(2011) 08 MAD CK 0247

In the Madras High Court

Case No : Civil Revision Petition (PD) No. 2542 of 2008 and M.P. No. 1 of 2008

M.R. Muralidharan — APPELLANT

Vs

Nalini, J.K. Keerthishri represented by her mother and guardian Mrs. Nalini and T.D. Kandababu — RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 12, 12(2), 25, 40, 40

Citation : (2011) 08 MAD CK 0247

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : A. Seshan, for the Appellant; P.B. Balaji, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajeswaran, J.—This Civil Revision Petition has been filed by the third Defendant in the suit in O.S. No. 93/2005, against the fair and decretal order dated 24.04.2008, made in I.A. No. 16512/2007, in O.S. No. 93/2005 by the 7th Assistant City Civil Judge, Chennai.

2. The suit in O.S. No. 93/2005 has been filed by the first and second Respondents herein/the Plaintiffs to set aside the Settlement Deed dated 25.06.2004, registered as Doc. No. 2601 of 2004 on the file of the Sub Registrar Office, Purasaiwakkam, as a fraudulent transfer.

3. The case of the Plaintiffs as per the amended plaint is as follows:

The first Defendant is the husband of the first Plaintiff and father of the second Plaintiff. The second Defendant is the mother of the first Defendant. Because of the misunderstanding between the spouses, they were living separately and therefore the first Defendant filed a petition in F.C.O.P. No. 950/2003 before the First Additional Family Court, Chennai against the first Plaintiff for restitution of conjugal rights. In that petition, the first Plaintiff wife filed an application for interim maintenance and a direction was given by the Court to pay an interim maintenance of Rs. 1,200/- per month from November 2003 till the disposal of the FCOP. The FCOP was dismissed on 08.04.2004, due to the non-appearance of the first Defendant. Till that date, namely April 2004, the first Defendant is bound to pay a sum of Rs. 6,000/- towards the interim maintenance to the first Plaintiff and No. money was paid. Thereafter, the first Plaintiff filed a Maintenance Application MC No. 233/2004 seeking maintenance for herself as well as for the second Plaintiff. By order dated 17.06.2004, the first Defendant was directed to pay Rs. 1,200/- per month from 12.05.2004. But till date, No. amount has been paid by the first Defendant. The first Defendant has also filed O.P. No. 1616/2004 before the First Additional Family Court for divorce on the ground of cruelty and the same is pending.

4. It is the further case of the first Plaintiff that the grandfather of the first Defendant one T.S.Annamalai Chettiyar settled the suit property in favour of the first Defendant/her husband by Settlement Deed dated 24.04.2003, reserving the life interest to himself. Thereafter, on 23.06.2004, the said Annamalai Chettiyar released his life interest in respect of the suit property in favour of the first Defendant. Since then, the first Defendant has been enjoying the suit property absolutely to himself. However, to defeat the rights of the Plaintiffs, the second Defendant, the mother of the first Defendant persuaded the first Defendant to execute a Settlement Deed dated 25.06.2004 in her favour and thus, the suit property stood transferred from the name of the first Defendant to the second Defendant.

5. According to the Plaintiffs, the first Defendant is a chronic alcoholic and taking advantage of his condition, the second Defendant has made the fraudulent transfer only to defeat and deny the lawful rights of the Plaintiffs. Hence, challenging the above Settlement Deed, the above suit has been filed by the Plaintiffs.

6. A common written statement has been filed by the Defendants 1 and 2 and a separate written statement has been filed by the third Defendant and the suit is being contested. The third Defendant inter-alia has made a counter claim also.

7. Further the third Defendant did raise an issue that the suit property has been valued at Rs. 50,000/- and paid the court fee thereon and the said valuation is incorrect as the Plaintiff has to pay the court fee as per the market value of the suit property as on the date of filing of the suit. Therefore, according to the third Defendant, since the court fee paid is incorrect, he raised an issue that the issue of payment of correct court fee should be tried as a preliminary issue as per Section 12(2) of the Tamil Nadu Court Fee and Suits Valuation Act in the suit.

