

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.2065 of 2020

S.Saraswathi

....Petitioner

.. Vs ..

1.P.Saraswathi

2.P.Saravanakumar @ Jeyaram

3.Chitra

4.Srividya

5.P.K.Rangaiya @ Agri

... Respondents

PRAYER: Petition filed under Section 227 of Constitution of India, praying to direct the learned Sub Judge, Bhavani to number the suit in CFR No.6988/33/2019 without further returning the plaint.

For Petitioner : Mr.N.Manokaran

For Respondents : Notice dispensed with

JUDGMENT

This Civil Revision Petition has been filed seeking a direction of this court to the learned Sub Judge, Bhavani to take the plaint filed in CFR No.6988/33/2019 without making further returns and number the suit and take the same for disposal.

2.It appears that the petitioner has presented a plaint on 18.12.2019 before the learned Sub Judge, Bhavani praying for the following reliefs :

"a) Declaring that the proceedings in O.S.No.35 of 2009 on the file of the learned Subordinate Judge, Erode and A.S.No.31 of 2014 on the file of the learned District Judge of Erode and S.A.No.295 of 2014 on the file of the Hon'ble High Court, Chennai are fraudulent, null and void not binding on the plaintiffs;

b) Restraining the defendants 1 to 3 by means of an injunction from proceeding with I.A.No.179 of 2011 in O.C.No.35 of 2009 till the disposal of the suit;

c) Restraining the defendants 1 to 3, their men and agents etc., from trespassing into any portion of the suit properties;"

3.By Docket endorsement dated 22.01.2020, the learned Sub Judge, Bhavani has returned the plaint with the following observations.

"Whether this Court has jurisdiction to entertain the suit as against the decree passed by the Hon'ble High Court, Hon'ble District Court and Hon'ble Sub Court to be clarified with relevant citation. Hence returned. Time one month."

4.According to the petitioner the above said defect was complied and the plaint was re-presented. Again the plaint was returned with the following endorsement:

"The plaintiff purchased the schedule of property from D4, while lis pendens. Hence, how this suit is maintainable. Hence, returned. Time one month."

The above said defect was also complied and again the plaint was re-presented on 12.02.2020. Once again it was returned by the Court below on 19.03.2020 with the following endorsement:

"As per the authorities produced before the court by the plaintiff in 2019(6) MLJ 372, the plaintiff ought to have filed exparte set aside application before the proper court. Besides, on the perusal of the facts of the suit, the purchase of the

schedule property by the plaintiff is hit by lis pendens. According to the ruling produced by the plaintiff, the remedy available to the plaintiff to file exparte set aside application. Hence, in the circumstances, how this suit is maintainable".

Therefore, having been frustrated by the returns of the plaint by the Court below, the petitioner has come forward with the present Revision Petition.

5. Notice to the respondents is dispensed with. Since the issue has been covered by the decision reported in "2009(5) CTC 550".

6. The learned counsel appearing for the petitioner would submit that the petitioner has filed a suit seeking to declare the proceedings in O.S.No.35 of 2009 on the file of the Subordinate Judge of Erode and A.S.No.31 of 2014 on the file of the District Judge of Erode and S.A.No.295 of 2014 on the file of High Court Chennai are fraudulent, null and void and not binding on the plaintiff.

7.However, the Court below has returned the plaint on various grounds stating that the petitioner ought to have file *ex parte* application to set aside the *ex parte* order before the proper Court and hence the suit is not maintainable. The learned counsel appearing for the petitioner would submit that the view of the Court below is erroneous and the suit is very much maintainable since even lis pendens purchasers are entitled to protect their interest by filing fresh suit and there is no legal impediment to maintain the suit at the instance of a bonafide purchaser for a valid consideration.

