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CRP(MD) Nos.915, 943, 967, 991 & 330 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 22.02.2021

Judgment Pronounced on : 16.07.2021

CORAM:

The Hon`ble Mr.Justice N.SESHASAYEE

CRP(MD) Nos.915, 943, 967, 991 & 330 of 2020

1.Selvaraj		Petitioner in CRP.(MD)No.915/2020
2.Revathi		Petitioner in CRP.(MD)No.943/2020
3.Thaibabanu		Petitioner in CRP.(MD)No.967/2020
4.A.Amutha		Petitioner in CRP.(MD)No.991/2020
5.Ayyanar		Petitioner in CRP.(MD)No.330/2020

Vs.

1.Koodankulam Nuclear Power Plant India Limited Represented through its Project Director Koodankulam, Ramanathapuram Taluk Tirunelveli District.	... Sole Respondent in CRP.(MD)No.915/2020
2.Seethai Kasi	... 1 st Respondent in CRP.(MD)No.943/2020
3.Sudhakar	... 2 nd Respondent in CRP.(MD)No.943/2020
4.The State of Tamil Nadu Through its Thoothukudi District Collector Thoothukudi.	... 3 rd Respondent in CRP.(MD)No.943/2020
5.The Tahsildar Thoothukudi Taluk, Thoothukudi.	... 4 th Respondent in CRP.(MD)No.943/2020
6.Shahul Proprietor of Kasim Textiles Textiles D.No.214, East Veli Street Puliyankulam, Silaiman Madurai - 625 012.	... 1 st Respondent in CRP.(MD)No.967/2020
7.Sekar Proprietor of Anitha Weaving Mill D.No.145, F6 West Car Street Thiruchengode - 637 211 Namakkal District.	... 2 nd Respondent in CRP.(MD)No.967/2020
8.Sivakumar Proprietor of Deiva Lakshmi Textiles D.No.DF499, Avinashi Road Vanchipalayam Tiruppur - 641 663.	... 3 rd Respondent in CRP.(MD)No.967/2020

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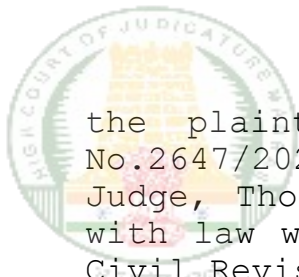


- 9.Arusamy Sivaraj
Proprietor of Nidhie Weaving Mill
D.No.389/2, Chettipalayam Road
Palladam
Tiruppur - 641 664. ... 4th Respondent in CRP.(MD)No.967/2020
- 10.Sekar
Proprietor of Srijayam Knits
D.No.2/1083, NVVB Layout
Andipalayam
Tiruppur - 641 687. ... 5th Respondent in CRP.(MD)No.967/2020
- 11.Thirupathy
Proprietor of Suthan Textiles
D.No.167, SIDCO, Kappalaur
Madurai - 625 008. ... 6th Respondent in CRP.(MD)No.967/2020
- 12.Ramalingam
Proprietor of Rani Textiles
Plot No.525, APIC Growth Centre
Kulapalli Village, Madipadu Region
Ongal - 523 211
Prakasam District
Andhra Pradesh State. ... 7th Respondent in CRP.(MD)No.967/2020
- 13.Karthik
Proprietor of Rasi Vinayaga Mills
D.No.2/121-17, Murugan Palayam
Vanchipalayam
Tiruppur - 641 663. ... 8th Respondent in CRP.(MD)No.967/2020
- 14.I.Murugan @ Agasthilingam
... 1st Respondent in CRP.(MD)No.991/2020
- 15.Usha Rani
... 2nd Respondent in CRP.(MD)No.991/2020
- 16.Meera
... 3rd Respondent in CRP.(MD)No.991/2020
- 17.Athilakshmi
... Sole Respondent in CRP.(MD)No.330/2020

Prayer in CRP(MD).No.915 of 2020 : Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Sub Court, Vallioor to number the plaint in Un-numbered O.S.No.... of 2019 [Filing No.OS/867/2019 (CNR.No.TNTL070008492019)] on the file of the Sub Court, Vallioor.

Prayer in CRP(MD).No.943 of 2020 : Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Principal District Judge, Thoothukudi, to take on file and number

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the plaint in Un-numbered O.S.No.... of 2020 pending in file No.2647/2020 dated 03.09.2020 on the file of the Principal District Judge, Thoothukudi, and to decide the same on merits in accordance with law within a time frame fixed by this Court, by allowing this Civil Revision Petition.

Prayer in CRP(MD).No.967 of 2020 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Return order dated 20.11.2020 passed by the Principal District Munsif Court, Thirumangalam in unnumbered O.S.S.R.No.4611 of 2020, and to direct the Principal District Munsif Court, Thirumangalam to number the said Original Suit.

Prayer in CRP(MD).No.991 of 2020 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 27.08.2020 passed in Un-numbered Suit in C.F.No.129 of 2020 on the file of the District Munsif-cum-Judicial Magistrate Court , Bhoothapandy, by allowing this Civil Revision Petition.

Prayer in CRP(MD).No.330 of 2020 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 07.01.2020 passed by the District Munsif Court, Melur in unnumbered O.S.No..... of 2020 and to number the plaint within a time frame as fixed by this Court and decide the same on merits in accordance with law.

For Petitioners : Mr.D.Nallathambi
(in both CRP (MD) No.915 &991/2020)

Mr.G.Prabhu Rajadurai
(in CRP (MD) No.943/2020)

Mr.R.Gowri Shankar
(in CRP (MD) No.967/2020)

Mr.S.A.Ajmal Khan
(in CRP (MD) No.330/2020)

Amicus Curiea : Mr.V.Lakshminarayanan,
Mr. Shankar Murali & Mr.J.Barathan

COMMON ORDER

1.1 This batch of cases and many more of like variety that oft frequent this Court with, what has now become a familiar grievance and have a common complaint:

- When a plaint is presented before the Registry on the Original Side of the District Judiciary, the Registry while scrutinizing



it for evaluating its merit for registration, raises baffling if not mindless objections, most of which may be relevant only for final adjudication and not for registering the plaint. And these objections eventually bear the signature of the judicial officer concerned and hence they become the Court's objections.

