



C.R.P(MD)No.531 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.531 of 2018

and

C.M.P(MD)No.2309 of 2018

A.Rajan

... Petitioner/Petitioner
2nd Defendant

Vs.

S.Koilpitchai (Died)

1.Samathanam

2.Kannimariyammal

3.Ramesh Abraham Samikkan

4.Susila Ebsiba

... Respondents 1 to 4/Respondents 2 to 5
Plaintiffs 2 to 5/LRs of Original Plaintiff

5.Murugan

... 5th Respondent/6th Respondent
1st Defendant

6.The Sub Registrar,
Gangaikondan Sub-Registration Jurisdiction,
Gangaikondan Village,
Tirunelveli Taluk,
Tirunelveli District.

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7.The District Registrar,
Office of the District Registrar,
Tirunelveli,
Tirunelveli District.

8.The State of Tamil Nadu,
Through its District Collector,
Tirunelveli-9.

... Respondents 6 to 8/Respondents 7 to 9
Defendants 3 to 5

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order, dated 20.02.2018 passed in I.A.No.235 of 2018 in O.S.No.400 of 2014 on the file of the learned I Additional District Munsif, Tirunelveli by allowing this Civil Revision Petition with cost.

For Petitioner : Mr.D.Nallathambi

For R-1 to R-3 : Mr.T.Selvan

For R-4 & R-5 : No appearance

For R-6 to R-8 : Mr.C.Satheesh
Government Advocate

ORDER

The instant revision petition has been filed by the second defendant in O.S.No.400 of 2014 on the file of the I Additional District Munsif Court, Tirunelveli, wherein the Trial Court has dismissed an



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application filed under Order VII, Rule 11 of Civil Procedure Code.

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2. The ancestor in title of the respondents 1 to 4 herein, namely, Koilpitchai had filed the above said suit for the relief of declaration that the sale deed, dated 12.08.2013 said to have been executed by the first defendant in favour of third defendant is null and void and to declare a sale deed executed by the first defendant in favour of second defendant on 23.07.2014 as null and void. The plaintiff has further prayed that cancel the sale deed, dated 12.08.2013 as null and void and to delete the entry from the encumbrance certificate. The plaintiff has further prayed for permanent injunction as against the defendants 1 and 2 from interfering with his possession and enjoyment of the property.

3. A perusal of the plaint indicates that taking advantage of his old age and physical illness, one L.Mahesh had obtained a registered power deed from him on 28.03.2013. Immediately after coming to know of the said document, the plaintiff had cancelled the power deed on 05.04.2013 and has made a paper publication on 22.04.2013 touching upon the



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cancellation of the document. However, based upon the cancelled power deed, a sale deed was created utilizing the photographs, ID cards, signature and thumb impression and impersonated the plaintiff and created a forged document. The power agent had created a sale deed, dated 12.08.2013 in favour of the first defendant and registered it as document No.1880 of 2013. According to the plaintiff, the Sub Registrar of the concerned office was also involved in the fraudulent activity. Since it is the case of the plaintiff that he had been impersonated in the said document, he had valued the present suit under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

4. The second defendant has filed a written statement contending that, there is no impersonation and the plaintiff himself has executed the registered power deed. Only based upon the said registered power deed, a sale deed came to be executed in favour of the first defendant. Therefore, the plaintiff ought to have valued the suit under Section 40 of the Tamil Nadu Court Fees Act and the valuation under Section 25(d) of the said Act is not maintainable.



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5. The Trial Court had framed additional issues on 20.02.2018 relating to the under valuation of the suit as well as the payment of Court fee. The plaintiff was examined as P.W.1 and Exhibits A.1 to A.21 were marked. At this stage, the second defendant had filed the present application in I.A.No.235 of 2018 under Order VII, Rule 11 CPC., [wrongly mentioned as Order VII, Rule 12 CPC.,] to reject the plaint on the ground that, suit is under valued and the Court fee paid is not correct. This application has been dismissed by the Trial Court on the ground that, any issue relating to valuation of suit and payment of Court fee has to be decided before evidence is recorded on merits as contemplated under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act. Since the second defendant had allowed the evidence to be recorded in the suit, it is too late in the day to seek rejection of plaint on the ground of under valuation and under payment of Court fee. On the said ground, application under Order VII, Rule 11 CPC., was rejected by the Trial Court. Challenging the same, the present revision petition has been filed.



