



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2194 of 2016

Thashileema Begam

... Petitioner/Plaintiff

vs.

1.N.Sheik Mohamed
2.Thashileema Bibi
3.S.Nagoor Meeran
4.S.Abdul Azeesh
5.S.Fathima
6.N.Ajbeer Rahman
7.Peveena

... Respondents/Defendants

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the order dated 11.07.2016 passed in unnumbered O.S.No.--of 2016 on the file of the Sub Court, Pudukottai.

For Petitioner : Mr.S.Ramasamy

For Respondents : Mr.G.Thaveethu for RR.1, 2 & 4 to 7

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Subordinate Judge, Pudukottai, in unnumbered O.S.No.--of 2016 dated 11.07.2016.

2. The plaint in unnumbered O.S.No.--of 2016 was filed for the relief of permanent injunction, on the basis of a gift deed executed by the petitioner's mother-in-law in favour of the petitioner as well as her husband. By an order dated 11.07.2016, the plaint was returned by the Court below, without even numbering and aggrieved over the same, the present petition came to be filed.

3. At the earlier rounds of arguments, the learned Counsel for the petitioner contended that the trial Judge had mechanically returned the plaint, without knowing the scope of the suit and without knowing the Saryath Law. He further contended that the plaint was returned, based on a wrong conclusion that the petitioner has to pay stamp duty in respect of Hiba, but, it is not necessary as per Saryath Law. In view of the same, this Court, by an order dated 08.02.2018, has called for a report from the learned Subordinate Judge, Pudukottai, as to why the plaint was rejected, without numbering.



4. The report of the learned Subordinate Judge, Pudukottai, dated 02.03.2018 was received and the same reads thus,

"This Court had returned the plaint for compliance of reasons stated in the return order dated 11.07.2016.

WEB COPY

- In the reason for return in SL.1 & 6, this Court has called for the plaintiff to clarify the reasons for not adding the necessary parties.
- In the reason for return in SL.No.5, this Court has directed the plaintiff to produce the Gift (Hiba) document executed by the Late Nagurhani infavour of her wife Tmt.Pappathi, which is a relevant document for and on that basis of Hiba document, Plaintiff have tracing out their title to the suit property.
- In the reason for return in SL.No.2 to 4, 10 & 11, this Court has questioned the validity of the document No.8, which is a sale agreement in respect of item No.2 of the suit scheduled property.
- In the reason for return in SL.No.14, this Court states that the documents No.1 to 4 are copies of sale deeds as mentioned in the list of documents in the plaint are attracted by the payment of deficit stamp duty. This Court has not direct the plaintiff to pay the stamp duty for the Gift (Hiba) document.
- Hence, I humbly submit that this Court had returned the plaint as unnumbered for compliance of all the reasons stated in the return order dated 11.07.2016 and not for the reason of stamp duty in respect of Gift (Hiba) document.

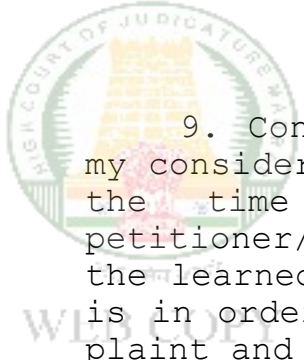
I further denied the allegation of the petitioner/plaintiff that this Court had mechanically returned the plaint."

5. Heard the learned Counsel appearing on both sides and perused the documents placed on record as well as the report of the learned Judge.

6. The petitioner before this Court, who is the plaintiff, is the dominus litus and therefore, she has to decide as to who has to be added as respondent, which has been settled in a number of decisions.

7. It is the petitioner, who has to establish her case, by way of adducing documents so as to prove her plea and if she is not able to produce such documents, automatically it will end against her and therefore, the learned Judge cannot complete the trial by asking to produce such documents even without numbering the plaint.

8. At this juncture, the learned Counsel for the petitioner submitted that the petitioner has already filed a memo before the Court below stating that if the Court feels that stamp duty has to be paid in respect of documents other than Gift (Hiba), the petitioner is ready and willing to pay the same at the time of marking the documents. The said submission is recorded.



9. Considering the facts and circumstances of the case and in my considered opinion, the learned Judge cannot decide the trial, at the time of filing of the suit and it is for the petitioner/plaintiff to establish her case during trial. Therefore, the learned Judge is directed to see as to whether the plaint filed is in order and if so, the learned Judge is directed to number the plaint and proceed with the same, in accordance with law.

10. With the above directions, this civil revision petition stands disposed of. No costs.

Sd/-

Assistant Registrar(Crl.Side)

/True copy/

Sub Assistant Registrar

To

1. The principal Subordinate Judge,
Pudukottai.
2. The Subordinate Judge,
Pudukottai.

Copy to:

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

+1CC TO M/S.S.RAMASAMY, ADVOCATE, SR NO.54061

C.R.P. (PD) (MD) No.2194 of 2016
07.03.2018

gk

MS/KK/SAR-3/18.04.2018/3P.6C