

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUPPUR.**

**Present: Thiru. N.Gunasekaran, M.B.A B.L.,**  
Principal District Judge, Tiruppur

**Friday, the 19<sup>th</sup> day of July, 2024**

Thiruvalluvarandu 2055, Sri Kurothi year, 03<sup>rd</sup> day of Aadi month

**I.A.No. 17 /2024 in**  
**OS.No.45/2021**  
**(CNR.No.TNTI18-002974-2020)**

1. Park Trust  
Represented by its Managing Trustee,  
Dr.P.V.Ravi
2. Dr.P.V.Ravi
3. T.R.Karthik ... Petitioners / Plaintiffs

**..Vs ..**

1. K.Manoharan
2. R.Anusha ... Respondents / Defendants

On 16.07.2024, the petition came before me in the presence of Thiru.S.Bharath, Counsel appearing for the petitioners and Thiru.N.V.Giri, B.Sc., B.L., Counsel appearing for the 1<sup>st</sup> respondent and Thiru.A.Jeyakumar, Counsel appearing for the 2<sup>nd</sup> respondent and endorsement made as no counter and upon perusing the petition, counter filed by the 1<sup>st</sup> respondent and connected records, having stood over for consideration, this Court delivers the following:

**ORDER**

This petition is filed under Order 16, Rule 1(3) r/w. Section 151 of the Code of Civil Procedure to order to recall PW4 for further examination touching upon the valuation appraisal report of the suit property.

19.07.2024

Principal District Court, Tiruppur

**2. Petition averment in brief reads as follows:-**

2.1. The 3<sup>rd</sup> petitioner is the one of the Trustees of Park Trust. He filed this affidavit on behalf of the Trust and also he aware of the facts of the case from his own knowledge. The suit has been filed for the reliefs of cancellation of a sale deed and other reliefs. In the above suit, the plaintiffs have caused examination of PW.4, the Branch Head of Union Bank of India, SME Branch for giving evidence touching upon the valuation of the suit property for the purpose of advancing certain loan based on the security created over the suit property. However, even though PW.4 was examined on 03.04.2024, he was unable to depose to the crucial facts of arriving at the valuation of the suit property and stated that the valuation report done by the said Bank was not done at the branch. Several shortcomings were elicited in the panel valuer report submitted by PW.4 and therefore, the valuation process done by the bank officials will be of vital assistance in enabling this Court to appreciate the correct valuation of the suit property.

2.2. PW.4, having been summoned to depose regarding the valuation of the suit property, ought to have obtained and produced the valuation report done by the bank's officials and only then the said witness can be said to have performed his duty to this Court and he should have been permitted to depart. However, PW.4 has not discharged his duty as a witness summoned by this Court, particularly with respect to the crucial fact of valuation of the suit property.

2.3. The valuation of the suit property as on the date of the impugned deed in Ex.A.16 was much higher than the value disclosed as sale consideration and this goes to show that the document was obtained by

coercion and undue influence, by exploiting the indebtedness of the plaintiffs. Therefore, it has become necessary to revoke the permission granted to PW.4 to depart and recall him to give further evidence and produce the valuation appraisal done by the bank's officials in respect of the suit property. Unless the plaintiff is permitted to do so, great prejudice and hardship will inure to the plaintiff, whereas if the petition is allowed, no prejudice will occasion to the adverse party. Hence, the petition.

**3) Counter statement filed by the 1<sup>st</sup> respondent in brief read as follows:-**

3.1. The petition is false, frivolous, vexatious and not maintainable both under law and on the facts of the case. The petitioners have to strict proof of all the allegations made in the affidavit except those that are specifically admitted herein. The petition is highly belated and highly vexatious one. This petition is filed after evidences are closed and when the matter was posted for arguments.

3.2. It is the usual practice of the petitioners / plaintiffs to file one petitioner and another in order to protract the proceedings. Already there is an order of Hon'ble High Court of Madras direction to complete the proceedings within four months and that prescribed period is already over. Therefore, at this stage filing of the reopen petition and recall of PW4 and examination of Advocate Commissioner are not at all maintainable and not necessary for this case and the petitioners' intention is also very clear to delay the proceedings.

