



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.06.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1019 of 2018
and C.M.P. (MD) No.4386 of 2018

R.Venkadachalapathy

... Petitioner/Petitioner/Plaintiff
-vs-

Ramasamy (Died)

1. Perumal
2. Nainar
3. Velusamy
4. Balakrishnan
5. Ramaiah Gounder
6. Amutha
7. Gokul
8. Chandran
9. Tamil
10. Murugan
11. Ramalakshmi
12. Seethalakshmi
13. Valliammal
14. Saravanan
15. Ganapathy Gounder

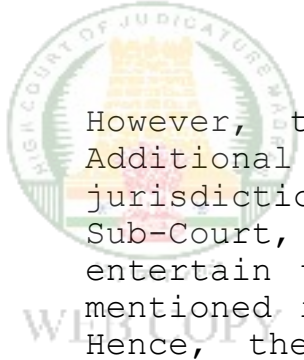
16. M/s.Shubh Reality (South) Pvt. Ltd.,
Through its Power Agent,
1/3 Lio Building, Salaipudur,
Valliyur, Radhapuram Taluk,
Tirunelveli District. ... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order of the return of plaint made on 05.04.2018 in Unnumbered I.A.No. of 2018 in O.S.No.60 of 2007 by the learned Additional District Munsif, Valliyur and pass any other suitable and other necessary orders as this Honble Court may deem fit.

For Petitioner : Mr.A.Selvam

O R D E R

The revision petitioner is the plaintiff in O.S.No.60 of 2007 on the file of the learned Additional District Munsif, Valliyur and in the suit, the plaintiff sought for partition of the property.



However, the plaint was returned on 19.08.2017 by the learned Additional District Munsif, Valliyur for want of pecuniary jurisdiction. When the plaintiff re-submitted the same before the Sub-Court, Valliyur, the learned Sub Judge, Valliyur has refused to entertain the plaint on the ground that no specific date had been mentioned in the order dated 19.08.2017 for appearance of parties. Hence, the plaintiff sought to file an application before the learned Additional District Munsif, Valliyur for necessary amendment in the order dated 19.08.2017 and the said application was not numbered, stating that the Court has no power to recall its own speaking order after disposal of application for extension of time. Aggrieved by the same, the petitioner / plaintiff is before this Court.

2. It is the case of the revision petitioner that the learned Additional District Munsif, Valliyur, while ordering the return of plaint under Order VII Rule 10(A), has referred to the pecuniary jurisdiction at the final stage of argument, instead of refusing to entertain the same at the first instance of the date of filing of the suit itself. It is the further case of the petitioner that the learned Additional District Munsif, Valliyur did not follow the procedures as adumbrated under Rule 10(2) and Rule 10(A) of CPC and also did not afford an opportunity to the plaintiff for filing necessary application so as to enable him to specify the date for presentation of the suit after its return and also for fixation of a date for appearance of the parties.

3. The revision petitioner states that once a decision had been taken by the learned Additional District Munsif, Valliyur for return of the plaint, in the interest of justice, it should have automatically fixed the date for the appearance of the parties in the Court, in which the plaint is proposed to be presented and without doing so, the application filed by the plaintiff for fixation of date for appearance of parties was simply rejected without even numbering it by citing its previous order. The revision petitioner has also stated that it is mandate on the part of the Trial Court to ensure the extension of balance of convenience on both sides and the refusal of the Trial Court in entertaining the application for specifying the date will definitely be prejudicial to him and therefore, the said order needs the intervention of this Court for rendering substantial justice to him.

4. Heard the learned counsel for the petitioner and the notice to other side is dispensed with, in view of the nature of disposal of this case. This Court also perused the material documents available on record.

5. The revision petitioner / plaintiff had filed an application under Order VII Rule 10(A) and Section 152 of CPC for specifying the date of appearance of parties in the order dated 19.08.2017, which was admittedly omitted to be mentioned in it. It is to be noted that the suit is of the year 2007 and the Trial Court, without raising any doubts regarding pecuniary jurisdiction all along, had simply returned the plaint to approach the concerned



Court having jurisdiction in the year 2017, that too, in a mechanical manner without following the procedures in letter and spirit. There is a force in the contention raised by the learned counsel for the petitioner that, had the suit been returned at the initial stage, it would have been filed before the appropriate forum at that time itself. Moreover, the Trial Court had fixed the value of the property on the basis of the present market value and certainly, there would be a hike in the market value every year and the return of the plaint at the fag end of the argument would cause irreparable loss to the plaintiff. As stated supra, the suit was filed in the year 2007 and has been pending almost for twelve years and having not given quietus to the suit in a short span of time, the plaintiff alone cannot be made to suffer and also cannot be made to run from pillar to post unnecessarily. It is pertinent to mention here that once an application is filed, it is the duty cast upon the Trial Court to number the same and thereafter, decide its own merits and demerits of the matter in accordance with law. Therefore, finding much force in the contention raised by the learned counsel for the petitioner and to meet out the ends of justice, this Court is of the view that a direction shall be issued to the Trial Court to first number the application and take a decision thereon on merits and in accordance with law.

6. In the result,

a) this Civil Revision Petition is allowed and the order of the return of plaint made on 05.04.2018 in unnumbered I.A.No. of 2018 in O.S.No.60 of 2007 by the learned Additional District Munsif, Valliyur, is hereby set aside;

b) the Trial Court is directed to number the application and pass suitable orders thereon on merits and in accordance with law by giving notice to both parties within a period of four weeks from the date of receipt of a copy of this order;

(c) on passing orders in the application, the concerned Trial Court trying the suit, is further directed to dispose of the same, within a period of three months thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To:

1.The Subordinate Judge, Valliyur.

2.The Additional District Munsif,



3.The Section Officer,
ER Section,
Madurai Bench of Madras High Court,
Madurai.

(To Return the original papers to the petitioner)

+2cc to Mr.A.Selvam, Advocate, SR.No.66560

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