8. Therefore, pending suit, the third Defendant filed an application in I.A. No. 16512/2007 to decide the issue of court fee payable by the Plaintiff as a preliminary issue, before evidence could be recorded. According to the third Defendant, while filing the relief u/s 40 of the Tamil Nadu Court Fees and Suits

Valuation Act, the Plaintiffs are bound to furnish the market value of the suit property as on the date of filing the plaint and accordingly, pay the court fee. Whereas the Plaintiff in this suit has taken the value of the property at Rs. 50,000/- and paid court fee thereon, instead of taking the market value of the suit property. According to the third Defendant, on the date of filing of the suit, the market value of the suit property was much more than Rs. 50,000/- and the suit property ought to have been valued on the market value as on that date and proper court fee ought to have been paid. Therefore, the correct fee payable had to be determined as the preliminary issue as provided u/s 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act before the evidence could be recorded.

9. The said application was resisted by the Respondents/Plaintiff by filing a common counter. It was contended by the Plaintiffs that when the suit is on trial and the issues have been framed, the third Defendant has filed this application only to protract the proceedings. Further, they have stated that the suit property has been valued as per the value stated in the settlement deed dated 25.06.2004 and there is No. illegality nor infirmity in the same. Therefore, they sought for the dismissal of the application.

10. The Trial Court by order dated 24.04.2008 dismissed the application by holding that since the Plaintiffs are not parties to the settlement deed dated 25.06.2004, which is sought to be set aside by the Plaintiffs in the suit, the Plaintiffs have correctly paid the court fees u/s 25(d) of the Act. Thus, the trial court held that the Plaintiffs should not be called upon to pay the court fees on the basis of the market value of the suit property u/s 40 of the Act. Aggrieved over the same, the above revision has been filed by the third Defendant.

11. I have heard the learned Counsel appearing for the Petitioner and the learned Counsel appearing for the Respondents/Plaintiffs. I have also gone through the entire documents available on record.

12. The learned Counsel for the Petitioner in support of his contentions that the court fee paid was not in conformity with the provisions of law and therefore, the issue of court fee should be tried as a preliminary issue, relied on the following judgments:

1. T. Kuppammal Vs. T. Natarajan and Another,

2. T.S. Rajam Ammal Vs. V.N. Swaminathan and Others,

3. G. Anusuya Vs. Amirthavalli and Others,

13. Before adverting to the facts of the case, now let me consider the decisions relied on by the learned Counsel for the revision Petitioner.

14. In T. Kuppammal Vs. T. Natarajan and Another, , a Division Bench of this Court held as follows:

2. In the instant case, however, it seems to us that the subject-matter is neither the property for which the mortgage was executed nor the mortgage itself. The

Petitioner, as a mortgagee, is not asking for the property. Nor does it relate to the mortgage. His grievance appears to be against the allotment of the property mortgaged to him to a person other than the mortgagor. That being the limited relief that the Petitioner is interested in the suit, the subject-matter, namely, his grievance against the particular allotment, is not capable of market value. It follows that court-fee is not payable u/s 40(1). The provision that will be applicable is Section 50. The court-fee paid by the Petitioners in C.R.Ps.1762 of 1968 and 1615 of 1969 appears to be correct. The Petitioner in C.R. P. 2019 of 1971 will have two months'' time to pay the deficit court-fee. There will be an order accordingly. No. costs in any of the petitions.

