



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD).No.2162 of 2019

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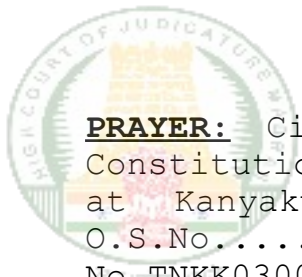
- 1.Kariyamonickapuram Oor
Vellala Samudhaya Trust,
Rep by Plaintiffs 2 to 5
- 2.V.Murugan
- 3.K.Subash Chandra Bose
- 4.T.Kannan
- 5.K.Kannan

... Petitioners/Plaintiffs

Vs.

- 1.The Commissioner,
H.R & C.E., Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai.
- 2.Joint Commissioner,
H.R. & C.E., Department,
Palaiyamkottai,
Tirunelveli.
- 3.Assistant Commissioner,
H.R & C.E., Department,
Vadiveeswaram, Nagercoil,
Vadiveeswaram Village,
Agasteeswaram Taluk,
Kanyakumari District.
- 4.The Executive Officer,
Arulmigu Mutharamman
Muppidariamman Temple,
Kariamonickampuram,
South Car Street,
Vadiveeswaram, Nagercoil,
Vadiveeswaram Village,
Agasteeswaram Taluk,
Kanyakumari District.
- 5.The State of Tamil Nadu,
Rep by the District Collector,
Kanyakumari District,
Nagercoil-629001
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents/Defendants



PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Principal Sub Court, Nagercoil at Kanyakumari District to number the plaint in unnumbered O.S.No.....of 2019 in filing No.O.S/618/2019 (CNR No.TNKK030010462019).

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For Petitioners : Mr.V.Meenakshisundaram for R.Murugan

ORDER

This civil revision petition has been filed seeking a direction to the learned Principal Sub-Judge, Nagarcoil at Kanyakumari District to number the plaint in unnumbered O.S.No.....of 2019 in filing No.O.S.No.618/2019 (CNR.No.TNKK030010462019)

2.The revision petitioners, who are the plaintiffs has filed the unnumbered suit in O.S.No...of 2019 in filing No.O.S.No.618 of 2019, for declaration and mandatory injunction against the respondents. The Court below returned the said suit by raising the following queries:-,

"Admittedly the disputed temple and its management was handed over to the HR and CE department in the year 1984 and the same isl under the control of that department. As such how the suit is in time and how the plaintiffs are entitled to claim the reliefs sought for in the plaint.

(2)How the Court fees paid is correct.

(3)How the plaintiffs are entitled to claim relief based on 06.11.1976 assessment notice under.

(4)when the properties are having market value how the plaintiffs are entitled to fix notional value of Rs.1,00,000/-."

3. The said suit was resubmitted by answering the above said queries. Again the same was returned for the following reasons:

"As per Section 71 of HR and CE Act mere notification of the Commissioner is sufficient for taking the control of religious instruction in case of mismanagement. So registered document is not necessary for transferring title to the HR and CE as per the Act. If anybody wants to challenge the handing over the management to the HR and CE, they have to file suit within 30 days from the date of notification as far Section 72 of the Act. Admittedly objected, temple dreads handing over the management to the HR and CE for a past 35 years. As such their suit is clearly barred by limitation and the explanation of the plaintiff that there is no limitation for this suit and the limitation is a mixed question of law and fact cannot be accepted. Hence, suit is returned as barred by limitation.

Further there is no evidence that there is trust as asked in the cause title. So the suit cannot filed under



Section 92 of CPC. Hence, the payment of Court fee is also in correct."

4.The learned counsel appearing for the revision petitioners contended that the revision petitioners has satisfactorily provided a detailed reply with regard to the queries raised by the Registrar. He further contended that, as the Ministerial Officer of the Court, he is entrusted with the duty only to examine the plaint and to note down all the deficiencies in the plaint for the purpose of compliance. In the present case, the revision petitioners also resubmitted the plaint by providing appropriate reply to queries raised. However, even after complying with the defects pointed out earlier by way of reply, the Court was not convinced of the compliance reported by the plaintiff, and in such case, it is open to the plaintiffs to request the Court to post the matter for maintainability so as to enable the Court to hear the plaintiffs with respect to the defects pointed out and the compliance made in respect of those defects.