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6. According to the learned Counsel appearing for the revision petitioner, though criminal proceedings were initiated as against the defendants and the concerned Sub Registrar, they were later dropped by the police officials due to the death of the plaintiff. He further contends that, there is no impersonation on the part of the plaintiff and only based upon the power deed executed by the plaintiff, a sale deed was registered in the name of the first defendant. When the plaintiff is a party to the document, for setting aside the said document, Court fees has to be paid only under Section 40 and not under Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act. He further contended that when additional issues have been framed by the Trial Court relating to the under valuation of the suit and under payment of Court fee, the said issue should not have been closed by the Trial Court in the interlocutory stage. Hence, he prayed for allowing the revision petition and to reject the plaint for under valuation of the suit.



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7. Per contra, the learned Counsel appearing for the plaintiffs / respondents had contended that, the Court fees in the civil suit cannot be determined on the basis of the pendency of the criminal case or dropping of the charges as against the defendants. He further contended that he has not sought to declare the document as null and void on the ground that, it was obtained under undue influence. In fact, it is his specific case that he had never signed or put his thumb impression in the document and therefore, when it is a case of impersonation, it should be treated that, he is not at all a party to the document and therefore, the payment of Court fee under Section 25(d) of the Court Fees Act should be treated as a correct valuation. He further contended that, the application currently presented under Order VII, Rule 11 CPC., is not maintainable and only an application under Section 12 of the Court Fees Act should have been filed. However, the stage at which such an application could be filed under Section 12 has crossed and therefore, viewed from any angle, the present application is not maintainable and he prayed for dismissal of the revision petition.



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8. I have carefully considered the submissions made on either side and perused the materials available on record.

9. The present application in I.A.No.235 of 2018 has been filed under Order VII, Rule 11 CPC., to reject the plaint by hearing the preliminary issue raised by the petitioner / second defendant. A perusal of Order VII, Rule 11 (b) CPC., reveals that, a plaint can be rejected for under valuation of the suit only when the plaintiff has failed to pay the correct Court fee after being called upon by the Court to correct the valuation. In the present case, the Court has not passed any orders declaring that, the suit is under valued or calling upon the plaintiff to pay additional Court fee. Only then, the issue of rejecting the plaint on the ground of non compliance of the order of the Court would arise. Therefore, the present application under Order VII, Rule 11 CPC., is not maintainable.



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10. As far as an application under Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act is concerned, the said application ought to have been presented before evidence is recorded. In the present case, admittedly, the plaintiff has been examined as P.W.1 and Exhibits A.1 to A.21 have already been marked on the date when the present application has been filed. Therefore, this application cannot be treated to be an application under Section 12 of the Tamil Nadu Court Fees and Suit Valuation also.

11. It is the specific case of the plaintiff that, he had never signed or placed his thumb impression in the sale deed, dated 18.08.2013. According to him, he had been impersonated and his photographs, ID cards have been misused. He has never signed or placed his thumb impression in the document and somebody has impersonated him. In the cases of impersonation, it means that the vendor has actually not executed the document. However, whether the vendor has actually not executed the document or not has to be found out only after trial.



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Therefore, at this point of time, it cannot be decided whether there was impersonation of the plaintiff or the plaintiff himself has executed the document and the same is subject matter of the trial.

12. The Trial Court has also framed additional issues touching upon the under valuation of the suit and the Court fee. In such circumstances, the Trial Court was not right in arriving at a finding that, the issue relating to under valuation and under payment of Court fee has reached finality, in view of the fact that, already evidence has been recorded. In such circumstances, this Court is of the considered opinion that, the Trial Court has to decide the issue relating to impersonation on merits and in accordance with law after full-fledged trial. In case if the Trial Court arrives at a finding that, it is a case of impersonation of the plaintiff, the Court fee already paid by the plaintiff is sustainable in law. If it is decided that there is no impersonation and the plaintiff has himself executed the document, it is the duty of the Court to collect the additional Court fee within the time frame fixed by the Court before drafting the decree in the suit. It is needless to point out that the Trial



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Court shall decide the issue of under valuation and under payment of Court fee without being influenced by anyone of the observations made in I.A.No.235 of 2018 or by this Court in this revision petition.

13. With the said observation, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

09.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The I Additional District Munsif,
Tirunelveli.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.

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3.The Sub Registrar,
Gangaikondan Sub-Registration Jurisdiction,
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4.The District Registrar,
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5.The District Collector,
The State of Tamil Nadu,
Tirunelveli-9.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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