



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2021

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WEB COPY

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.R.P (MD)No.392 of 2021

K.Mohamed Zakkariah

... Petitioner/Plaintiff

Vs.

- 1.The Public Works Department
represented by its Chief Engineer,
Water Resources Organisation
Periyar-Vaigai Basin Sub Division-I, Madurai-625002.
- 2.The Assistant Engineer,
Public Works Department,
Water Resources Organisation,
Irrigation Section No.II,
Periyar-Vaigai Basin, Sub Division-I, Madurai-625002.
- 3.The Junior Engineer,
Public Works Department,
Water resources Organisation,
Irrigation Section No-II,
Periyar-Vaigai Basin, Sub Division-I, Madurai-625002.
- 4.The District Collector,
Madurai District,
Gandhi Nagar, Madurai-625020.

... Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Docket Order dated 12.08.2020 passed in unnumbered O.S.No. of 2020 on the file of the learned Principal Sub Judge, Madurai and further direct the learned Principal Sub Judge, Madurai to number the civil suit.

For petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.J.Gunaseelan Muthaiah,
Additional Government Pleader.

ORDER

This Civil Revision Petition has been filed to set aside the Docket Order dated 12.08.2020 passed in unnumbered O.S.No. of 2020 on the file of the learned Principal Sub Judge, Madurai and number the same.

2.The learned counsel for the petitioner would state that the
<https://hcservices.ecourts.gov.in/hcservices/>



petitioner/plaintiff filed the above unnumbered suit for declaration and permanent injunction in respect of the suit property. He would further state that the trial Court on erroneous appreciation of the plaintiff averments, returned the plaint stating that the plaintiff encroached the water body as such, the suit is not maintainable, in view of the judgment reported in **2015 WLR 1029** in a case of **TK Shanmugam Vs. State of Tamilnadu and others**. He would also state that the question of maintainability can be framed as a preliminary issue after numbering the suit and without doing so, returning the plaint questioning the merits of the case, is arbitrary. Thus, he would pray for setting aside the impugned order.

3. Heard the learned counsel for the petitioner.

4. Perusal of record shows that the learned Judge has returned the plaint questioning the maintainability of the suit. While numbering the suit, the learned Judge has to see whether the plaint satisfies the ingredients set out under Order 7 Rule 1 of the Civil Procedure Code which reads as follows:-

'1. Particulars to be contained in plaint.--- The plaint shall contain the following particulars ---

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect, and in the case of a minor, a statement regarding his age to the best of the knowledge and belief of the person verifying the plaint;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaint claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject matter of the suit for the purpose of jurisdiction and of court-fees, so far as the case admits.

Provided that, where owing to the large number of defendants or any other sufficient reason, it is not practicable to ascertain with reasonable accuracy the age of the minor defendant, it may be stated that the age of the minor defendant is not known.'

5. If the ingredients under Order 7 Rule 1 of the Civil Procedure Code are satisfied on the face of the plaint as stated by



the plaintiff, then the plaint has to be numbered and proceeded in the manner known to law. The plaint cannot be returned questioning the merits of the case.

6. Therefore, the learned Principal Sub Judge, Madurai, is directed to number the suit and take the plaint on file and dispose of the same in accordance with law.

7. With the above direction, this Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

gns

Note: 1. Registry is directed to return the original plaint (unnumbered) in OS.SR.No. Of 2020 to the counsel for the petitioner after getting attesting copies of same.

2. In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To
The Principal Sub Court, Madurai.

Copy to

The Section Officer,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.SPL GP (SR-9681[F] dated 09/03/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-9545[F] dated 09/03/2021)

C.R.P(MD)No.392 of 2021

CN(21.06.2021) 3P 6C