5.In support of his contention, he referred the judgment in the case of **R.MANICKAM AND ANOTHER V. THE SENGUNTHAR CHARITABLE TRUST, REP BY ITS SECRETARY, AND OTHERS**, reported in **2009(5) CTC 550**, wherein, relevant portions are extracted hereunder:

"10.The litigants would be put to difficulties in case the Court of original jurisdiction drag them from pillar to post, even before registering the plaint. The attempt of the Court before registering the Plaint should be to ascertain as to whether the procedural requirement for filing such a Suit has been complied with by the plaintiff. The statutory provisions as contained under Order 7 Rule 1 of the Code of Civil Procedure prescribes the particulars to contained in the plaint. In addition to the institution of the Suit of general nature, there are suits in particular cases like the Suit by or against the Government or public officers in their official capacity, inter-pleader suits, suits relating to public nuisance or other wrongful acts affecting the public at large as well as suits relating to public charities within the meaning of Section 92 of the Civil Procedure Code. There is a prescribed procedure contemplated for institution of such specified suits. The Court was obliged to examine as to whether the plaintiff has complied with such fundamental procedures, and in case of such compliance, the Court has no other alternative than to register the plaint. The Court was not powerless even after registering the Plaint. The Statutory provisions as per Order 7 Rule 11 of the Code of Civil Procedure enables the Court to reject the Plaint at any point of time. It is not necessary to file written statement by the defendant for the purpose of

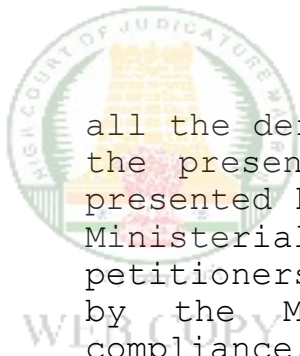


exercising the jurisdiction to reject the plaint.

13. There should be a uniform procedure in the matter of consideration of plaint and petitions for the purpose of registration. Whenever a plaint is filed it has to be verified by the Ministerial Officer of the Court entrusted with the duty to examine the plaint. Such officer has to note down all the deficiencies in the plaint for the purpose of compliance. The defects pointed out by the Court in its entirety should be noted in the docket and the plaintiff should be directed to rectify those defects within a reasonable time fixed by the Court. The plaint duly represented after compliance should be examined again not for the purpose of inventing further defects for return, but for the purpose of ascertaining as to whether the initial returns were duly complied with. This does not mean that it was not permissible to indicate defects afresh which were not mentioned in the original return. In exceptional cases, when it was made out that a particular defect was omitted to be mentioned in the original return, the Court would be at liberty to indicate such defects subsequently. However, such cases should be exceptional. In the normal circumstances, all the defects should be pointed out during the initial return itself. Even after complying with the defects pointed out earlier by way of first or second return, the Court was not convinced of the compliance reported by the plaintiff, it would be open to the plaintiff to request the Court to post the matter for maintainability, so as to enable the Court to hear the plaintiff with respect to the defects pointed out and the compliance made in respect of those defects. When a request for such hearing is made, it should be the endeavour of the Court to hear the plaintiff's counsel at the earliest point of time. It would enable both the Court as well as the counsel to understand the fundamental defects in the plaint and the steps to be taken to rectify those defects."

6. Heard the learned counsel appearing for the revision petitioners and perused the materials on record.

7. In the present case, it appears that when the plaint was originally submitted by the revision petitioners/plaintiffs, the same was returned raising certain queries/pointing out certain defects. Again, when the plaint was re-submitted, answering the queries/rectifying the defects pointed out, the same was refused to be entertained by the Registry by stating that the suit is barred by limitation. As rightly pointed out by the learned counsel for the revision petitioners, the Ministerial Officer of the Court is entrusted with the duty only to examine the plaint and to note down



all the deficiencies in the plaint for the purpose of compliance. In the present case, it is seen that when the plaint was initially presented by the revision petitioners, the same was returned by the Ministerial Officer raising certain queries. Hence, the revision petitioners re-presented the plaint by answering the queries raised by the Ministerial Officer. However, even after the said compliance, the plaint was refused to be entertained on the ground of limitation. This Court really wonders as to how, the Ministerial Officer came to a conclusion that the suit is barred by limitation without even going into the merits of the matter. As noticed above, the Ministerial Officer of the Court is expected only to examine the plaint and to note down the deficiencies in the plaint for the purpose of compliance and he cannot act as a fact finding authority at the threshold and reject the plaint on the ground of limitation. It is for the Court to decide whether the suit is maintainable or not after hearing the plaintiffs. This Court would further like to point out that even after complying with the defects pointed out, if the Court was not convinced of the compliance reported by the plaintiff, in such case, the procedure to be adopted by the Ministerial Officer is to refer the matter before the Court to test its maintainability and the issue has to be decided judicially. Therefore, this Court directs the Court below to number the suit and decide on the merits of the matter after hearing both the parties

8. With the above observations, this Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Principal Sub Judge,
Nagercoil at Kanyakumari Dt.
2. The Section Officer, E.R. Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

Note: The Registry is directed to return the original order copy to the learned counsel for the revision petitioners, after retaining the xerox copy of the same.

+1 CC to M/s. R. MURUGAN, Advocate (SR-102017[F] dated 28/11/2019)

C.R.P. (MD) .No.2162 of 2019

27.11.2019

SMA/08/01/2020/5P/5C

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