.”

8. In the decision in **Suhrid Singh v. Randhir Singh**, [(2010) 12 SCC 112], it has been held as follows:-

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed,



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wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different.”

9.Since the petitioner / plaintiff is a stranger to the settlement deed dated 23.06.2022, this Court is of the opinion that it is sufficient if the petitioner pays the Court fee as per Section 25(d) of the Act for the relief of declaration. Accordingly, this revision petition stands allowed and the learned District Munsif, Eraniel, Kanyakumari District, is directed to take up the suit on file, if it is otherwise in order and proceed accordingly. There shall be no order as to costs.

Index : Yes / No
Internet : Yes
gk

10.01.2023

Note: Registry is to return the original plaint after taking sufficient copies and after getting due acknowledgments.

To

The District Munsif,
Eraniel, Kanyakumari District.



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B.PUGALENDHI, J.

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