



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2018

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WEB COPY

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(PD) (MD) No.2446 of 2016

1.P.Paulpandy

... Petitioner/Plaintiff

-Vs-

1.Vishal Artheck (Died)

2.The District Registrar,
(Administration),
Department of Registration,
Kanyakumari Division,
Nagercoil,
Kanyakumari District.

3.The Sub Registrar,
Sub Registrar Office,
Rajakkamangalam,
Kanyakumari district.

..Respondents 1 to 3/Defendants

4.N.Mohanlalbabu

.. 4th respondent

(R4 is brought on record as lr of the deceased R1 vide court order dated 4.6.2018 made in C.M.P.(MD) Nos.4481 to 4483 of 2018).

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the docket order dated 07.10.2018 passed in unnumbered O.S. No. of 2016 on the file of the Principal District Munsif Court, Nagercoil and to direct the Principal District Munsif Court, Nagercoil to nuber the suit in accordance with law.

For Petitioner : Mr.V.Meenakshisundaram
For R1 & R4 : Mr.Anbarasi Dhanaseelan
For R2 & R3 : Mr.Karuppasamy
Government Advocate

O R D E R

The revision petitioner filed the plaint bearing No.476/2016 before the Principal District Munsif Court at Nagercoil seeking the relief of declaration that the suit document is sham and nominal and for consequential reliefs. The court below declined to number the same. The court below took the stand that the petitioner herein should have asked for cancellation of the document in question and valued the suit in terms of Section 40 of Tamilnadu Court Fee and



Suit Valuation Act, 1955. The order passed by the court below declining to number the plaint is questioned in this Civil Revision Petition.

2. The learned counsel appearing for the revision petitioner placing reliance on the decision reported in 1970(1) MLJ page 207 (In Kaka Hajee Md. Ishaque Sahim Vs. Kaka Md. Saddiq Sahib and others) and 2011(1) MWN(Civil)258 (In Ganga Krishnan Vs. 1. Bajaj Enterprises, Chennai and one another) contended that it is open to the revision petitioner to seek the declaration instead of cancellation.

3. This Court is of the view that the principles laid down in both decisions are squarely applicable to the present case. In any event, it is always open to the contesting defendants to raise objection when he appears in the suit. The trial court need not decline to number the plaint.

4. In this view of the matter, the order of return impugned in this Civil Revision Petition is set aside. Accordingly, this Civil Revision Petition is allowed. No costs. The Registry is directed to return the original plaint to the learned counsel for the revision petitioner for re-presentation before the court below.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-I)

To,

1. The Principal District Munsif, Nagercoil

2. The District Registrar, (Administration),
Department of Registration, Kanyakumari Division,
Nagercoil, Kanyakumari District.

3. The Sub Registrar, Sub Registrar Office, Rajakkamangalam,
Kanyakumari district.

Copy To:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+ 1 CC TO Mr. D. Nallathambi, ADVOCATE IN SR No. 88244.

+ 1 CC TO Mr. Dhanaseelan, ADVOCATE IN SR No. 88122.

CM

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