15. In T.S. Rajam Ammal Vs. V.N. Swaminathan and Others, , this Court held as follows:

5. Independently of the Full Bench decision, even as a matter of construction of Section 40 of the 1955 Act I come to the same conclusion. The section has been extracted in full already and the material part of that section is "fee shall be computed on the Value of the subject matter of the suit, and such value shall be deemed to be--if the whole decree or other document is sought to be cancelled, the amount or value of the property for which the decree Was passed or other document Was executed". Maharajan, J. took the view that the language used is "the amount or value of the property for which the document was executed, and not the amount or value of the property in respect of which the document was executed" and therefore the consideration recited in the document is the test and not the market value of the property. With great respect, I am unable to agree with this reasoning of the learned Judge. In the portion extracted by me above a common provision is made regarding decree as well as document and if it is split up and applied separately to the decree and the document it will read "such Value shall be deemed to be if the Whole decree is sought to be cancelled, the amount or the value of the property for which the decree was passed" and "such value shall be deemed to be if the other document is sought to be cancelled, the amount or the value of the property for which the other document Was executed". It will be seen that the expression ''value of the property'' is common to the decree as Well as the document. As far as the decree is concerned, No. decree is passed in respect of a property for any value. With regard to a property a decree''s purpose is allotment to different sharers. Whenever a decree deals with a property either in the form of declaration of title or in the form of direction of delivery of possession or in the form of injunction, the value of the property, if it has to be determined, has to be determined independently and the decree itself does not determine the value. Therefore, if the expression ''value of the property'' has to be understood with reference to the decree sought to be set aside, the ''value'' can only mean ''market value'' and nothing else. Only in the case of a document it itself recites the value of the property and in the case of a settlement it states what the value of the property settled is and in the case of a conveyance it states what the consideration for the conveyance is, but No. such feature Will be present in the, case of a decree. So long as the expression ''value

of the property'' has been used in common, both With reference to the decree and With reference to the document, as a matter of construction, it must bear only one meaning and it cannot bear one meaning when it is used in relation to the decree and another meaning when it is used in relation to the document. Looked at from this point of view, "value of the property" can only mean the market value as on the date of the plaint as pointed out by the Full Bench referred to above. The pronoun ''which'' occurring in the expression "value of the property for which the decree was passed 01 the other document Was executed" relates to ''the property'' and not to ''value''. One other reason which appears to have influenced Maharajan, J., in coming to the conclusion which he did Was that the Legislature has expressly used the Words "market value" in twelve other sections of the Act in contra-distinction to the word ''value'' used in Section 40 of the Madras Court-fees and Suits Valuation Act, 1955. In my opinion, this has No. significance because even the Court-fees Act of 1870 used the words ''market Value'' in several other sections as against the Word ''value'' in Section 7 (iv-A). For instance, the expression ''market value'' occurs in Section 7 (iii), 7 (iv) (a), 7 (v) (e) etc. Consequently, this cannot be a ground for holding that the expression ''value'' in Section 40 of the Madras Court-fees and Suits Valuation Act, 1955, can refer only to the consideration recited in the document and not to the ''market value'' of the properties involved.

16. In G. Anusuya Vs. Amirthavalli and Others, , this Court held as follows:

3. Though under Order 14 Rule 2 CPC the valuation and payment of court fee is not specifically mentioned as an issue to be decided as a preliminary issue, Section 12(2) of the Court Fees and Suit Valuation Act comes into play, according to which if a Defendant raises a dispute regarding valuation of the suit property or court fee paid by the Plaintiff and all questions arising on such pleas shall be heard as preliminary issues and No. discretion is left with the Court. In support of proposition, the learned Counsel for the Respondents relied on the another decision of this Court reported in 2002 (2) CTC 513 (V.R. Gopalakrishnan Andiammal). In the said decision it has been held that,

13. There is also a provision in the Tamil Nadu Court Fees and Suits Valuation Act, 1955 viz., Section 12 which lays down that the Court shall decide on the materials and allegations available in the Plaint, the property court fee payable thereon. Section 12(2) of the Act reads thus: Any Defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim, but subject to the next succeeding Sub-section, not later, plead that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient, all questions arising on such pleas shall be heard and decided before evidence is recorded affecting such Defendant, on the merits of the claim. If the court decides that the subject matter of the suit has not been properly valued or that the fee paid is not sufficient, the court shall fix a date before which the plaint shall be amended in accordance with the Court''s decision and the deficit fee shall be paid. If the plaint be not amended or if the

