

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.535 of 2016

Muthuganesah

... Petitioner

vs.

1.Thillaimani
2.Vaigaimala
3.M.Balakrishnan
4.Bharathamani
5.Ambiga
6.R.Subramani
7.Kumar
8.M.Selvaraj
9.Saravanan

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India for a direction directing the Principal District Judge, Tiruppur to number the suit dated 18.01.2016 in CFR No.557 of 2016 instead of returning the plaint on various dates namely 18.01.2016 and 20.01.2016.

For Petitioners : Mr.N.Manokaran
for Mr.N.Ponraj

ORDER

The present civil revision petition has been filed under Article 227 of the Constitution of India, challenging the order of the learned Principal District Judge, Tiruppur returning the plaint insisting upon compliance

with the returns made earlier, which were answered in the endorsement made at the time of re-presentation. Such order of return came to be passed after hearing the matter in the open court.

2. The proposed suit in CFR No.557/2016 was sought to be filed for the following reliefs:

- i) a declaration that the partition deed dated 19.08.2015 registered as document No.6698/2015 on the file of Sub Registrar, Dharapuram, is invalid in law and *void ab initio*;
- ii) a permanent injunction restraining the defendants from alienating the suit property; and
- iii) for cost

The said document, which has been sought to be declared invalid in law, was a partition deed to which defendants 1 to 5 were parties. When such a document was sought to be assailed as invalid, the parties to the said document are, of course, necessary parties and in fact they have been made as party-defendants.

3. The reliefs are sought for against respondents 1 to 5/defendants 1 to 5 and also the respondents 6 to 9/defendants 6 to 9, who have entered into an agreement with the third defendant and the persons in whose favour the third defendant had executed deeds of power of attorney for the said transactions. The relief of permanent injunction not to alienate the property has also been sought for against the persons shown as defendants. Under the said circumstances, the court below cannot go

into the question at the time of admitting the plaint as to whether all the persons, who ought to have been made parties, have been made parties to the suit or not. It is for the defendants to contend that the suit is bad for non-joinder of necessary parties. The court, while admitting the plaint, can scrutinise the other aspects, namely the cause of action, valuation, payment of court fee, jurisdiction and limitation. The court can also verify whether the plaint has been filed in the proper form and whether the necessary requirements of plaint have been complied with. The question as to whether any other person should have been made a party is outside the purview of the scrutiny of the trial court at the time of admitting the plaint. The above said aspects are with reference to the merits of the return made by the trial court.

4. Once certain defects are pointed out by the court and the plaint is returned and the plaintiff or plaintiffs, re-present the same stating that the plaint has been properly prepared and filed and asking the court to hear regarding the necessity to comply with the returns made by the court, the court can return the plaint provided its view that the compliance with the returns are mandatory and it is conceded by the plaintiff. If the plaintiff makes it clear that he is not prepared to comply with the returns and the plaint as filed by him should be taken on file, the trial court should reject the plaint rather than returning the plaint stating the very same reason. In this regard also, the order of the trial court cannot be sustained both on technical ground indicated supra and on merit, as indicated supra which

appears in the first part of the order of this court. The orders of the trial court dated 18.01.2016 and 20.01.2016 returning the plaint insisting upon making the left out persons as parties in the suit cannot be sustained. The order of the learned trial Judge shows improper exercise of jurisdiction and failure to exercise jurisdiction conferred on the trial court in the matter of scrutiny of plaint before admission of the plaint. It is a fit case in which this court has to exercise its power of superintendence under Article 227 of the Constitution of India and direct the trial court to take the plaint on file without insisting upon the compliance with the returns made in the order of the trial court dated 18.01.2016 and 20.01.2016.

In the result, the civil revision petition is allowed. The orders of return dated 18.01.2016 and 20.01.2016 are set aside. The trial court is directed to take the plaint on file without insisting upon compliance with the returns made in the orders dated 18.01.2016 and 20.01.2016. The original plaint is directed to be returned to the petitioners for re-presentation in the court below. Time is granted to the plaintiff for re-presentation of the plaint till 04.03.2016. No cost.

18.02.2016

Index : Yes
Internet : Yes
asr

To
The Principal District Judge, Tiruppur

P.R.SHIVAKUMAR, J.

asr/-

C.R.P (PD) No.535 of 2016

18.02.2016