- Secondly, that plaints are repeatedly returned for curing defects, with the Registry/Court raising its objections in installments.
- That a plaint is not taken up for scrutiny for weeks or months, and is neither taken on file, nor returned for weeks to months on end. (Even in this batch there was a CRP(PD) 943/2020 which made a complaint falling in this variety)

1.2 It requires no more than invoking the maxim '*res ipsa loquitor*' to explain the inconvenience which the Registry and Courts might be creating for the litigants or their counsel. Are not such instances obstructive of right to access justice? Does it not then reflect an element of apathy or plain insensitivity in certain quarters of the District Judiciary? This Court consciously avoids a tempting-drift to waste its efforts in a pointless endeavour to fix the blame, as it realizes that there is a greater responsibility and a marked need to provide the correctives.

2. Before embarking to deal with the larger issue, let the facts of each of the cases in this batch that provided the cause for this Court to do what it proposes to do be introduced:

A. CRP(MD) 915 of 2020:

The grievance of the petitioner here is that his plaint was assigned a Diary No OS.SR 867/2019, but has not been registered as a suit. The prayer in the plaint is for recovery of a block of land measuring 2.44 acres in Sy.No:218/2A plus a bore well and couple of buildings. The defendant shown in the plaint was Koodankulam Atomic Energy India Ltd. The pleaded cause of action for the suit is that while the lands adjacent to the suit property were acquired for the purposes associated with the Koodankulam Atomic Energy project, the suit property was not included in the acquisition. It further states that part of S.No:218/2 was acquired, and on acquisition the survey field for the acquired portion was sub-divided into S.No:218/2B, whereas the portion not acquired was assigned S.No:218/2A. However, while issuing patta to the defendant, S.No:218/2A was also included. In the said circumstances, the petitioner had instituted O.S.89/2015 seeking a declaration of his title to the property in Sy. No.218/2A. However, there appeared to have crept an error in providing the correct survey number. Therefore, I.A.2/2019 was filed to amend the plaint. During the pendency of this petition, the petitioner was forcibly evicted from Sy. No 218/2A and a compound wall too has been constructed. Hence, the petitioner had filed a suit under Sec.6 of



the Specific Relief Act. On 21-08-2019, the plaint was returned. The grounds of return are:

- "1.How the suit against the land acquisition proceeding is respect of public project is maintainable in law?*
- 2.As per the plaint records, a suit for declaration of title and permanent injunction was filed before the PDM, Valliyoor and pending in O.S.No.89/2015. Hence, how the suit between the same parties with regard to very same property is maintainable in law to be explored.*
- 3.As per the plaint, annexed document No.7, patta, property is belonged to the defendant by way of land acquisition proceedings. Hence, how the suit is maintainable to be explored.*
- 4.Clean copy to be filed.*

Hence, returned. Time two months."

The petitioner has answered each of these grounds. Now it was again returned. The grounds are:

- "1.Previous return endorsement dated 21.08.2015 is still holds good.*
- 2.As per Section 6 of the Specific Relief Act, no suit under Section 6 of the Act, shall be brought against the ground [Section 6 (2) (b) of the Specific Relief Act]. Hence, the plaint is returned. Time two months."*

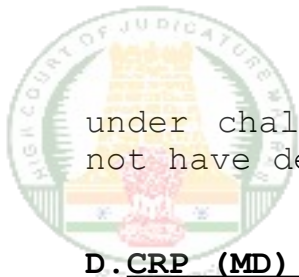
Evidently the second ground mentioned in the second return was not there in the first. This is now under challenge.

B. CRP(MD) No.943 of 2020 :

In this case, the plaint presented on 31-08-2020, but, it was neither registered nor returned for about two months.

C.CRP (MD) No: 991 of 2020:

In this case, petitioner had instituted O.S.201/2019 before the Principal District Court, Kanyakumari at Nagercoil, for recovery of money based on a promissory note coupled with an acknowledgement of debt. Subsequently, the petitioner presented a plaint against the same defendant before the Judicial Magistrate cum District Munsiff Court, Bhoothapandi, for a declaratory decree that some six cheques issued by the petitioner/plaintiff was not supported by consideration, and also for an ancillary relief of prohibitory injunction that the defendant should be restrained from encashing some six cheques issued by him (the plaintiff). This plaint was returned on grounds of maintainability. Relying on Sec.41(b) of the Specific Relief Act, the Court vide its speaking order dated 27-08-2020, had returned the plaint on grounds of maintainability. This is



under challenge, mainly on the ground that the trial court should not have decided the suit even before numbering it.

D. CRP (MD) 967 of 2020:

The petitioner herein presented a plaint before the Principal District Munsif Court, Thirumangalam, which was received by the Registry of the Court on 05-11-2020 in O.S.SR No4159 of 2020. The prayer sought in the suit was for a bare injunction that the defendants be restrained from recovering certain amounts borne of a commercial transaction by any means other than by the due process of law. This plaint was returned for correcting some formal defects. After curing those defects, the plaint was re-presented, but it was now returned when the Court raised a maintainability issue since the prayer was one under Sec 41(d) of the Specific Relief Act. The petitioner's counsel offered his explanation and re-presented it again. On 11-11-2020, it was again returned, but now on the ground that the defects mentioned in the earlier instance was not complied. Petitioner's advocate had endorsed that all defects are cured on the same day. But on 20-11-2020, the plaint was again returned on the following grounds:

"(i) Since the prayer claimed is barred u/sec 41(d) of the Specific Relief Act, how this suit is maintainable?

(ii) Injunction relief can be claimed in respect of properties. How this injunction suit is maintainable as against the defendants in their personal capacity? Explain."

This return has prompted the petitioner to approach this Court.

E. CRP (MD) 330 of 2020:

A plaint was presented seeking declaration of title to the suit property. The cause of action for the suit is founded on the allegation that out of a plot of 9 cents, the middle three cents were allotted to the share of petitioner's grandfather in a partition, and that a patta was fraudulently obtained by the allottee of the remaining 6 cents. Plaintiff has further alleged that the defendant in the suit claims that he had purchased the entire 9 cents based on a sale deed dated 29-01-1971 from the descendants of the allottee of the 6 cents, and therefore, pleaded that the sale deed is fraudulent. The learned District Munsiff rejected the plaint Vide an elaborate 14 paged order. He has reasoned that the suit is not maintainable under Order VII Rule 11 (d) CPC on the ground that the suit for declaration of the sale deed dated 29-01-1971 as being invalid is barred by limitation, since the petitioner has not given the date of his knowledge of the alleged fraud.