deficit fee be not paid within the time allowed, the plaint shall be rejected and the court shall pass such order as it deems just regarding costs of the suit. According to the above provision, all questions arising as such pleads shall be heard and hence No. discretion is vested with the Court. If on the basis of the materials and allegations contained in the plaint, the court comes to the conclusion that the suit has not been properly valued or that the fee paid is not sufficient, the court can call upon the Plaintiff to amend the plaint and also pay the deficit court fee. If the Plaintiff fails to do that, the Court shall reject the plaint and pass appropriate orders. Once the Court decides that the subject matter of the suit has not been properly valued or that the court fee paid is not sufficient, the court has No. option except to fix a date and call upon the Plaintiff to comply the defect viz., by amending the plaint and also by paying necessary court fee. It has to be noticed that in this Section, the word "shall" has been employed as against the word "may" that occurs in Order 14, Rule 2, Code of Civil Procedure. of course, it is the settled legal position that the question of valuation must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on merits and further all the material allegations contained in the plaint should be construed an taken as a whole. It is the substance and not the form matters (Vide Neelavathi and Others Vs. N. Natarajan and Others, and Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaits Chandeshwar Prasad and Meshwar Prasad and Another, .

14. There appears to be some conflict between the provisions in CC (ie) Order 14 Rule 2 when read with Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act with reference to deciding the pecuniary jurisdiction of the Court. Suppose, in a given case, the Defendant comes forward with an application requesting the court to decide an issue relating to valuation of the suit property or the payment of court fee as a preliminary issue, the Court may applying the proviso in Order 14, Rule 2, decide to consider along with other issues and not a s a preliminary issue. Then the Defendant may file an application to consider the issue as per the provisions of Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act, then the court will have No. discretion and it has to consider the same. The Tamil Nadu Court Fees and Suits Valuation Act is a substantial law while CPC is a procedural law. The substantial law will prevail over the procedural code and consequently, it follows whenever the Defendant files an application requesting the Court to decide the issue of valuation of the suit property or the payment of court fee and all questions arising on such pleas as a preliminary issue, the Court has to necessarily consider as per the provisions of Section 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act. Not in all cases where the Defendant has disputed in the written statement, the valuation of the suit property or contended that the suit property has not been properly valued, the court has to consider it as a preliminary issue. Only where the Defendant makes an application, the Court is bound to consider u/s 12(2) of the Tamil Nadu Court Fees and Suits Valuation Act.

4. The above decision squarely applies to the facts of this case. While CPC is a procedural law, Tamil Nadu Court Fees and Suit Valuation Act, 1955 is a substantial law and substantial law always prevails over the Procedural Code. Further, a perusal of the order would show that in this case No. evidence was recorded by either side. Hence the leaned District Judge rightly adjourned the suit for deciding the court fee as the preliminary issue and No. error or infirmity can be attached to the said order.

17. In the light of the above judgments, the learned Counsel for the Petitioner contends that the trial court#s judgment is not correct and the same has to be set aside as the Respondents 1 and 2/Plaintiffs ought to have valued the suit on the basis of the market value of the property and not on the basis of the value as stated in the Settlement Deed.

18. I am unable to accept the contentions of the learned Counsel for the Petitioners.

19. The trial court in its order dated 24.04.2008 has clearly held that the Plaintiff and the Respondents 1 and 2 herein are not the parties to the settlement deed and therefore, when they are not parties to the document, they need not value the suit and pay the court fee u/s 40 of the Court Fees Act and it is correctly done by the Plaintiffs by valuing the suit and paying the court fee u/s 25(d) of the Court Fee Act.

20. It is settled law that there is No. scope for assessing the market value in a suit u/s 25(d) of the Court Fees Act, the Court finds that provisions for open market value has relevance only for a suit u/s 40 of the Act. It is equally settled that, when the Plaintiffs are not parties to a document and when they seek for setting aside that document, it is not necessary for the Plaintiff to value the suit on the basis of the market value of the property and it would be sufficient to value the same as per Section 25(d) of the Act, according to which, fees shall be paid on the amount at which the relief sought is valued in the plaint or on Rs. 1,000/- whichever is higher. In so far as the Respondents 1 and 2/Plaintiffs herein are not parties to the document, then, as rightly held by the trial court, they have valued the suit properly u/s 25(d) of the Act and accordingly, I do not find any infirmity in the orders passed by the trial court. Consequently, the Civil Revision Petition has No. merits and the same is dismissed. No. cost. Consequently, the connected petition is also dismissed.

21. In so far as the judgments relied on by the counsel for the Petitioner are concerned, they do not deal with the issue on hand and the facts of those cases are clearly distinguishable and hence, they are not helpful to the case of the Petitioner.

