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C.R.P.No.2284 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM:

**THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR**

**C.R.P.No.2284 of 2024**

**and**

**C.M.P.No.12038 of 2024**

V.Hamilton

... Petitioner

Vs.

V.John Davidson

... Respondent

**PRAYER:** Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the order passed by the learned District Munsif cum Judicial Magistrate, Thiruporur, in I.A.No.4 of 2024 in O.S.No.104 of 2023.

For Petitioner : Mr.R.Manickavel

For Respondent : Mr.T.K.S.Bharathy Shri

**ORDER**

This revision petition has been filed challenging the order passed by the learned District Munsif cum Judicial Magistrate, Thiruporur, in I.A.No.4 of 2024 in O.S.No.104 of 2023.



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2.The petitioner/defendant in O.S.No.104 of 2023 filed an application in I.A.No.4 of 2024 under order VII Rule 11(b) of C.P.C. seeking to reject the plaint as the suit is not properly valued and no proper Court fee is paid under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 (hereinafter 'TNCFSV Act').

3.The contention of the learned counsel for petitioner is that the property was purchased by the petitioner on 22.11.2001 vide Doc.No.2502/2001. According to the petitioner, the respondent/plaintiff is the second witness and after purchase, the petitioner is in possession and enjoyment of the property. The respondent/plaintiff insisted the petitioner to sell the property as he is in need of money in the year 2008. Hence, the petitioner entered into an agreement with one Naveen for total consideration of Rs.1,30,00,000/- and received the advance and paid to the respondent. The original title deeds were handed over to Naveen. The respondent insisted to



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execute a settlement deed in his favour for the suit property and undertook to

settle Mr.Naveen. The respondent not complied the condition as on date.

When insisted for the said amount, the petitioner has no option other than cancel the settlement deed. Hence, the petitioner cancelled the settlement deed on 11.03.2016 vide Doc.No.2954 of 2016 and obtained patta in his name on 03.07.2013. The respondent aware about the sale agreement, now filed the suit and the suit is at the stage of trial and proof affidavit filed by the respondent.

4.The primary ground raised by the petitioner is that the relief sought by the respondent/plaintiff is under Section 25(d) of TNCFSV Act and the respondent ought to have paid the Court fee under Section 40 of TNCFSV Act. His further contention is that the respondent not filed any document except patta to show that he is in possession of the suit property.



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5.The contention of the learned counsel for respondent is that the suit was filed with necessary stamp duty. The petitioner/defendant was set ex-parte on 21.11.2016 and he filed a petition to set aside the ex-parte order and the same was allowed on 12.03.2024. Again the petitioner, filed I.A.No.3 of 2024 to reject the proof affidavit and the same was dismissed on 08.04.2024. Again, the present I.A.No.4 of 2024 was filed to delay and drag on the Court proceedings. The suit was properly numbered and taken on file after verifying the documents. The present suit is filed for declaration and there is no prayer for cancellation of deed. Hence, the Lower Court approved the plaint and proceeded, for the past 8 years. The Court fee issues not raised by the petitioner in the written statement. The petitioner has no right to pray for rejection of plaint. He further submitted that the respondent is not a party to the cancellation deed, hence, prayed to dismiss the petition. In support of his contentions, he relied upon the following judgments:



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(i) *V.Jagathambal vs. S.Subramaniyan and others* reported in *CDJ 2022 MHC 9251*;

(ii) *M/s.Siddha Constructions (P) Ltd. vs. M.Shanmugam* reported in *CDJ 2006 MHC 2117*;

(iii) *K.Palanisamy & another vs. S.B.Subramani and another* reported in *CDJ 2007 MHC 634*;

(iv) *K.Kumar vs. Anthonysamy and another* reported in *CDJ 2021 MHC 2846*;

(v) *K.Chinnathurai vs. Allimuthu and others* reported in *CDJ 2007 MHC 724*;

(vi) *Alamelu @ Chinnakannammal and others vs. Manickammal* reported in *CDJ 1978 MHC 346*;

6.Considering the submissions made and on perusal of the materials, it is seen that the trial Court found that the respondent/plaintiff filed a suit for injunction and declaration. The main prayer is for declaration. The respondent/plaintiff signed the cancellation of settlement deed and it is an unilateral cancellation of settlement deed. Therefore, the respondent/plaintiff is not required to pay Court fee on the value of deed and



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hence, dismissed the petition and further held that the plaint cannot be rejected under order VII Rule 11(b) of C.P.C.

7.Finding that the Lower Court order proper, this Court is not inclined to interfere with the impugned order dated 26.04.2024 passed by the learned District Munsif cum Judicial Magistrate, Thiruporur. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.06.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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To  
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The District Munsif cum Judicial Magistrate,  
Thiruporur.



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**M.NIRMAL KUMAR, J.**

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