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C.R.P.(PD)No.4584 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4584 of 2024
and C.M.P.No.25532 of 2024

1. G.Velu

2. Tamilselvi

.. Petitioners

Vs

A.Dhanasekaran (deceased)

1. D.Nithya

2. D.Nandhini

3. D.Saranya

4. D.Ganesh Pandi

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 27.08.2024 in I.A.No.5 of 2024 in O.S.No.6007 of 2016 on the file of the learned XIII Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.N.Sivaprakash



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ORDER

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This civil revision petition arises against the order passed by the learned XIII Assistant Judge, City Civil Court at Chennai in I.A.No.5 of 2024 in O.S.No.6007 of 2016 dated 27.08.2024.

2. The civil revision petitioners are the defendants in the suit. The deceased 1st plaintiff presented O.S.No.6007 of 2016 for declaration that a sale deed executed by the 2nd defendant in favour of the 1st defendant on 19.01.2009 is null and void and for the consequential relief of permanent injunction restraining the defendants 1 & 2 from in any manner interfering with his peaceful possession and enjoyment of the suit property.

3. The case of the plaintiffs is that the 1st plaintiff got the property, by way of a settlement deed executed by his mother, one Pushpavathy Ammal in his favour. Pushpavathy Ammal had obtained the property by way of another settlement deed executed by the father of the 1st plaintiff and the husband of Pushpavathy Ammal, namely, one Ayyaavu Mudaliar. The plaint proceeds that due to financial constraints, the 1st plaintiff had



approached the 1st defendant to help him to tide over the crisis caused on account of his health issues. The 1st defendant, according to the plaintiff, acceded to his request and for the purpose of identifying a purchaser, had called upon the 1st plaintiff to execute a power of attorney in favour of the 2nd defendant, who is the wife of the 1st defendant. Accordingly, he executed a power of attorney with respect to the B-schedule mentioned property, which is a portion of the A-schedule mentioned property. The entire extent of A-schedule is 1402 sq.ft. and the B-schedule is 289 sq.ft. As nothing happened from 2009 to 2014, the 1st plaintiff contacted the defendants to cancel the power of attorney. Since the defendants did not answer his calls, he proceeded to cancel the power of attorney on 21.08.2014.

4. Thereafter, the 1st plaintiff received a call from the Aminjikarai Police Station stating that the 1st defendant had lodged a complaint as against him. It was at that stage, he came to know that a sale deed had been executed by the 2nd defendant in favour of the 1st defendant. He also pleaded that the defendants had, in order to grab the property, presented O.S.No.5817 of 2014 in which the 1st defendant alone was a party. On coming to know that the fraud had been played on him, he came forward



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with the suit in O.S.No.6007 of 2016.

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5. A written statement was presented by the defendants as early as on 27th of January 2017. Years later, they took out an application for rejection of the plaint in I.A.No.5 of 2024. In the meantime, on an order of the learned Judge, the suit in O.S.No.6007 of 2016 is being tried jointly along with O.S.No.5817 of 2014. Pending the suit, the 1st plaintiff passed away, his legal representatives were brought on record as his representatives.

6. The rejection of the plaint application was based on the following grounds namely,

- (i) the suit does not have cause of action;
- (ii) it is barred by limitation; and
- (iii) the suit was not valued as required under Section 40 of the Tamil Nadu Court-Fees and Suits Valuation Act (the TNCF Act), but had been valued under Section 25(d) of TNCF Act.

7. The learned Trial Judge received a counter from the plaintiffs



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and proceeded to dismiss the petition. Hence, this revision.

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8. I heard Mr.N.Sivaprakash for the civil revision petitioners.

9. Mr.N.Sivaprakash urges that the learned Trial Judge had committed a serious error in not appreciating that the suit should have been valued under Section 40 and not under Section 25(d) of the TNCF Act. He further points out that a sale deed had been executed in the year 2009, whereas the suit came to be filed only in the year 2016. Therefore, the suit is barred. He states, under Article 59 of the Limitation Act, the suit should have been presented by the year 2012 and since it was filed four years thereafter, it is barred by limitation. Finally, he urges that there is no cause of action for the suit.

10. I have carefully considered the submissions of Mr.N.Sivaprakash. I have gone through the records.

11. I have to remind myself that, at the time of rejection of the plaint, I have to take the averments made in the plaint to be true and thereafter consider whether the suit is barred by law or whether it should



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remain on the file of the Court. At the time of consideration of the rejection of the plaint, the Court is not concerned with the defence that is raised by the defendants however sterling it might be. This is because, a plea for rejection of the plaint is a plea in demurrer and at that stage, as pointed out above, the Court takes the averments to be true.

12. If the averments made in the plaint are taken to be true, it is clear that the plaintiff was not aware about the execution of the sale deed by the 2nd defendant in favour of the 1st defendant. He came to know about the sale deed only after the police complaint that had been lodged by the civil revision petitioners with the Aminjikarai Police Station in 2014.