3.3. Suit is for the cancellation of sale deed and for which the examination of Advocate Commissioner and for which the examination of bank manager who is PW4 is not at all required under law. After examination of PW4 and after marking the registered mortgage deed and valuation report, the further examination of PW4 is not at all necessary.

3.4. PW4 has not discharged his duty as a witness summoned by this court particularly with the respect to the crucial fact valuation of the suit property is not correct and not admitted. Actually, PW4 is the witness of the plaintiff and therefore, the respondents/plaintiffs have no right to take such a stand against his own witness and even otherwise PW4 bank manager deposed before this court relating to the mortgage deed in detail.

3.5. The valuation of the suit property as on the date of the date of the deed, Ex.A16 was much higher than the value disclosed as sale consideration and this goes to show that the document was obtained by coercion and undue influence by exploiting the indebtedness of the plaintiffs are all false and not admitted by this defendant.

3.6. It has become necessary to revoke the permission granted to PW4 to depart and recall him to give further evidence and produce the valuation, appraisal done by the bank officials in respect of the suit property are all false and not admitted by the respondent/defendant. There is no merit in this application. If the petition is allowed, this respondent will be exposed to irreparable loss and hardships and hence, the Petition is liable to be dismissed.

4) The Counsel for the 2<sup>nd</sup> respondent has made an endorsement as no counter on the side of 2<sup>nd</sup> respondent.

5) **The Point for consideration is**

Whether the evidence of PW4 is to be recalled for further examination touching upon the valuation appraisal report of the suit property?

6) No oral or documentary evidence was let in from either of the party.

7) **POINT:-**

Both side heard. Records perused. Suit is for the relief of cancellation of sale deed, permanent and mandatory injunction. Pending trial, the Bank Manager, Union Bank of India, Tiruppur was summoned to produce the valuation reports and to depose with reference to fixation of value of suit property described in schedule-IV to the supplemental Memorandum of Deposit of Document of Title (MODT); dated 16.12.2020 and registered document No.5444 of 2020 with Joint Sub Registrar Office No.II, Tiruppur and in pursuant to the same, he was examined before the court at the instance of petitioner / plaintiff as PW4 and marked the valuation report in Ex.A.47 beside supplemental Memorandum of Deposit of Document of Title (MODT); dated 16.12.2020 in Ex.A48.

8) PW4 in his evidence would depose that he was not working as Branch Manager when the Exs.A47 and A48 came into existence. It is to reiterate that the valuation report was already produced and marked as Ex.A47. No evidence shall be given in proof of the terms of Ex.A.47 except the document itself as per Section 94 of Bharatiya Sakshya Adhinyam, 2023.

9) It is to reiterate that PW4 was examined at the instance of petitioner / plaintiff and the short comings if any ought to have elicited

from the PW4 by cross examining him with the permission of court as per Section 154 of Bharatiya Sakshya Adhiniyam, 2023, but failed to do so. The application is found to have filed belatedly when the case was in the stage of argument that too when there is direction of the Hon'ble High Court, Madras to dispose the suit within the period of stipulated time as per Order; dated 27.11.2023 in C.M.A.No.1828 and 799 of 2022 and C.M.P.No.13120 of 2022.

10) The PW6 is not an Officer attached to relevant Government Department and hence, he is incompetent to depose evidence in respect of the market value of the suit property at the time of impugned sale deed in Ex.A.16.

11) Therefore, this court is not inclined to allow the petition to recall of PW4 for further examination touching upon the valuation appraisal report of the suit property for the reasons stated therein. Point is answered accordingly.

In result, the Petition is dismissed.

Dictated to the Steno-typist, typed by her as directly on Computer, corrected and pronounced by me in the open Court dated this the 19<sup>th</sup> day of July, 2024

Principal District Judge,  
Tiruppur.

Draft / Fair / Copy Order  
I.A. No.17/2024 in  
OS No.45/2021  
Dt:19.07.2024  
PDJ Court, Tiruppur.