
(2001) 06 KL CK 0070

In the High Court Of Kerala

Case No : C.R.P. No's. 2280 and 2588 of 1998 (D)

N. Narayani Ammal

APPELLANT

Vs

P. Sanjeev and Another

RESPONDENT

Date of Decision : 21-06-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 13, 115, 144, 2(2)
Contract Act, 1872 — Section 19
Kerala Court Fees and Suits Valuation Act, 1959 — Section 25, 40, 40(1)
Transfer of Property Act, 1882 — Section 53

Citation : AIR 2001 Ker 305 : (2001) 3 CivCC 47 : (2001) 3 ILR (Ker) 114 :
(2001) 2 KLJ 294

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : N.N. Sugunapalan, for the Appellant; P.V. Ramesh Shankar, G.
Unnikrishnan and G.P. Shinod, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Hariharan Nair, J.—Alleging that the sale deed in respect of the plaintiff A schedule property and two hypothecation deeds in respect of plaintiff B schedule property executed by the plaintiff were the result of fraud, O.S. 1683/97 was filed before the IIInd Additional Munsiff's Court, Thiruvananthapuram by the present revision petitioner. The decree sought the following declaration.

To pass a decree declaring that the sale deed No. 135/97, with respect to plaintiff A schedule and hypothecation deeds Nos. 196/97 and 197/97 with respect to plaintiff B schedule of the Thiruvananthapuram Sub Registrar's Office are void documents vitiated by fraud and misrepresentation and further that those documents are neither binding on the plaintiff A and B schedules nor the plaintiff in any manner and to pass a decree of consequential prohibitory injunction restraining the defendants from forcibly dispossessing her from the plaintiff A schedule and the building thereon otherwise than by due process of law.

2. The defendants, who entered appearance, contended that the Court fee paid was insufficient and that actually setting aside of the two documents is required for which Court-fee is payable u/s 40 of the Court-fees Act and not u/s 25(b). The question was considered as a preliminary point and as per the impugned order, the trial Court accepted the defendant's contention and directed the plaintiff to pay Court-fee u/s 40(1) of the Kerala Court-fees and Suits Valuation Act.

3. On the day the suit was taken up for payment of Court fee as above, the plaintiff submitted before the trial Court that the order directing payment of Court fee was under challenge before this Court. However, the plaintiff was found absent on a later day and no stay order, in fact, reached the trial Court. In the circumstances, the trial Court passed an order on 2-11-1998 rejecting the plaint. It is this order that is the subject matter of C.R.P. No. 2588/98.

4. During hearing today, the learned Counsel for the petitioner placed reliance on the decision in *Kumaran v. Chandran* 1985 KLT (S.N.) 43 - Case No. 69 in support of the contention that in a suit for declaration that a document is null and void, the plaintiff need pay Court fee only u/s 25(b). According to the learned Counsel for the respondents, the said decision has no application to the facts of this case. A perusal of the aforesaid decision shows that the plaintiff had contended in that suit that the document executed by one Achuthan (3rd party) was not genuine and void. The Court found that if the averments contained in the plaint that the purported execution of the document was false; that the documents are not true and genuine and that Achuthan the purported executant was never a party to the documents are proved, there will be no document valid in the eye of law and that in that perspective a suit for declaration that the document is void was maintainable in which case the court fee payable was only u/s 25(b) and not u/s 40 of the Act. The position here is different in so far as the disputed documents, admittedly stand in the name of the plaintiff and the signatures therein are admitted.

5. *Karuna Kuries & Finance v. Kunju Vareed* 1998 (2) Kar LJ 748 relied on by the petitioner was a case where the suit was filed seeking relief of declaration that a document was invalid and for cancellation of two documents. The suit was u/s 53 of the Transfer of Property Act. Along with an application for amendment of the plaint to change the prayer from setting aside the two fraudulent document as one to declare that the documents are fraudulent and created with intent to defeat and delay creditors, the petitioner also sought change of the valuation as one u/s 25(b)(ii) of the Kerala Court Fees and Suits Valuation Act. The Court found that if the prayer actually amounts to setting aside the document, then the Court fee will have to be paid u/s 40 of the Act and that, that section would come into play only when it is necessary to set aside a decree or a document. It is also found that u/s 53, what is required is only a declaration that the document is not binding on the creditors, and that in the circumstances, it is not necessary to pay Court fee u/s 40 of the Act.

6. The basic question therefore is whether the relief that the plaintiff can legitimately seek in the suit, on the averments in the plaint is one for setting aside the document, in which case, Court fee would be payable u/s 40 or whether what is required is only a declaration; in which case, Court fee need be paid only u/s 25(b) of the Act.

7. I have perused the copy of the plaint that was made available to me during hearing today. The plaintiffs contentions therein were that she was an illiterate lady; not of normal intellect and that a fraud was played on her which resulted in execution of the three documents. She had no case that she was not a signatory to the documents in question which were duly registered. The one and only case projected by her was that being the result of fraud, the document is ineffective.

8. Section 19 of the Indian Contract Act deals with the effect of fraud. According to this section, when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

9. It is therefore clear that the three documents which are the subject matter of the suit in question are actually voidable and not null and void even if the entire averments in the plaint are accepted as correct. Viewed from that perspective, the actual prayer that should have been included in the plaint, on the averments contained therein was only to set aside the document and not to declare the same as invalid. No provision of law has been placed before me which would show that the alleged fraudulent documents can be treated as void and not voidable.

10. In these circumstances, I am of the view that the Court below was right in finding that the Court fee payable is u/s 40 of the Act and not u/s 25(b). The order impugned in C.R.P. No. 2280/98 does not therefore suffer from any material illegality, irregularity or impropriety and that C.R.P. is hence dismissed.

11. I shall now consider the maintainability of C.R.P. No. 2588/98. The impugned order therein is one rejecting the plaint for non-payment of the Court fee that had been ordered earlier. Section 2(2) of the CPC defines "decree". It is made clear therein that it shall be deemed to include the rejection of a plaint and the determination of any question within Section 144. The order impugned in C.R.P. 2588/98 is therefore a decree in the eye of law and as such appealable in nature. For that reason Section 115 of the CPC relating to revisional Jurisdiction cannot be applied to that case. The C.R.P. No. 2588/98 is hence not maintainable and dismissed.

12. The learned Counsel for the petitioner submitted that even if the rejection is upheld, it may still be open to the petitioner to file appropriate suit in forma pauperia with valuation u/s 40. I do not think it is a matter that can be dealt with in this Judgment, Suffice it to say that if any such suit is filed, it will be considered on the merits as contemplated in Order VII, Rule 13 of the Code of Civil Procedure.