



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD)No.645 of 2021

1.Duraisamy  
2.Subramaniyan  
3.P.Balasubramanian  
4.P.Ponnusamy

...Petitioners

Vs

1.Mani @ Marappan  
2.R.Muthusamy  
3.Palaniammal  
4.Murugasamy  
5.Ponnusamy  
6.State of Tamil Nadu  
Rep by its District Collector,  
Erode District.  
7.The Tahsildar,  
Perundurai Taluk,  
Erode District.

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to direct the learned Subordinate Judge, Perundurai to number the Unnumbered suit in O.S.SR.No... of 2020 on its file.

For Petitioners : Ms.C.Meena

O R D E R

The limited prayer sought for in this petition is to direct the learned Subordinate Judge, Perundurai to number the Unnumbered suit in O.S.SR.No... of 2020 on its file.

2. The petitioner/plaintiff herein had filed the suit in O.S.SR.No... of 2020, seeking for the following relief:

(a) declaring that the revenue records created by the defendants in respect of the suit properties is null and void, not acted upon and not binding the plaintiffs in any way.

(b) directing the defendants 6 and 7 to restore the revenue records pertaining to suit properties to its original position by way of mandatory injunction;

(c) directing division of the first item of the suit properties into 3 equal shares by metes and bounds and with



reference to good and bad soil and allot 1 such share to the plaintiffs and put them in separate possession;

(d) appointing a commissioner for making division of the suit properties as aforesaid clause (a);

(e) restraining the defendants 1 to 5, their men, agents, etc., from in any way and in any manner either alienating or encumbering the suit properties with specific boundaries till final partition is effected by means of permanent injunction;

In the alternative

(f) appointing a commissioner to fix the boundary line for the items 2 to 4 of the suit properties in accordance with the partition deed dated 31.01.2005 entered among the plaintiffs and the defendants 1 to 5 in accordance with their share ratio and their entitlement with the help of Taluk Surveyor or Competent Surveyor by means of mandatory injunction;

(g) directing the defendants to pay the costs of the suit;

3. The learned counsel for the petitioner would submit that the act of the Court below by returning the petition without numbering is illegal and erroneous. The Court below has acted beyond the scope and have decided the maintainability of the petition at the filing stage itself and have rejected the same. The Court below without understanding the scenario under which the petition has been filed, has returned the same, even after rendering an explanation for maintainability of the same. The learned counsel further submitted Court below ought to have considered the power of attorney deed executed by the first petitioner to his son dated 27.08.2020, which gives him authorization to prosecute the case. In support of her contention, the learned counsel placed reliance on the judgments of this Court in the cases of Rayathal (died) and Others Vs. Periya Kannu and others reported in (2011) 3 MLJ 423 and Vishwas Footwear Company Ltd., Vs. The District Collector and others reported in 2011 (5) CTC. Hence, the learned counsel prays to allow this civil revision petition.

4. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. As rightly pointed out by the learned counsel for the petitioner, the Hon'ble Division Bench of this Court in the case of Vishwas Footwear Company Ltd., (supra), has followed several other Judgements and in the cases of Kuppuswami Nainar's and Chockkappan's and held that parties who seek for cancellation of patta should be directed to approach the Civil Court to establish their title. The relevant portion of the order reads as follows:

"In the light of the judgments in



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Kuppuswami Nainar's case and Chockkappan's case, the person who has applied to the Revenue Divisional Officer for cancellation of Patta should be directed to approach the Civil Court to establish the title and for seeking to grant of patta after cancelling the patta granted in favour of the Appellant-Company. On this ground, the appellant is entitled to succeed."

6. On perusal of the records, it is seen that originally the suit was filed for partition, declaration and permanent injunction. We are constrained to observe here that the Registry has no authority to return plaints of this nature, questioning the maintainability on legal provision, which can be an issue before the Trial Court alone. There is no provision contemplated either under the Civil Procedure Code or under the Civil Rules of Practice empowering the Registry to return the plaint on these grounds of maintainability.

7. Hence, the learned Subordinate Judge, Perundurai is called upon to instruct his Registry to number the unnumbered suit in O.S.SR.No.2735 of 2020, if it is otherwise in order, as expeditiously as possible. The original documents filed to be returned to the petitioner by substituting the same with xerox copies.

8. In the light of the above direction, this civil revision petition stands allowed. No costs.

Sd/-  
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

sbn

To

- 1.The Subordinate Judge,  
Perundurai.
- 2.The Section Officer,  
E.R Section, High Court, Madras.

+1cc to M/s.M.Guruprasad, Advocate, S.R.No.19214

C.R.P.(PD)No.645 of 2021

SMI(CO)  
SB(27/08/2021)