A Prelude:

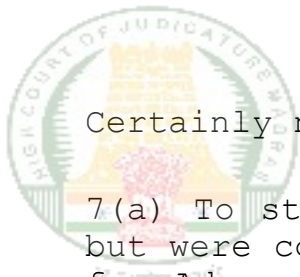
3. The grievances are what are stated in the opening paragraph. The immediate consequence of these practices carries with it the grim potentiality of defeating the very purpose of filing the suit, and putting serious obstacles in the path of access to justice.

4. While the cause of action to bring an action at law belongs to the plaintiff, the rights and the remedies attached to its violation belong to the substantive law. The pursuit of justice however, goes through a procedural process, and this is statutorily governed Vide a century old Civil Procedure Code. *Stricto senso*, the procedural aspect of registering the plaint must be, and at all times, ought to be uniform. If all those who are enjoined with the responsibility of registering the plaint understand the procedure involved in the same way, then there is little reason for its differential-application. Is there then a differential understanding of the procedure in a wrong way?

5. Have some of our Courts become a guardian of any procedure that they author, or guardian of the rights of the citizens? If these Courts believe that they are there to uphold the rights, is it not then intriguing how the purpose will be achieved when litigants are denied even entry into the legal system? Does all the investment which the Judicial Academy has been making for updating and upgrading the level of legal awareness of the District Judiciary yield only less than optimum results? Or, is there an attitudinal problem with a section of our District Judiciary?

6.1 Here, there is a need to distinguish an erroneous order borne of right approach, and the quality of approach adopted itself. Though this Court is only expected to test the justifiability of the orders of the trial court in this batch of revision petitions, since the cases falling under this genre generally fall under the latter category - a product of wrong approach, it has become imperative for this Court to expand the scope of its Order. This is essential for bringing in uniformity in the practice, and to cut down on the arbitrariness in scrutinizing the plaint for its registration.

6.2 Therefore, in the 113th year of the Code of Civil Procedure Code, 1908, this Court, in its 159th year of its existence, has taken upon itself the responsibility of providing a checklist for the Registry of the District Judiciary on what it may do, or refrain from doing while scrutinizing the plaint. To declare this aspect of law is not just part of the judicial power of this Court but is part of its constitutional duty under Article 227 of the Constitution.



Certainly not a moment of pride, but of pain and sombre reflection.

7(a) To start with all these cases were listed on different dates, but were consolidated to investigate the pathology of the malaise. A few Advocates, who had logged on to the virtual Court, (for other cases where they have been engaged) joined the issue and made a joint statement: that access to justice in the original side finds its greatest obstacle at the Registry of the District Judiciary. Of them Mr. V. Lakshminarayanan (from Chennai), Mr. Murali Shankar (from Tiruchirappalli) and Mr. J. Bharathan (of Madurai) deserve special mention. They were appointed as Amicus Curiae. This Court records its appreciation for the assistance of the learned Advocates.

7(b) Mr. Lakshminarayanan collected some data from various northern districts which come under the direct jurisdiction of the Principal seat of this Court, whereas others presented the state of affairs in the districts that fall under the jurisdiction of this Bench. There is a grand unanimity in their submissions. They argued that to have a plaint converted into a suit forms the first of the ten chambers of Access to Justice (a la the movie *36 Chambers of Shaolin*), and the process is least litigant friendly, and the approach very often strikes an appalling discordance with the procedure.

8. The bedrock of our civil justice system rests on the maxim '*Ubi jus ibi remedium*'. A legally enforceable right, when violated, or when faced with a threat of violation is remediable in law. Section 9 of the Code is but a statutory expression or a manifestation of this maxim, which has recognised the right of any litigant to approach a civil court to seek a remedy in vindication of violation to any civil right. In **Ganga Bai v. Vijay Kumar** [(1974) 2 SCC 393], the Supreme Court declared it thus:

"15.There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous the claim, that the law confers no such right to sue. **A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit.** (emphasis supplied)

An adjudicatory mechanism for the redressal of the grievances of a citizen is an integral facet of the principle of access to justice which, the Supreme Court in **Anita Kushwaha v Pushap Sudan** [(2016) 8 SCC 509], has declared as a facet of right to life guaranteed under Article 21 of the Constitution. The Court observed:



"One of the most fundamental requirements for providing to the citizens access to justice is to set up an adjudicatory mechanism whether described as a court, tribunal, commission or authority or called by any other name whatsoever, where a citizen can agitate his grievance and seek adjudication of what he may perceive as a breach of his right by another citizen or by the State or any one of its instrumentalities. In order that the right of a citizen to access justice is protected, the mechanism so provided must not only be effective but must also be just, fair and objective in its approach. So also the procedure which the court, tribunal or authority may adopt for adjudication, must, in itself be just and fair and in keeping with the well-recognised principles of natural justice."

9. The right belongs to the litigant and not to the Court. Its violation also belongs to the realm beyond the domain of the Courts. In a litigation situation, the Courts play their role (a) either to facilitate its settlement; or (b) to adjudicate on the rights and violation complained of wherever a suit defies the prospects of a settlement. However, the resolution of a dispute either through a Court-initiated-process of settlement, or through a process of adjudication is achievable only if the litigant is given access to the Courts. Here the trial Courts need to understand the dichotomy between its adjudicatory role and the need to negotiate procedure in aid of its duty to adjudicate. Scrutinizing a plaint for the purpose of registering it as a suit belongs solely to the realm of procedure.

