



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.05.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No.1070 of 2018

1.N.Krishnaveni

2.Namburajan

.. Petitioners /Plaintiff

VS

1.G.Tharmaraja

2.T.Thamaraiselvi

3.J.Senthamarai

.. Respondents/Defendants

Prayer: Civil Revision is filed under Article 227 of the Constitution of India, praying to set aside the order dated 14.05.2018 of the Vacation Civil Judge Madurai returning the plaint filed by the petitioners in Unnumbered plaint in O.S.SR.No.200 of 2018 and further direct to number the plaint filed by the petitioners and take the same on file by Vacation Civil Judge, Madurai.

For Petitioner

: Mr.M.Thirunavukkarasu

ORDER

The case of the petitioner is that they are wife and husband, the 1st respondent is the brother of the 1st petitioner, the 2nd respondent is wife of the 1st respondent and the 3rd respondent is sister of the 2nd respondent. They entered into an agreement and started a business in the name and style of "Sun Polimer" but considering the relationship the agreement was not reduced into writing but on oral. The 2nd petitioner has been involved in the business actively and out of the income of the business, the properties are purchased in the name of the parties to the business. The business and as well as relationship between the parties went smoothly, however, the respondents taking advantage of their close relationship attempted to transact the properties between themselves and adverse to the petitioners. On knowing the same the petitioners have issued a legal notice seeking partition, by settling the business. In turn the respondents 1 and 2 issued a reply admitting the receipt of amount, however stated that the amount was received as a loan for interest.



2. In the above circumstances, they filed a suit on 07.05.2018 before the Vacation Judge, Madurai for partition and in view of the urgency to get an order of injunction restraining the attempt of the defendants to alienate the properties they filed an interlocutory application for injunction also. However, the plaint was returned on 10.05.2018 stating that cause of action not available, whether the business is a registered one and the prayer of the plaint is not proper.

3. Though the plaint was represented in the next vacation court explaining that the cause of action is clearly mentioned in the plaint, the maintainability of prayer and as well as the nature of agreement entered into was oral. Again the plaint was returned on the ground that the prayer is not correct, without even considering the request of the petitioners to take the plaint in open court for maintainability. In view of the above the said order of return is challenged before this Court.

4. I heard Mr. M. Thirunavukkarasu, learned counsel for the petitioner and perused the records.

5. The learned counsel for the petitioner has further submitted that when the suit was filed seeking partition with an application to get the emergent relief of interim injunction restraining the alienation of the properties, the Court below has committed serious error in returning the plaint, without considering the cause of action pleaded in the plaint about issuing the suit notice and reply. The return on the ground that the cause of action is not available is total non application as the same is categorically mentioned in the plaint.

6. The 2nd and 3rd reasons are also not proper since it is for the defendants to oppose the case by filing written statement. The learned counsel for the petitioners submitted that the Court below cannot return the plaint at the threshold, regarding the prayer since the maintainability of prayer shall be considered on merits. The return of plaint without considering the emergency would make the interim prayer as infructuous and serious prejudice will be caused to the petitioners.

7. Since the plaint is yet to be numbered, this court feels that the notice to the respondents in the civil revision petition can be dispensed with as it is always open to the respondents to contest the suit and they have no say even before numbering the suit.

8. Order 7 Rule 1(e) of C.P.C., which reads as follows:-

1. "Particulars to be contained in Plaint :- The Plaint shall contain the following particulars :-

(a) to (d)

<https://hcservices.ecourts.gov.in/hcservices/>

(e) the facts constituting the cause of action and when it arose;



9. At the time of numbering the plaint the Court has to see whether the plaint contains the cause of action but it cannot consider whether the cause of action pleaded is correct and true. It is up to the defendants in the suit to come out with an application to reject the plaint under Order 7, Rule 11 of C.P.C., if the cause of action is not available. On perusal of the plaint, it is clear that the cause of action is pleaded as required in the above rule and thus the Court below is wrong in returning the plaint.

10. The nature of transaction and as well as the agreement between parties cannot be decided at the time of numbering the plaint but the same has to be decided on the basis of defence to be taken by the defendants, thus the second ground for return is also not proper at this stage.

11. The Court below returned the plaint even after representing with explanation and without considering the explanation regarding the prayer in the plaint is totally incorrect and not proper. It is always for the plaintiffs to make out a prayer but the granting of relief is always subject to proof of right and entitlement to get the same. In other words, it is for the defendants to take available defence for not granting the relief and the court cannot act as defendants or on behalf of defendant while numbering the plaint. The Court below has even failed to consider the relationship of parties and the nature of oral agreement, which requires a decision on merits with valid defence from the defendants, particularly when the nature of reply given to the suit notice admitting the money transaction. Thus the third ground also not sustainable. When the request was made on behalf of the plaintiffs to take the plaint in open court it ought to have taken up for hearing and after affording an opportunity of hearing the court below should have passed order either numbering or returning the plaint. The non-consideration of the said request but simply returning the plaint again and again is not proper and no useful purpose would be served.

12. In view of the above the impugned return by the Court below is not justifiable and thus the same is set aside. The learned counsel for the petitioners submit that the summer vacation is about to be over, hence the plaint has to be represented before the regular District Court and thus prayed for suitable direction for numbering the plaint. This Court deems it proper to issue the following direction while allowing this civil revision petition:-

[1] The Civil Revision Petition is allowed by setting aside the impugned order dated 14.05.2018 passed by the learned Vacation Civil Judge, Madurai returning the plaint filed by the petitioners in Unnumbered plaint in O.S.SR.No.200 of 2018.

[2] The Petitioners are directed to represent the plaint before the regular District Court, Madurai within a



week from the date of receipt of a copy of this order and on representation, the regular District Court is directed to number the plaint.

13. Accordingly, this Civil Revision Petition is allowed as indicated above without costs. The Registry directed to return the original plaint.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Civil Judge,
Madurai.

+1CC to Mr.M.Thirunavukkarasu Advocate in SR.No.66474.

VSV
DS/SKN-RSK/SAR-3 :28.06.2018:4P/3C

C.R.P. (MD) No.1070 of 2018
31.05.2018