(2006) 04 MAD CK 0172

In the Madras High Court

Case No : C.R.P. (PD) No. 2143 of 2004 and C.M.P. No. 1905 of 2005

Alexander Joseph APPELLANT

Vs

D. Ramajayam, Koulanthini, Abey Joseph and Meera Joseph RESPONDENT

Date of Decision : 20-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Pondicherry Court Fees and Suits Valuation Act, 1972 — Section 25, 27, 40, 40(1)
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 25

Citation : (2006) 04 MAD CK 0172

Hon'ble Judges : T.V. Masilamani, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; Sai, Bharth and Ilan, for the Respondent

Final Decision : Allowed

Judgement

T.V. Masilamani, J.—The revision petitioner is the plaintiff in the suit in O.S. No. 508 of 2003 on the file of the Principal District Munsif,

Pondicherry.

2. The revision petitioner filed the petition in I.A. No. 1129 of 2004 u/s 151 C.P.C. praying for trial of the suit on all the issues instead of hearing

the same for the purpose of valuation of the suit with reference to the Pondicherry Court Fees Act. Learned District Munsif, Pondicherry after

hearing both sides directed the revision petitioner to seek the relief of declaration of title to the property and that if it is not prayed for, he has to

comply with the provision u/s 27(a) of the Pondicherry Court Fees and Suits Valuation Act. The petitioner did not comply with the order and

therefore the petition was dismissed with costs. Hence, the revision.

3. Heard learned Counsel for the revision petitioner and learned Counsel for the respondents.

4. The revision petitioner filed the said suit for declaration that the sale deed dated 4.9.2002 executed in favour of the second respondent/second

defendant and the sale deed dated 11.4.2003 executed by the second respondent in favour of the respondents 3 and 4 herein/ defendants 3 and 4

are null and void ab initio and unenforceable in the eye of law and for permanent injunction restraining the respondents from interfering with the

peaceful possession and enjoyment of the suit property by the revision petitioner. He has valued the suit under Sections 25(d) and 27(c) of the

Pondicherry Court Fees and Suit Valuation Act, 1972 and paid court fee accordingly.

5. The respondents 1 and 2 filed the written statement questioning the valuation of the suit by the revision petitioner and contended inter alia that

since the title of the revision petitioner under the sale deed 9.5.2002 is denied by the defendants, the suit must be valued u/s 25(b) of the said Act

on the basis of the market value of the suit property and that if the market value is taken into account, the District Munsif Court will not have

jurisdiction as a result of which the plaint has to be returned for presentation before the proper court.

6. Learned Principal District Munsif directed the revision petitioner as referred to above and passed the impugned order. Learned counsel for the

revision petitioner has argued at the outset that the revision petitioner purchased the suit property under the sale deed dated 9.5.2002 from one

Josephraj, who became the exclusive owner by virtue of the partition deed dated 12.11.1914, for valuable consideration and he continued to be in

possession and enjoyment of the suit property since then in his own right. Further according to him, the vendor Josephraj, died on 29.5.2002 at

Anna Nagar, Pondicherry as per document No. 13 Death certificate produced along with the plaint and in spite of such factual aspect, the second

respondent created the sale deed dated 4.9.2002 in respect of the suit property as if the same had been executed by the said Josephraj by

impersonation long after his death and in turn he has executed the registered sale deed dated 11.4.20 03 in respect of the suit property in favour of

the defendants 3 and 4. Hence, he has contended that on the basis of such averments in the plaint, it has become necessary on the part of the revision petitioner to file the suit for declaration that the sale deed 4.9.2002 as null and void and for permanent injunction restraining the

respondents from interfering with the petitioner''s possession and enjoyment of the suit property and accordingly, the suit has been valued under

appropriate provision of law. Hence, he has urged that the contentions put forth in the written statement filed by the respondents need not be taken

into account in deciding the question with reference to valuation of the suit for the purpose of court fee and jurisdiction.