10. Thiru V. Lakshminarayan, in his submissions, laid emphasis in bringing out the distinction between the adjudicatory jurisdiction of the Court and the duty of the Court in aiding access to justice, and backed his submissions with several authorities, which would be alluded to heretofore. He submitted:

a) The process of converting a plaint into a suit is fundamentally part of the administrative or ministerial act of the Court, as dictated by the procedural law. No adjudication is involved, nor should it be involved when a plaint is presented at the point of entry into the legal system. Hence, during scrutiny of plaints for registration, the Courts should not wear the cap which it might wear while engaged in a judicial act of adjudication.

b) Secondly, when a plaint is presented for its compliance with the procedural law, the Courts can neither ignore the procedural prescription, nor can they fashion their own procedural requirements *dehors* the minimum requirements of the



Code and add them. Consequently, the Courts do not have any power to return the plaint except under the circumstances set out under Order VII Rule 10 CPC. He added:

- When a plaint, or, any original petition is presented, during scrutiny, the Registry should not "act" as a defendant/ respondent, and raise objections, which a defendant/respondent might take after entering appearance.
- Matters pertaining to judicial adjudication, which is to mean, any finding which the Court may be called upon to enter on the merits of the cause of action cannot be advanced when the plaint is merely taken up for scrutiny by the Registry-Court combine. For convenience even a check list of formal defects, not indicating a possible line of defense, nor requiring evidence in proof of the cause of action, may be made available in order that procedural consistency may be established across the State. This will also infuse an element of predictability for both the Advocates and the litigant, and eschew arbitrariness, besides curbing the temptation to engage in certain other unhealthy practices.
- The Registry, should not have power to return the plaint multiple times, inventing newer grounds for each successive return. In other words, a plaint or original petition may be returned only once, and where anything is omitted to be done at the first instance, the power of the Registry to return the plaint again shall be foreclosed.
- When a plaint or an original petition is filed as an emergent case, it is generally taken up for scrutiny on the same day. However, when a plaint is not filed as an emergent case, they are taken up for scrutiny without any outer time limit. An outer time-limit must be prescribed.
- Issues impinging upon the right to sue, cause of action, interpretation of law, genealogy of parties, relationship of parties, rights and liabilities of parties etc., cannot be made grounds of return.
- The Registry shall not insist that the Advocates/litigants to recast the reliefs. It is the exclusive domain of the Advocates/litigants, and their freedom at the point of presenting the plaint or original petition is absolute, and it is for the Court to grant it or deny it after an adjudicatory process, but not at the stage when the plaint is scrutinized for registration. Neither the Registry nor the Court may direct what relief must be sought or how it must be framed.
- As to the valuation of the plaint for the purpose of Court fee, say for instance, whether a suit must be valued under Sec.25(d) of the Tamil Nadu Court Fee and Suit Valuation Act, or under Sec.40 of the Act is essentially a judicial



function and it cannot be delegated to the Registry.

11.1 Concurring substantially with Mr. Lakshminarayanan, Mr. Shankar Murali, also an Amicus Curiea, submitted that he differs from the former only on the aspect of suit valuation and court fee. He submitted that under Sec.12 of the T.N. Suit Valuation and Court Fee Act, 1955, the question touching upon the payment of proper Court Fee on the plaint ought to be decided prior to its registration and it cannot be done post registration of the plaint as a suit. He lamented that notwithstanding the fact that under Order VII Rule 1 to 9 of the CPC, read with Sec12 of the T.N. Court Fees and Suit Valuation Act, which make explicit the procedural requirements of what the Registry ought to consider while scrutinizing a plaint, Registries across the State engage themselves in generous breach of these provisions by supplementing their own requirements.

11.2 Thiru.Bharathan (Amicus Curiea), for his part catalogued the particular instances on the basis of the data he has collected, all of which fall under any one of the categories indicated in paragraph 1.1.

12. The other learned counsel who appeared for the petitioners, besides making specific submissions on their respective cases, have also listed certain extra-statutory grounds on which plaints are returned. They include: (a) Demanding the proof of any genealogy wherever the plaintiff has detailed it; (b) Insisting on production of Original Title Deed where the property is ancestral from time immemorial, or where the Original Title Deeds are not in physical custody; (c) Insisting on an expert valuation report for the subject matter of the suit to ascertain the valuation; (d) Forcing corrections to the reliefs sought for etc.,

The Discussion:

13. An aspect that echoed more during the hearing was the sentiment that the Registries of several Courts in the District Judiciary behave more like a defendant/respondent when they take up a plaint, or an original petition for scrutiny. And, there is a feeble, yet adequately audible indication that the registry of the District Judiciary across the State is arbitrary, and that its procedure varies with the of the particular views of the Presiding Officer and the Chief Ministerial Officer, no matter that the procedure statutorily prescribed remain the same.

14. Order IV Rule 1 provides for institution of a suit. It reads:

1. Suit to be commenced by plaint

(1) Every suit shall be instituted by presenting a 1[plaint in Court] to the Court] or such officer as it appoints



in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

(3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2).

Order VI *inter alia* states broadly what the pleadings in general shall contain, and Order VII prescribes what a plaint in particular shall state. In the context of registering the plaint, the concern raised is not what the plaint shall contain, but how far the Court should filter the plaint for the extent of its conformity with Order IV Rule 1. And, Order IV does not list the same.

15. Every right recognized in law, when violated, requires to be remedied. But between the right-violation and its vindication, a suitor must travel a grueling journey through the labyrinthine procedure. This journey is inescapable and unavoidable, yet it should not be rendered harder than a hunt for 'Mackenna's Gold.' The Courts, being sentinels on the qui vive, should not risk missing the wood for the trees. Any belief by any Judge that 'my job is to adjudicate, and hence I will adjudicate whatever that is brought before me', is a horrendous misconception in understanding the role of the Court.

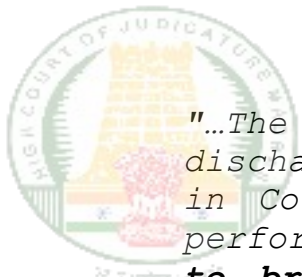
16. This now brings in the need to differentiate a judicial act from an administrative act that the Courts perform, something on which Thiru. Lakshminarayanan, Advocate laid considerable emphasis. According to him, a proper grounding on this distinction is indispensable for handling the rights-violation situation governed by the substantive law, and registering a plaint governed by the procedural law.

