



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.08.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (PD) (MD) .No.1307 of 2018

WEB COPY

John Stephen

... Petitioner/Plaintiff

Vs.

R.Perumal

... Respondent/Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the docket order dated 06.04.2018 and direct the learned Principal District Munsif, Nagercoil to number the unnumbered O.S.No. of 2018.

For Petitioner : Mr.M.P.Senthil

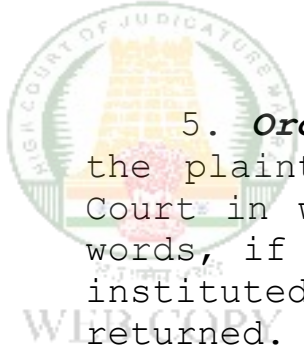
O R D E R

The Revision petitioner filed a suit for permanent injunction before the learned Principal District Munsif, Nagercoil.

2. Without numbering the same, the learned trial Munsif by the impugned order dated 06.04.2018 held that the plaint is not legally maintainable and returned the same with liberty to the petitioner to work out the remedy in the manner known to law. The said order is questioned in this Civil Revision petition.

3. The learned counsel appearing for the Revision petitioner placing reliance on the decision of this Court reported in **2016 (5) CTC 329 (G.V.Vanitha V. K.Dhanasekaran)** contended that an application will have to be first numbered and that it cannot be rejected before that. He also brought to the notice of this Court an unreported decision rendered in **C.R.P.No.1888 of 2014 (M.Masood V. Parisal Beevi), dated 03.09.2014.**

4. Even though the learned trial Munsif has returned the plaint, this Court is of the view that the order in question actually amounts to rejection of the plaint itself. That it is an order of rejection is evident from the fact that the Court below has expressly held that the plaint in question is not legally maintainable. Even the endorsement of return is to the effect that the plaint has been returned to enable the plaintiff to work out the remedy in the manner known to law.



5. **Order 7 Rule 10 of C.P.C.**, enables the Court to return the plaint at any stage of the suit to be presented to the Court in which the suit should have been instituted. In other words, if the Court below is of the view that the suit has been instituted before the wrong Court, then in that event it can be returned. But then, the impugned order does not read so. Though it may not have employed the expression "returned", actually what the Court below has done is to reject the plaint.

6. Therefore, this Court is of the view that the case on hand falls not under Order 7 Rule 10 of C.P.C., but under Order 7 Rule 11 of C.P.C. It is not necessary that an order of rejection has been passed only after formally numbering the suit. This Court has not gone into the correctness of the reason assigned by the Court below. It may be erroneous. But then, the only question is whether this Civil Revision petition is maintainable. This Civil Revision petition is filed under Article 227 of the Constitution of India. An order rejecting the plaint amounts to a decree and is therefore, appealable. This Court therefore holds that the impugned order though styled as a return of plaint is actually an order of rejection.

7. The learned counsel appearing for the Revision petitioner contended that no decreetal order has been passed. This Court is again unable to agree with the said objection raised by the Revision petitioner. An order rejecting the plaint amounts to a decree. There is no necessity to pass a separate decreetal order.

8. This Court therefore even while dismissing the Civil Revision petition as not maintainable, gives liberty to the petitioner herein to file an appeal questioning the impugned order, whereby the learned trial Munsif held that the plaint in question is not maintainable. Registry is directed to return the original plaint together with the impugned order. If the Revision petitioner files an appeal within a period of four weeks from the date of receipt of a copy of this order, the lower Appellate Court shall entertain the same and hear the matter on merits without any reference to limitation.

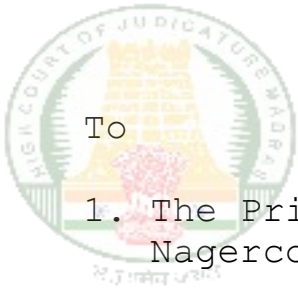
9. With these observations and directions, the Civil Revision petition stands dismissed. No costs.

Sd/-

Assistant Registrar (RTI)

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

Sub Assistant Registrar(CS-III)



To

1. The Principal District Munsif,
Nagercoil.

2. The Record Keeper,
V.R.Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.M.P.Senthil, Advocate SR.No.77380

Pmu

MK/SKN/SAR 3/31.08.2018/3P/5C

ORDER MADE IN
C.R.P. (PD) (MD) .No.1307 of 2018
06.08.2018