7. Further the learned Counsel for the revision petitioner has relied on the decisions, Nachimuthu Gounder v. Avalnaickenpatti Co-Op. Society

1983 L.W. 793 V. Nataraja Iyer v. Arunachalam 1989 L.W. 574 K. Sundaramoorthy Mudaliar Vs. Manickammal and Another, , Kasthuri

Radhakrishnan v. A. Radhakrishnan 1995-2-L.W. 880, in support of his contention that the suit need not be valued on the basis of the market

value of the suit property and that the valuation u/s 25(d) and 27(c) of the said Act is sufficient in the circumstances of the case.

8. It is no doubt true that since the revision petitioner is not a party to the sale deeds in favour of the respondents, he need not seek any relief for

cancellation of the documents as per Section 40 of the said Act and therefore he has submitted that as per the ratio laid down in Kasthuri

Radhakrishnan v. A. Radhakrishnan 1995 2 L.W. 880 it is sufficient for him to value the suit u/s 25(d) of the said Act for declaration that the sale

deeds in favour of the respondents are null and void. Similarly, the valuation of the suit for permanent injunction u/s 27(c) would suffice the purpose

for the simple reason that if the sale deeds in favour of the respondents are declared as null and void, the revision petitioner would necessarily be

entitled to the relief of permanent injunction on the basis of his possession of the suit property on the date of the suit. The relevant principle of law

laid down in the said decision reads as follows:-

When a person seeks to make out title which cannot be established without removing an instrument to which he himself is a party, then, irrespective

of the garb in which the suit is dressed, its substantial character must be for the cancellation of the instrument. All that had been stated in the plaint

in this case is that acquisition of the property by the father of the 1st plaintiff was for the benefit of the daughter (not a party to the suit) of the first petitioner and sons of the first petitioner (petitioners 2 and 3). On the allegations in the plaint in this case, it does not appear that there was any

contribution as such by the second or third petitioners in order to enable them to claim title to the property as such. In addition, it has to be pointed

out that u/s 40(1) of the Act, in a suit for cancellation of a document, it must be such that it purports or operates to create, declare, assign, limit or

extinguish, whether in presenti or in future, any right, title or interest in immovable property.

9. Under similar circumstances, it was held in the decision that the valuation of the suit u/s 25(d) of the Tamil Nadu Court Fee and Suit Valuation

Act 1955 is valid under law. It is not in controversy that the provisions u/s 25(d) and 27(c) in both the enactments are similar and therefore there is

no difficulty in following the principle of law laid down in the said decision.

10. Per contra, learned Counsel for the respondents has relied on the decisions in Purshottam Dass and Others Vs. Har Narain and Another, and

Kamaleshwar Kishore Singh 2001 (4) CTC 764 in support of his contention that even though the defence taken in the written statement may not

be relevant for the purpose of court fee, if there is provision of law requiring the plaintiff to value the suit in a particular manner, the valuation of the

suit in different way may not be permitted as the same is arbitrary and contradictory to the provision of law. Though the principles of law laid down

in the said decisions are not in controversy, as has been rightly pointed out by the learned Counsel for the revision petitioner, the facts involved in

the said cases are different from that of the case on hand and therefore this Court is unable to follow the ratio laid down in the said decisions in so

far as the facts of this case are concerned.

11. In any view of the matter, the suit has to be valued on the basis of the averments made in the plaint and if the plaint averments in this case are

analysed, one would come to the irresistible conclusion that the suit has been properly valued for the purpose of court fee and jurisdiction. Hence

the impugned order passed by the court below is set aside.

12. For the reasons aforesaid, the Civil Revision petition is allowed. The learned Principal District Munsif, Pondicherry is directed to dispose of the

suit on all issues in accordance with law within six months from the date of furnishing a copy of this order. Consequently, C.M.P. No. 1905 of

2005 is closed. However, there is no order as to costs.