Registration of Plaint - A Ministerial Act:

17. One of the early cases, in **Regina (John M'Evoy) Vs Dublin Corporation**, [(1872) 2 L.R. Irish 371], May C.J., declared what qualifies for an act of the Court to be termed as a judicial act. The learned Chief Justice observed:

*"The term "judicial" does not necessarily mean acts of a judge or legal tribunal sitting for the determination of matters of law, but for the purpose of this question a **judicial act seems to be an act done by competent authority, upon consideration of facts and circumstances and imposing liability or affecting the rights of others.**"*

In **Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson** [(1902) (1) QB 431], Lopes, LJ observed :



"...The word 'judicial' has two meanings. It may refer to the discharge of duties exercisable by a Judge or by Justices in Court or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind, that is, a mind to determine what is fair and just in respect of the matters under consideration." (emphasis supplied)

In **Attorney General of Gambia v. Pierre Sarr N' Jie**[(1961) A.C. 617 (633)], the Judicial Committee of the Privy Council decided that if the order is capable of being appealed against, then it should be treated as an exercise of Judicial Power. In **R.M. Seshadri vs Second Addl. Income-Tax Officer**, [AIR 1954 Mad 806 (DB)= [1954] 25 I.T.R. 400 (Mad)], while differentiating a Tribunal and a Court, this Court held:

"9. The decisions of Courts are arrived at usually by the application of objective standards which are fixed, i.e., **in accordance with the principles of procedure and the mode of taking evidence in the manner laid down by the Evidence Act**". (emphasis supplied)

18. A rule of thumb that distinguishes the adjudicatory/judicial act of the court from its administrative/ministerial act is that the former always requires an application of judicial mind where the Court is required to understand the contents of the plaint on a plane of law, whereas the administrative/ministerial act of scrutinizing the plaint does not require any elaborate distillation of fact-finding. For some of the judicial pronouncements which reflect the idea that numbering a plaint or an application is only a ministerial act, see: **P. Surendran Vs State by Inspector of Police** [(2019) 9 SCC 154 : 2019SCC Online SC 507], **K. Venkatesan Vs E. Hemantharaj** [CDJ 2016MHC 5629 : 2016 SCCOnline 9462], **G. V. Vanitha & Others Vs K. Dhanasekaran & Others** [2016 (5) CTC 329], **M. Ramachandran Vs M. Palani** [CRP(PD)2207 of 2016, dated 28-11-2018], **M. Rajendran Vs Government of India** [(2020) 5 MLJ 766], and **Srinivasan alias Balaji Vs Jayalakshmi Vs Vidhya** [2001-2- LW 527].

Return of Plaint - Role of the Court:

19. There is a clear distinction in law between "presentation of a plaint" and "institution of a suit" and this was brought out by a Division Bench of this Court in **Olympic Cards Limited Vs Standard Chartered Bank**, [(2013) 1 LW 385], wherein it has observed as follows:



"Rule (1) of Order IV of C.P.C. provided for institution of suits. Rules 3 and 4 of Order IV contains the statutory prescription that the plaint must comply with the essential requirements of a valid plaint and then only the process of filing would culminate in the registration of a suit. Rule 21 of Civil Rules of Practice contains the basic difference between presentation and institution. There is no dispute that the date of filing the plaint would be counted for the purpose of limitation. However, that does not mean that the suit was validly instituted by filing the plaint. The plaint, which does not comply with the rules contained in Order VI and VII, is not a valid plaint. The Court will initially give a Diary Number indicating the presentation of suit. In case the plaint is returned, it would remain as a "returned plaint" and not a "returned suit". The act of numbering the plaint and inclusion in the Register of Suits alone would constitute the institution of suit. The stages prior to the registration of suit are all preliminary in nature. The return of plaint before registration is for the purpose of complying with certain defects pointed out by the Court. The further procedure after admitting of the plaint is indicated in Rule 9 of Order VII. This provision shows that the Court would issue summons to the parties after admitting the plaint and registering the suit. Thereafter only the defendants are coming on record, exception being their appearance by lodging caveat. Even after admitting the plaint, the Court can return the plaint on the ground of jurisdiction under Rule 10 of Order VII of C.P.C. The fact that the plaintiff/petitioner served the defendant/respondent the copies of plaint/petitions before filing the suit/petition would not amount to institution of suit/filing petition. It is only when the Court admits the plaint, register it and enter it in the suit register, it can be said that the suit is validly instituted."

The procedure involved in vetting a plaint for numbering in the pre-registration stage, in terms of the above passage, must be considered only as a preliminary stage. And, for curing defects at that stage a plaint can be returned and this is part of the activities of the preliminary stage. The point however, is how far can the Court/Registry stretch the process for vetting the plaint for defects during the preliminary stage? Is it then permissible for the Court to employ all or any of the tools it has in its forensic kit which may find utility only during its adjudicatory process - the judicial act, in the preliminary stage of vetting the plaint for registration? In **Fathima Vs Rahamatullah & Others** [2021(1) CTC 499], this Court had an occasion to observe that Courts are doctors of bleeding rights. Would it be appropriate for a doctor to decide



on the course of treatment or to refuse treatment even before a patient registers him/her as a patient? This will apply in equal measure to Courts and their Registries while scrutinizing the plaint for its registration as a suit.

20. When the Code has set out the parameters, no Court shall overstep the procedural prescription. After all, law of procedure is a handmaid of justice, and a rule book of fairness with inherent flexibility and elasticity. Its object is to aid the furtherance of justice and not to impede it. (See: ***P.Suresh Vs R. Rangasamy and others*** [2021(1) CTC 320]. Substantive rights are building blocks and the procedure may be understood as masonry. A bad handling of the masonry has the ability to spoil the construction, irrespective of the quality of materials available. Therefore, it now depends a lot on how a judge chooses to handle the procedure. The choice before the Court are just two: (a) serving the cause of justice according to procedure; and (b) serving the procedure.

Understanding the Procedure:

21. As outlined earlier, though Order IV Rule 1 deals with institution of suit, it does not say no more than declaring that the plaint shall conform to Order VI and Order VII to the extent required. And, it has been noted that numbering a plaint is a ministerial act performed at the preliminary stage before registering a plaint.