8.Heard, the learned counsel appearing for the petitioner and perused the entire records and return endorsements made by the Court below. It appears that the plaint has been re-presented after compliance. If at all, the plaint is manifestly vexatious and meritless, then the suit itself is not maintainable. The learned Judge is vested with power under Order 7 Rule 11 of CPC and he can exercise the same at any stage of the suit either before registering the plaint or after entertaining the suit. In the decision in "*R.Manickam Vs The Sengunthar Charitable Trust*

represented by its Secretary, T.P.Arumugam" reported in "2009(5) CTC 550" this Court has categorically dealt with issue in regard to rejection of the plaint and ultimately directed the Trial Court to consider the matter on merits as there was nothing to indicate as to why the Court has come to the conclusion that the compliance was not correct. In the present case, this Court also finds that there was nothing to indicate as to why the Court below has come to the conclusion that the compliance was not correct and the suit is not maintainable.

9. In view of the above, the learned Sub Judge, Bhavani is directed to take the plaint and number the same if it is otherwise in order within a period of two weeks from the date of receipt of the copy of this order. The respondents/defendants are at liberty to raise necessary pleadings in the Written Statement in regard to maintainability of the suit. The Trial Court can exercise its power under Order 7 Rule 11 of CPC or framing a preliminary issue with regard to maintainability of the suit and dispose of the same in accordance with law.

10.With the above directions, this Civil Revision Petition is disposed of. No costs.

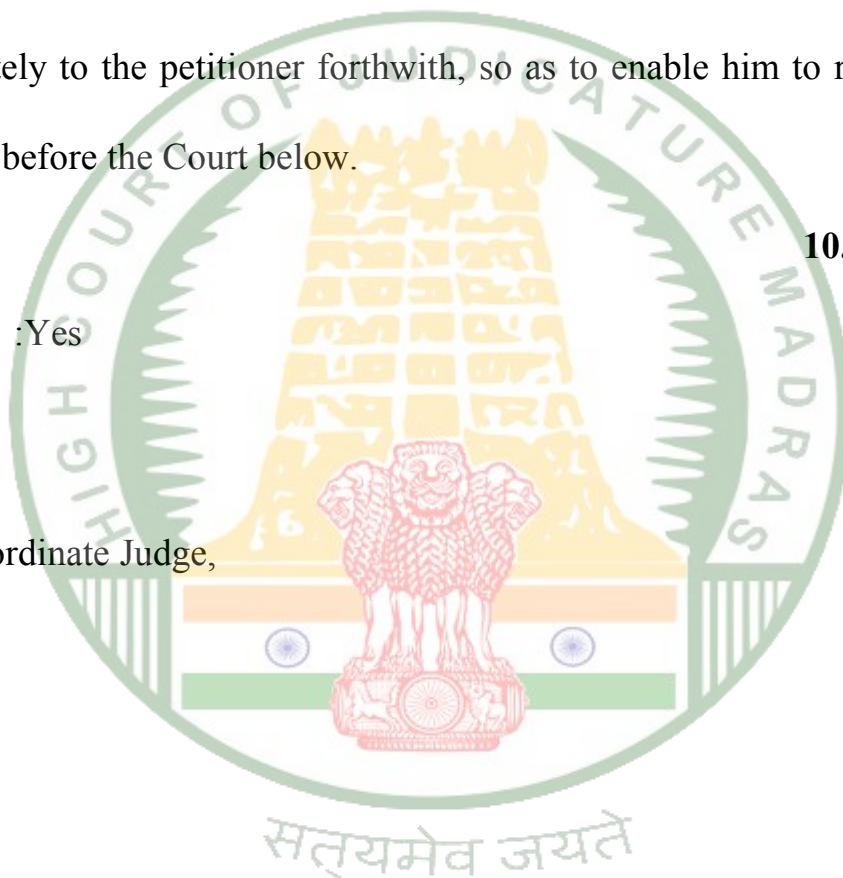
11.The Registry is directed to return the original plaint immediately to the petitioner forthwith, so as to enable him to represent the same before the Court below.

10.12.2020

Internet :Yes
mtl

To

The Subordinate Judge,
Bhavani.



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RMT.TEEKAA RAMAN, J.

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