

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED:25.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN, J.**

C.R.P. No.2141 of 2020

M.Basheer

...Petitioner

Vs

1.Mrs.Sulaika @ Sulaika Bivi

2.V.I.Badhrudeen

3.V.I.Farook @ Abdul Farook

4.V.I.Noordheen

5.V.I.Rafiq @ Rafideen

6.V.I.Samed @ Abdul Samed

7.V.I.Abdul Sathar

8.The Sub Registrar,
Joint-Sub Registrar Office,
Coimbatore.

9.The Sub Registrar,
Pollachi Sub Registrar Office,
Pollachi.

10.The Sub Registrar
Naimalai Sub Registrar Office,
Anaimalai.

11.The District Collector,
Coimbatore.

...Respondents

PRAYER: Civil Revision Petition filed under Section 227 Constitution of India, to set aside the order dated 07.08.2020 rejecting the plaint in Unnumbered suit in C.S.R.No.632 of 2020 on the file of the District Munsif cum Judicial Magistrate Court, Madukkarai and issue consequential direction to entertain and take the unnumbered plaint in O.S.C.S.R.No.632 of 2020 on file, number the suit.

For Petitioner : Mr.R.Prabakar.

ORDER

The limited prayer sought for in the present Civil Revision Petition is to set aside the order dated 07.08.2020 rejecting the plaint in Unnumbered Suit in C.S.R.No.632 of 2020 on the file of the District Munsif cum Judicial Magistrate Court, Madukkarai and issue direction to entertain and take the unnumbered plaint in O.S.C.S.R.No.632 of 2020.

2. The learned counsel for the petitioner would submit that the Court below has rejected the plaint at premature stage even before numbering the suit, which is unsustainable and is liable to be set aside. The Court below ought not to have rejected the plaint when one of the suit property is situated within the jurisdiction of the trial Court. The learned counsel further submitted that the Court below cannot go into the question of multiplicity of proceedings, which is beyond the scope and ambit of Order 7 Rule 11 of C.P.C.

3. The learned counsel further submitted that, when the Court is competent to decide the subject matter of the plaint, the Court ought to have entertained the plaint, irrespective of the entitlement of the party in seeking relief before another Court. The Res Sub Judice cannot be cited as a bar to entertain the plaint and the same comes only in the stage of registered suit and even then, it will not act as a bar to another suit. The plaint presented in C.S.R.No.632 of 2020 is totally on the basis of different cause of action and the res sub judice cannot be applied at all. It is further contended that the Court below is having jurisdiction to entertain and adjudicate the suit prayer in view of Sections 17 and 18 of C.P.C. The trial Court erred in holding that the other items except one item of property is not situated within the jurisdiction of the Court which is against Sections 17 and 18 of C.P.C. When the suit plaint satisfies the elements of Order 7 rule 1 to 6, the trial Court ought to have admitted the plaint and registered the same. The Court below ought not to have gone into the ownership, title and entitlement of the parties when the plaint itself has not been taken on file and registered as a suit. Hence, the learned counsel for the petitioner prays to allow this petition.

4. Heard Mr. R.Prabakar, learned counsel for the petitioner and perused the materials available on record.

5. It is seen from the records and the submissions made by the learned counsel for the petitioner that the lower Court has rightly rejected the said plaint of the petitioner and the same cannot be found fault with. However, this Court has also given a suggestion for the same that it can be withdrawn from the Court below and represented before the competent District Court.

6. Accordingly, the learned District Munsif cum Judicial Magistrate, Madukkarai is directed to return the unnumbered suit filed by the petitioner within a period of one week from the date of receipt of a copy of this order and the petitioner is at liberty to present the same before the concerned District Court within a period of two weeks thereafter. Since it is submitted that the suit was rejected, as there is no jurisdiction, liberty is given to the petitioner to represent the same before the court below, which has got jurisdiction and the matter can be numbered and posted along with the suit, which is already pending for adjudication.

In view of the above, the present Civil Revision Petition is dismissed. No costs.

25.02.2021

Index:Yes/No
Speaking order/Non-Speaking Order

sbn / ssd

To

1. The District Munsif cum Judicial Magistrate Court,
Madukkarai.
2. The Section Officer,
V.R.Section,
High Court, Madras

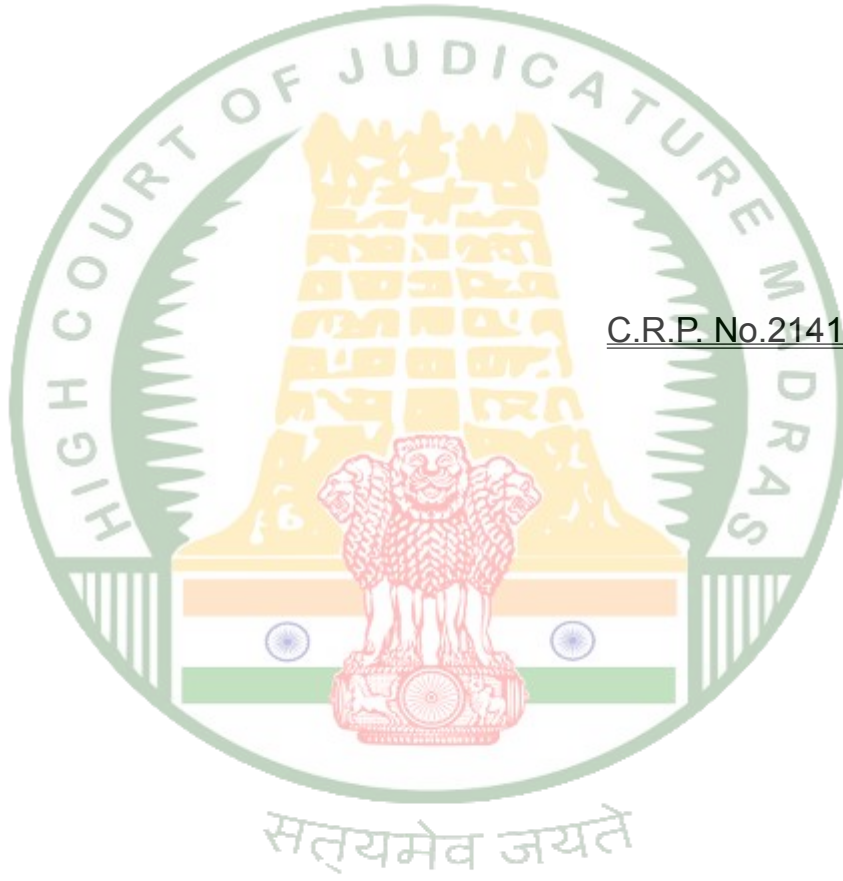


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ssd/sbn



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