22. Turning to procedure per se, the Code chiefly provides only two provisions: One under Order VII Rule 10 for return of a plaint for want of pecuniary or territorial jurisdiction, and the other is Rule 11 which provides for rejection of plaint on certain grounds. In ***Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy***, [(2018) 14 SCC 1], the Supreme Court clarified this point when it observed

"24. Ordinarily, an application for rejection of election petition in limine, purportedly under Order 7 Rule 11 for non-disclosure of cause of action, ought to proceed at the threshold. For, it has to be considered only on the basis of institutional defects in the election petition in reference to the grounds specified in clauses (a) to (f) of Rule 11. Indeed, non-disclosure of cause of action is covered by clause (a) therein. Concededly, Order 7 CPC generally deals with the institution of a plaint. It delineates the requirements regarding the particulars to be contained in the plaint, relief to be specifically stated, for relief to be founded on separate grounds, procedure on admitting plaint, and includes return of plaint. The rejection of plaint follows the procedure on admitting



plaint or even before admitting the same, if the court on presentation of the plaint is of the view that the same does not fulfil the statutory and institutional requirements referred to in clauses (a) to (f) of Rule 11.

The power bestowed in the court in terms of Rule 11 may also be exercised by the court on a formal application moved by the defendant after being served with the summons to appear before the Court. Be that as it may, the application under Order 7 Rule 11 deserves consideration at the threshold." (emphasis supplied)

This would now imply that the trial Court has the power to reject the plaint even at the pre-registration stage. Still, not all the limbs of Order VII Rule 11 of the Code can be exercised by the Court on its own motion at a stage prior to the numbering/registration of a plaint. For instance, a plaint can be rejected under Order VII Rule 11(f) if the plaintiff fails to comply with Order VII Rule 9 which requires him to file adequate copies of the plaint as there are defendants within 7 days from the date of ordering summons on the defendant. The order directing issuance of summons is obviously, as stated in Order VII Rule 9, can be made only after the plaint is admitted and registered as a suit. Therefore, notwithstanding the availability of the power to reject the plaint before its numbering, still rejection under Order VII Rule 11(f) cannot apply at that stage.

23. The dictum in **Madiraju Venkata Ramana Raju case**, [(2018) 14 SCC 1] however, does not deal with how the Courts ought to exercise the power of rejection of plaint at the preliminary/preregistration stage, or what may weigh with it at that stage when the courts engage only in the ministerial act of scrutinizing the plaint. Now, it is one thing for the Court to reject the plaint at the instance of the defendant upon registration of the suit, and it is another thing for the court to reject the plaint at the preliminary stage during the preregistration stage. In **Hindustan Petroleum Corporation v C.M Hariraj** [2002-3-LW 476], this Court held that the trial court, at the numbering stage, cannot test the correctness of the existence or otherwise of a cause of action and reject a plaint under Order VII Rule 11(a) even prior to its numbering. The Court observed:

"The question whether there is any cause of action or not can be ultimately decided only after issue of notice to the other side and the Court cannot act as a spokesman of the defendants."



Given the scheme of the Code, this observation stands to reason, since a defendant has an option to admit the allegations in the plaint either under Order X, or in the course of any procedure contemplated under Sec.89 CPC or when notice to admit is served on him under Order XII, or while answering any interrogatories served on him under Order XI Rule 1, or even during trial. The Court and its Registry need to be aware about this possibility, and may not hold a brief for the defendant at the preliminary stage when it is expected to discharge only the ministerial function of scrutinizing the plaint for its merit for registering it as a suit.

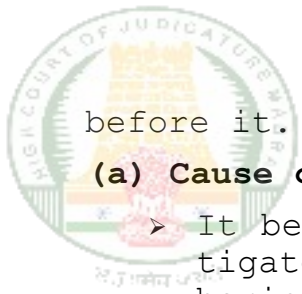
24.1 Therefore, it may be stated as a general rule that the Courts, at the preregistration stage of the plaint, should confine the scope of its scrutiny to the barest minimum which a ministerial act may require. It does not call for any serious application of mind because the defendant is still not before the Court, and with no evidence before it there is nothing to adjudicate either.

24.2 When in doubt, it may be advisable for the Court to register the plaint, which only enables procedural flexibility in registering a plaint without deciding on the right of the plaintiff. The anxiety of the Code to preserve a suit can be gathered from the fact that it treats only an order rejecting a plaint as a decree, but not an order dismissing a prayer for its rejection.

Exceptions:

25. There is however, one exception: Deciding if the suit is maintainable at the preliminary stage while numbering the suit. This is required under Order VII Rule 1(f). And it pertains to a statement on jurisdiction. Jurisdiction, in the context, has to be understood as (a) inherent jurisdiction of the Court to take cognizance of a dispute brought before it through a plaint; (b) territorial and pecuniary jurisdiction; (c) absence of cause of action; and (d) limitation. Least complicated of them is ascertaining territorial and pecuniary jurisdiction and it does not require a discussion.

26. Sec.9 of the CPC makes it obligatory for a civil court to take cognizance of a suit of a civil nature unless its jurisdiction is barred either expressly or by necessary implication. There are two parts to it: First there must be a suit of civil nature - a suit where the existence of an enforceable legal right and its violation are alleged; and Second, the inherent jurisdiction of the Court to take cognizance of the same. The former deals with the cause for the action which is presented before the court in a plaint, and the latter concerns with the availability of the inherent jurisdiction in the Court to take cognizance of the cause of action so presented



before it.

(a) Cause of action:

- It belongs to the plaintiff. The Court/Registry cannot investigate the merit of the cause of action at the stage of numbering the plaint or adequacy of pleadings. It has to merely presume and accept the pleadings as they are at that stage. This is however, subject to one exception: where the allegation in the plaint does not constitute a legally recognised right, then the Court may reject the plaint even at the preliminary stage: To illustrate, if the plaintiff pleads that she was married prior to the date of coming into force of Sec.29-A of the Hindu Succession Act (inserted Vide a Tamil Nadu Amendment which elevated all unmarried daughters as on the date on which the provision became operational as coparceners), and still seeks a right as a coparcener under the said provision, then the Court may reject the plaint. If however, she does not state anything about the date of her marriage, at the stage of numbering plaint, it is not the job of the Registry to insist on it, since it will then partake the character of an adjudication; nor can it insist on any document evidencing marriage, for the Court or the Registry is not empowered to hold a trial at the preliminary stage, but are only required to verify if the check-list to be provided in the tabulation in paragraph 31 below.

