



C.R.P.[NPD].No.4512 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.[NPD] No.4512 of 2023

1.Nalini

2.K.Siva

3.T.Senthalir

4.M.Mahalakshmi

.. Petitioners

Vs.

1.Aivelu

2.Nallamalli Raju Ramya

3.N.Yogesh

4.Andhra Bank,
Valasaravakkam Branch,
Chennai 600 087.

.. Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the order dated 05.02.2024 passed in O.S.No.351 of 2018 on the file of the Subordinate Judge, Poonamallee.

For Petitioners : Mr.A.R.Nixon



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ORDER

Challenging the order of the trial Court rejecting the plaint on the ground that the suit property has not been properly valued and proper Court fee was not paid, the present Civil Revision Petition has been filed.

2.The suit has been filed by the petitioners/ plaintiffs seeking for following prayers:

(a) for a mandatory injunction directing the defendants 1 to 3 to redeem the schedule – B property mortgaged with the 4th defendant as per the Memorandum of Understanding dated 27.05.2015 alternatively permit the plaintiff to redeem the mortgage with the 4th defendant bank bearing Mortgage Deed No.6044/2013 registered on the file of the Sub-Registrar Office, Virugambakkam with the liberty to recover the redemption amount from the defendants 1 – 3.

(b) to set aside the sale deed executed by N.B.R.Prasad in the name of the 1st defendant under Document No.5871 of 2013 dated 13.09.2013 registered on the file of the Sub-Registrar, Virugambakkam, Chennai – 600 092.



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(c) direct the 1st defendant to register the plaint B – schedule property in the name of the plaintiff or their nominees as per the Memorandum of Understanding dated 27.05.2015 entered between plaintiff and the defendants 1 to 3 within a date fixed by this Court failing which this Court may be pleased to register the document in favour of the plaintiff.

3. It is to be noted that the suit has been numbered and at the time of filing of the suit, the suit property has been valued for a sum of Rs.9,32,846/- and the Court fee of Rs.28,045/-, has been paid by the plaintiffs/petitioners and suit was also numbered. Thereafter, a written statement was also filed on behalf of the defendants and till such time, there was no issue raised with regard to the payment of Court fee. When the matter stood thus, the Court directed the petitioners to value the suit under section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 in respect of the prayer (b) and since the petitioners had not complied with the same, by order, dated 05.02.2024, the trial Court rejected the plaint.

4.It is well settled that as far as Section 40 of the Court Fees and



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Suits Valuation Act, 1955 is concerned, the Court fee payable on the value of the document arises only when a person is a party to the document in respect of which, the prayer sought of in the suit, whereas, here the plaintiffs seek for cancellation of the document executed by the third party and admittedly, the plaintiffs are not the parties to the document. When the plaintiffs are not the parties to the document, insisting them to pay the Court fee on the value of the document does not arise at all. Further, as far as the prayer (c) is concerned, the market value was already calculated by the Court and mandatory court fees has also been paid by the plaintiff. Once again directing the plaintiffs to value the property and to pay the Court fee thereof as per Section 40 of the Act is not correct, particularly, when they are not the parties to the document.

5.In such view of the matter, the order made in O.S.No.351 of 2018 dated 05.02.2024, is set aside and the trial Court is directed to proceed with the suit in the manner known to law and dispose of the same as expeditiously as possible.



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WEB COPY 6. Accordingly, this Civil Revision Petition is Allowed. No costs.

21.11.2024

rst

Index : Yes/No

Internet: Yes/No

Speaking/Non-Speaking Order

To:

The Subordinate Judge,
Poonamallee.



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N.SATHISH KUMAR, J.

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