13. In so far as the plea of limitation is concerned, a person cannot challenge a document unless and until he is made aware of the same. When the plaint states that the plaintiff came to know about the document only in the year 2014 and had presented the suit in the year 2016, necessarily it has to be held as in time.

14. With respect to the plea of lack of cause of action is concerned,



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according to the deceased 1st plaintiff, he had executed a document in favour of the 2nd defendant only for the purpose of enabling him to get some funds to tide over his financial difficulties. Paragraph Nos.11 and 12 of the plaint states that 1st and 2nd defendants never informed the deceased 1st plaintiff about the execution of the document. He further pleads that the original of the title deeds are still in his custody and that he never received any consideration from either the 1st or the 2nd defendant for the execution of the document. He asserts in paragraph no.17 of the plaint that the physical possession and enjoyment of the suit property is still with the plaintiffs.

15. Mr.N.Sivaprakash contends that he has taken possession of the B-schedule and the averment in paragraph no.17 is a false one. As pointed out above, I am only dealing with an application for rejection of the plaint. I am not entitled to look into the defence that is raised by the defendants. Whether the defendants are in possession of the property or not is a matter which they have to prove at the time of trial. Suffice it to say, the plaintiffs plead that no consideration has been given. The 1st plaintiff was not aware of the impugned sale deed and he continues to be in possession of the property. Hence, my reading of the plaint shows that



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there exists a cause of action.

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16. The last plea being one of Court fee. A perusal of the plaint shows that the 1st plaintiff has valued the suit under Section 25(d) of the TNCF Act. According to Mr.N.Sivaprakash, the valuation is improper as the 1st plaintiff has admitted the execution of the power of attorney on the basis of which the 2nd defendant executed the sale deed in favour of the 1st defendant. Therefore, the plaintiff should be treated as a party to the document and consequently, the valuation should have been only under Section 40 of the TNCF Act. This is a good plea, in case the defendants had filed an application under Section 12(2) of the TNCF Act. No such application seems to have been filed before the first hearing in the suit.

17. As per the Civil Rules of Practice and Circular Standing Orders issued by this Court for the guidance of the Subordinate Courts, in exercise the powers under Section 122 of the Code of Civil Procedure, “first hearing” on the suit is the date on which the issues are settled by the Trial Court. In case the defendants do not file an application before the 1st hearing, they are not entitled to put the clock back by way of an application under Order VII Rule 11 of the C.P.C.

18. Mr.N.Sivaprakash states that the evidence has already been



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recorded in O.S.No.5817 of 2014. In terms of Section 12(3), the plea, that the subject matter of the suit has not been properly valued or sufficient Court fee has not been paid, should be made before the evidence is recorded on the merits of the claim. When the parties have entered the witness box and have tendered evidence, the stage for the defendants to raise an issue of the Court fee has long gone by.

19. In any event, under Order VII Rule 11(b) of the Code for a plaint to be rejected on grounds of deficit Court fee, there should be an order by the Trial Court calling upon the plaintiff to pay the deficit Court fee and the plaintiff should not have paid the said amount. A prior order directing the plaintiff to pay additional Court fee is *sine qua non* for exercising the power under Order VII Rule 11(b). There is no such order in the present case. Hence, the application for rejection of plaint under that provision is not maintainable.

20. At this stage, Mr.N.Sivaprakash points out to a judgment of this Court in ***N.Ramesh v. Faery Estates Private Limited, Perungudi, Chennai and others, CRP.(PD)No.1791 of 2012, dated 18.07.2017*** and urges that as per paragraph no.14 of the said judgment, the Hon'ble



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Ms.Justice V.M.Velumani had confirmed the order of the Trial Court in rejecting the plaint under Order VII Rule 11(b) of the Code for improper valuation.

21. Mr.N.Sivaprakash is correct that this Court had confirmed the order of the learned Additional District Munsif at Alandur calling upon the plaintiff to pay additional Court fee. The said judgment does not come to the rescue of Mr.N.Sivaprakash for the simple reason that in the facts of that case, the learned single Judge had rendered a finding that the Trial Court had called upon the plaintiff to pay additional Court fee as per the order in I.A.No.1811 of 2011.

22. As discussed above, when the Court calls upon a party to pay additional Court fee and he does not pay the same, the Court necessarily has to reject the plaint under Order VII Rule 11(b). In this case, there is no such order passed by the learned Trial Judge calling upon the plaintiff to pay additional Court fee. Hence, this judgment is inapplicable to the facts of the present case.

23. As trial has commenced and parties have entered the witness



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box and started their depositions, I am not inclined to interfere with the order passed by the learned XIII Assistant Judge, City Civil Court at Chennai.

24. The learned XIII Assistant Judge, City Civil Court at Chennai shall take into consideration that the suit is pending for more than 10 years and would expedite the proceedings at all stages.

25. With the above observations, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.11.2024

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No

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To

XIII Assistant Judge,
City Civil Court, Chennai.

V. LAKSHMINARAYANAN,J.



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