IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.1977 of 2022
and
C.M.P. No. 10082 of 2022

Dr.D.Desikacharulu (deceased)

1. D.Jayasree
2. D.Srikrishna
3. D.Sriranga ... Petitioners

versus

1. Raja Holdings Financiers & Merchants
2. Raja @ Venugopal
3. G.Kalpana
4. Velappan
5. Narendra Lohia

6. Karnataka Bank Limited,
   rep. by its Chief Manager

7. Ravi
   Assistant General Manager

8. Venkatramani
   Panel Valuer,
   Karnataka Bank Ltd.

9. B.R.Sreekanth
Former Chief Manager,
Karnataka Bank Limited ... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order made in I.A.No.1 of 2019 in O.S.No. 5049 of 2019 dated 15.03.2022 pending on the file of XIX Addl. City Civil Court, Chennai.

For Petitioners	:	Mr.S.Sathyanarayanan
For Respondents	:	Mr.R.Thiyagarajan, for R1 to R3
		F4 to R9 – Given up

<u>O R D E R</u>

Challenging the impugned fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.5049 of 2019 dated 15.03.2022 passed by XIX Addl. Judge, City Civil Court, Chennai, the Revision Petitioners have filed this Civil Revision Petition.

2. Heard and considered rival submissions of learned counsel for revision petitioners and respondents and perused the materials available on record.

3. The petitioners are the plaintiffs in the suit in O.S.No. 5049 of 2019 and the same was filed seeking for the relief of declaration as well as injunction against the defendants 1 to 9 in C.S.No.395 of 2014 and subsequently, the same was transferred to City Civil Court and renumbered as O.S.No.5049 of 2019. During the pendency of the suit, the defendants 1, 2 and 5 have filed an application in I.A.No.1 of 2019 under Order VII Rule 11 of C.P.C. to direct the respondents 1 to 4/plaintiffs to pay the court fee under Sec.40 of Tamil Nadu Court Fee and Suit Valuation Act, 1955. That application was contested by the plaintiffs by filing counter objections. On hearing both sides, the trial judge held that the allegation on the plaint in substance amounts to cancellation of the document. Though the prayer is couched in the form of seeking declaration that the document is not valid and not binding, the relief in substance indirectly amounts to seeking for cancellation of the Sale Deed. Accordingly, the said petition was ordered. Challenging the said findings, the Revision Petitioners/plaintiffs filed this Civil Revision Petition.

4. The learned counsel for Revision Petitioners would argue that the respondents 1, 2 and 5 have sanctioned the loan for an amount of Rs.20

crores to the 1st petitioner. The 2nd revision petitioner stood as a guarantor. However, at the time of sanctioning the loan, the 1st and 2nd respondents have coerced and unduly influenced the petitioners 1 and 2 to sign in various documents including mortgage deed, guarantee deed, blank cheques, blank papers, blank papers with revenue stamps before revenue office and they never knew about the ulterior motive of respondent that those documents were obtained with an intention to grab the property. He would further submit that when they have fixed exorbitant rate of interest to the outstanding amount, they are not able to repay the amount to them. Taking advantage of that, they have attempted to sell the property for lesser value, however, the revision petitioners have also tried to sell the property in order to settle the issue, but through the mortgage deeds, the bank officials have attempted to auction the property under distress price. Therefore, the suit was filed to declare the schedule documents stand in the name of 6th respondent as null and void and not binding on them along with prayer for injunction against the respondents 1 to 5. But, the learned judge failed to appreciate the fact that the bank officials as well as all these respondents have charged exorbitant rate of interest of 36%, which is against the norms prescribed under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003. Therefore, it is a matter for trial to prove the fraud and undue influence and it is tainted with void. Hence, the documents need not be cancelled and declaration relief alone is sufficient. Therefore, she paid the court fee under Sec.25(b) of the Act, which is sufficient. But, the trial judge erroneously without appreciating these legal proposition and facts and circumstances, erroneously allowed the application filed by the defendants 1, 2 and 5 and directed to pay the court fee as per Sec. 40 of the Act, as such is unjust and the same is liable to be set aside.

5. By way of reply, the learned counsel for respondents/contesting defendants 1, 2 and 5 would submit that after receiving loan amount of Rs.20 crores, the plaintiffs challenging the mortgage deed dated 24.10.2013 as well as guarantee deeds executed in favour of bank voluntarily, but now the prayer of declaration in the suit is totally contrary to law, even otherwise, they can seek the remedy of cancellation of document. So, they have to pay the court fee under Sec.40 of the Act, which was rightly observed by the court below, which needs no interference. Sec.40 of the Act reads as under :-

"*40. Suit for cancellation of decrees, etc. -- (1) In a suit for* *cancellation of a decree for money or other property having a money value, or other document, which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, 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 documents was executed:-*

(1) If a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.

(2) If the decree or other document is such that the liability under it cannot be split up and the relief claimed relates only to a particular item of property belonging to the plaintiff or to the plaintiff's share in any such property, fee shall be computed on the value of such property or share or on the amount of the decree, whichever is less.

Explanation : A suit to set aside an award shall be deemed to be a suit to set aside a decree within the meaning of this section (Exphasis added)"

Accordingly, he prayed to dismiss this Civil Revision Petition as no merit.

6. Considering the facts and circumstances and on considering both side submissions, the main contention putforth by the revision petitioners/plaintiffs is that the documents like mortgage deed, guarantee deed and other documents were obtained by the bank officials under coercion and undue influence, but the contention of the bank/respondents 6 to 9 is that having availed the loan of Rs.20 crores by executing those documents, now to evade payment received, such a contention made by the revision petitioners is not acceptable one. Furthermore, on considering the submissions made in the plaint, if the plaintiffs are unduly coerced by the bank officials, they ought to have sought the prayer to cancel the documents, but instead of assuming the cancellation of documents, they have sought only the relief of declaration that the sale deeds are invalid. If the documents were not been cancelled, then there is no remedy available to the plaintiffs. If the allegations are true, as per the above provision of law, the plaintiffs ought to have sought the relief of cancellation of documents and to pay court fee under Sec.40 of the Act, which was rightly observed by the trial judge, which needs no interference. Therefore, this Civil Revision Petition is

dismissed as no merit. The revision petitioners/plaintiffs are directed to pay court fee under Sec.40 of the Act within a period of twelve weeks from the date of receipt of copy of this order, failing which, the suit is liable to be rejected. No costs. Consequently, the connected Civil Miscellaneous Petition stands closed.

20.06.2024

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To

XIX Addl. Judge,
City Civil Court, Chennai.

T.V.THAMILSELVI, J.

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