



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.NO.2377 OF 2021

AND

C.M.P. NO. 18084 OF 2021

1. Kavitha

2. Minor. Suriya

3. Minor. Sanjana

... Petitioners/
Plaintiffs

Vs

1. Ravikumar

2. Sakunthala

3. Sukumar

4. Jothi

5. Jayanthi

6. Vasanthi

7. Kala

8. Mohan

... Respondents/
Defendants

PRAYER :

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order of return of plaint in O.S. No. 3 of 2020 dated 13.09.2021 and direct the Family Judge, Dharmapuri to taken up the plaint on file.

For Petitioners : Mr. V.Sakkarapani



O R D E R

This Petition is filed to set aside the order of return of plaint in O.S. No. 3 of 2020 dated 13.09.2021 and direct the Learned Family Judge, Dharmapuri to take up the plaint on file and pass orders.

2. The Learned Counsel for the Petitioners submitted that the Petitioners filed suit in O.S. No. 3 of 2020 against the Respondent for the relief of maintenance, permanent injunction and charge over the suit properties. The First Petitioner is the wife of the First Respondent. The Second and Third Petitioners are the children born to the First Petitioner and the First Respondent. The other Respondents are the brothers and sisters of the First Respondent. The suit properties are joint family properties of the Respondents. The First Respondent deserted the Petitioners and not paid any amount to maintain the Petitioners. Therefore, the suit was filed for the reliefs aforementioned. When the plaint was presented before the Learned Family Judge, Dharmapuri, the plaint was returned stating the following reasons:

"Due to pandemic period, Order passed today on advance hearing petition filed by petitioner. This court has no jurisdiction on the subject matter viz., Thirupathur. (jpUg;gj;Jhh;). Based AIR 1993 SC 2094 and AIR 1997 cal 202 where in it is held that "where the court has no jurisdiction over the subject-matter, it has to return the plaint."

The Petitioners re-presented the plaint by filing memo dated 15.09.2021. It is stated in the memo that as per Section 7 of Family Courts Act, the suit can be filed before the Family Court, Dharmapuri. It is also submitted that the Petitioners and the First Respondent are residing in Dharmapuri from 2009. Therefore, the Family Court, Dharmapuri has jurisdiction to maintain the suit. After perusing this return, the plaint was again returned stating that except the prayer 1, other prayers cannot be claimed in the Family Court, Dharmapuri. Drawing reference from Section 16 of the Civil Procedure Code, it was submitted that suit has to be filed where the subject matter is situated. One specific reason given for return of plaint is that the Petitioners claim charge over immovable properties. As per Section 16(c) of the Civil Procedure Code, the plaint has to be presented before the Court within whose jurisdiction property is situated. Challenging the said order, this Civil Revision Petition is filed.

3. Considered the submissions of the Learned Counsel for the Petitioners and perused the records.



4. Admittedly, the suit properties are situated in Thiruppur District. As per Section 16(c) of the Civil Procedure Code, the suit for sale or redemption in the case of a mortgage of or charge upon immovable property, the suit has to be filed in the Court within whose jurisdiction the subject matter of the suit is situated. Section 7 of the Family Courts Act deals with jurisdiction of Family Courts. The Family Courts while exercising jurisdiction is deemed to be the District Court in entertaining proceedings in the nature of challenging the marriage, restitution of conjugal rights, judicial separation or dissolution of marriage; etc., in the suit or proceeding between the parties to a marriage with respect to the properties of the parties or either of them. It is the submission of the Learned Counsel for the Petitioners that as per Section 7(c) of the Family Courts Act, the Family Court can entertain suit relating to property. There is no doubt that the Family Court can entertain suit under Section 7 of the Family Courts Act. The question is which Family Court, more specifically, the question before this Court is whether the Family Court, Dharmapuri or the Family Court, Thiruppur can entertain jurisdiction over the relief claimed in the plaint? As said earlier, the suit properties are situated in Thiruppur District. The Petitioners claimed the relief of creating charge over the immovable properties in Thiruppur District along with the relief of maintenance and other reliefs.

5. In the considered view of this Court, the Learned Family Judge, Dharmapuri is correct in returning the plaint for presenting it before the proper Court having jurisdiction. Thus, this Court finds no reason to interfere with the order of the Learned Family Judge, Dharmapuri. Hence, the order of the Learned Family Judge, Dharmapuri passed in O.S. No. 3 of 2020 is confirmed. The Petitioners are directed to present the plaint before the proper Court having jurisdiction within 30 days from the date of receipt of a copy of this order. The Registry is directed to return the original plaint filed along with this Civil Revision Petition to the Petitioners.

6. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Judge Family Court,
Dharmapuri.

Copy To

The Section Officer,
ER Section, High Court,
Madras.

+1cc to Mr. V.Sakkarapani, Advocate, S.R.No.56469

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and
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KG (CO)
PM/02/12/2021