(b) Exclusion of civil court jurisdiction:

- Order 7 Rule 11 (d) empowers the Court to reject a plaint where it appears from the statement in the plaint that it is barred by any law. The power to reject the plaint and the scope of objections touching upon the maintainability of the suit at the stage of numbering requires careful delineation. Issues of maintainability may arise where the jurisdiction of a civil court is expressly or impliedly barred by any law. An illustrative case is the decision in **V. Vijayakumar v M. Murugadoss** [(2014) (4) CTC 266], where this Court upheld the order of the trial court rejecting the plaint without numbering it, on the ground that on the pleaded cause of action, its jurisdiction was impliedly barred by the provisions of the Industrial Disputes Act, 1947. In this category, the plenary jurisdiction of the Civil Court under Section 9 is ousted, and the Court would, therefore, have no jurisdiction to entertain the presentation of the plaint let alone numbering and admitting it. To register a suit by numbering and entering it in the Register of suits maintained under Order IV of the Code would fly in the face of such statutory prohibition. Courts need to look to the relief sought, and should satisfy itself if it has inherent jurisdiction to grant the relief, or if it is statutorily barred from exercising its jurisdiction.



- Here, the Courts have to be utterly careful in reading the plaint wholly and understand what it conveys. In the case involved in CRP(MD) 915 of 2020 now before this Court, the plaintiff pleads that out of a larger block of land, a portion was acquired for purposes associated with Koodankulam Atomic power project, that the other portion is with him, that portion which was acquired and the one which was not acquired underwent a survey sub-division, and has sought a relief as regards the portion not acquired. With zero application of mind, the learned Munsiff has returned the plaint inter alia on the ground that the suit was not maintainable since the matter relates to land acquisition. How unfortunate that the learned Judge did not even consider it necessary to read the plaint and understand what it conveys?
- In the context of the power to reject the plaint before its registration as a suit, an aspect that haunts the exclusion of jurisdiction is the bar to grant a certain relief. The cases falling under the category of bar of jurisdiction needs to be clearly demarcated from cases where there exists no statutory embargo for the institution of the suit but where the reliefs claimed may not pass legal muster. Here, the Court needs to bear in mind that the right to have access to a Court and to initiate a legal proceeding is one thing, and the entitlement of the suitor to a particular relief is quite another. Maintainability at the stage of numbering has nothing to do with whether the plaintiff is or is not entitled to a particular relief which cannot be decided at that stage. For instance, a decision on whether on the basis of pleaded facts, a contract cannot be enforced in view of the bar under Section 14 of the Specific Relief Act or that the relief sought for is hit by Section 41 of the Specific Relief Act cannot be determined before the suit is numbered and instituted. (The case involved in CRP(MD) 991 of 2020 is an example) Hence, the appropriateness or otherwise of the relief(s) claimed cannot be a matter for legal scrutiny at the stage of numbering.

(c) Limitation:

- Of a cognate variety are cases where on the pleaded cause of action, the relief appears to be barred by limitation. But limitation is generally considered as a mixed question of law and fact. The issue here is whether the question of limitation should be probed at the stage of numbering. Being a mixed question of law and fact, it is appropriate that the issue on limitation is better probed at the stage of trial. However, the Supreme Court has clarified that where there is a clear bar, the Court would be justified in exercising its powers under Order 7 Rule 11 [See: ***Dahiben v Arvindbhai Kalyanji Bhanusali***, [(2020) 7 SCC 366]. Even in such extreme cases, the ideal



the Limitation Act even before admitting the same and issuing summons to the defendant, as was observed by S. Padmanabhan, J in **Craft Centre v The Koncherry Coir Factory** (AIR 1991 Kerala 83), with which this Court respectfully concurs.

Valuation

27. This is another aspect that feeds the Court or its registry with endless opportunities to return the plaint. Valuation of a suit is covered under Order VII Rule 11 (b) and (c) and they provide for rejection of the plaint on the ground of undervaluation, and a consequent failure to correct the valuation in the plaint and/or where the plaint is insufficiently stamped with the requisite stamp paper, and the plaintiff does not make good the deficiency within the time fixed by the Court. Here the Court is required to bear in mind that at the stage of numbering the plaint, it is only required to go by the averments in the plaint, unless it has objective materials within the plaint to indicate that the suit must be differently valued. The mandate of Section 12(1) of the Tamil Nadu Court Fees and Suit Valuation Act which requires the Court to decide on the proper court fee, prior to registration of the plaint, based on the "*plaint materials and allegations*" and the accompanying valuation statement (under Section 10). If it is subsequently found at the instance of the defendant that the plaint is undervalued, the Court can always frame a preliminary issue to that effect under Section 12 (2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955, (See **Divakrupamani v Sakuntala Devi**, (2000) 2 ALT 275(DB), **Chithra Ramalingam v Sridharane**, 2010-3-LW 793). And, as and when the defendant makes his objection to valuation, the Court may decide the issue even as a preliminary issue. But that would be at a later stage and hence registering the suit cannot be halted on this ground. See: **S.RM. AR. S. SP. Sathappa Chettiar v. S. RM. AR. RM. Ramanathan Chettiar** [1958 SCR 1024 : AIR 1958 SC 245] ; **Tara Devi v. Sri Thakur Radha Krishna Maharaj** [(1987) 4 SCC 69 at page 70]; **Commercial Aviation and Travel Co. v. Vimla Pannalal** [(1988) 3 SCC 423 (427)].

28. As to what is the procedure to be followed when the plaint is found to be undervalued at the stage of presentation, a Division Bench of this Court in **K. Natarajan v P.K Rajasekaran** [2003 3 LW 803] has inter alia set out authoritatively:

"(3) Whenever a plaint is received, the same shall be verified and if found to be not in order, the same shall be returned at least on the third day (excluding the date of presentation so also the intervening holidays).

(4) If the suit is presented on the last date of limitation affixing less Court fee, than the one mentioned in the details of valuation in the plaint, an affidavit shall be



filed by the plaintiff giving reasons for not paying the requisite Court fee".

Summing up

29. To sum up, the Court may reject the plaint before numbering and entering it in the Register of Suits, if from a reading of the plaint, it is seen that the suit is barred by any law, or if it suffers from any procedural infirmity, adumbrated supra. The Court, at that stage, cannot and is not expected to conduct a roving enquiry into the merits of the matter by testing the correctness of the plaint- averments even prior to its institution.

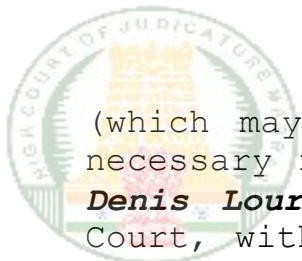
30. In **S. Parameswari v. Denis Lourdusamy**, [(2011) 5 CTC 742], this Court had held that after one return, the Court should post the matter in open Court, and invited arguments of the counsel on the question of maintainability and pass a judicial order. If the objection is upheld, the aggrieved party could work out his/her rights. In **Muthuganesah v. Thillaimani**, [2016- 2- LW 340], this Court had pointed out:

"3. The court, while admitting the plaint, can scrutinise the other aspects, namely the cause of action, valuation, payment of court fee, jurisdiction and limitation. The court can also verify whether the plaint has been filed in the proper form and whether the necessary requirements of plaint have been complied with. The question as to whether any other person should have been made a party is outside the purview of the scrutiny of the trial court at the time of admitting the plaint. The above said aspects are with reference to the merits of the return made by the trial court.

4. Once certain defects are pointed out by the court and the plaint is returned and the plaintiff or plaintiffs, re-present the same stating that the plaint has been properly prepared and filed and asking the court to hear regarding the necessity to comply with the returns made by the court, the court can return the plaint provided its view that the compliance with the returns are mandatory and it is conceded by the plaintiff. If the plaintiff makes it clear that he is not prepared to comply with the returns and the plaint as filed by him should be taken on file, the trial court should reject the plaint rather than returning the plaint stating the very same reason."

This Court only adds a rider to it: In all cases where the Court chooses to reject the plaint for not curing the defects mentioned

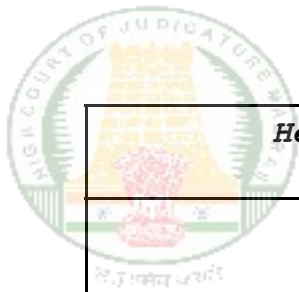
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(which may include the issue on exclusion of jurisdiction) it is necessary for the Court to follow the dictum in **S. Parameswari v. Denis Lourdusamy**, [(2011) 5 CTC 742] and post the matter before Court, with or without the request of the plaintiff or the counsel concerned, and hear them. The duty to hear before a decision is made constitutes the soul of procedural fairness inbuilt in the Civil Procedure Code, and cannot be compromised.

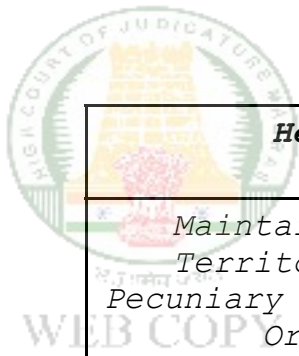
31. Now, to facilitate the process of scrutiny of plaint at the preliminary, preregistration stage in the manner herein above stated, this Court tabulate the same below:

Heads	Permissible during scrutiny of plaint	Not permissible
Cause title and form of pleading (Order VI Rule 3)	Yes. Can be verified if there is a substantial compliance of Appendix A.	
Parties to suit Order VII Rule 1 (a) to (b) and Rule 4	Yes. Required to the extent required, and if the suit is laid in a representative capacity.	
Maintainability (cause of action) Sec.9 & Order VII Rule 1(e)	Yes. Only to the extent of ascertaining if the plaintiff has a legally recognised or enforceable right on a plain reading of the plaint, and no more.	➤Sufficiency or adequacy of pleading cannot be gone into. Hence grounds of fraud as in Order VI Rule 4 CPC cannot be insisted. ➤Proof of any of the allegations in the plaint should not be sought. ➤Merits of the matter or correctness of the pleadings cannot be gone into.

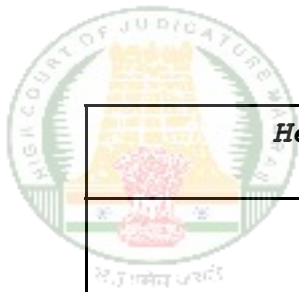


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Heads	Permissible during scrutiny of plaint	Not permissible
Maintainability (Jurisdiction) Sec.9 CPC	➤If the inherent jurisdiction of the Court is barred in granting the relief sought by any statute. ➤Caution must be exercised before returning a plaint. The entire plaint, the cause of action and the relief sought must be understood as are stated or disclosed in the plaint alone need to be considered. ➤The statutory provision barring the institution of the civil suit or excluding the civil court's inherent jurisdiction to take cognizance of the civil dispute must be strictly understood.	
Maintainability (Limitation)	Yes. Where a suit is ex facie barred by limitation. Only the allegation in the plaint should be the basis. However, where the plaintiff pleads exemption from the law of limitation under Order VII Rule 6, this should be left to be tested post registration of the suit at the appropriate stage.	Newer or clarificatory material or proof of any fact pertaining to limitation should not be insisted.

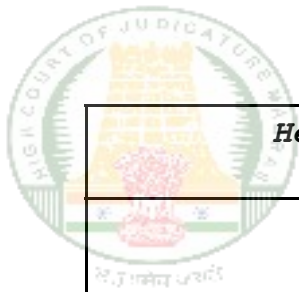


Heads	Permissible during scrutiny of plaint	Not permissible
Maintainability Territorial and Pecuniary jurisdiction Order Sec.15 to 21 r/w Order VII Rule 1(f)	Yes.	
Money suits Order VII Rule 2	If precise amount is stated	
Description of Property Order VII Rule 3	Yes	However, sufficiency of the description cannot be gone into. Again, if there is any variance of extent or boundary description with any title deed, even that may be formally notified for a possible typographical or clerical mistake, but if any explanation is offered justifying the extent stated, the plaint has to be registered. This is because, looking for proof and correctness of pleadings is not contemplated at the stage when the suit is registered.



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Heads	Permissible during scrutiny of plaint	Not permissible
Relief Order VII Rule 7 and 8	Yes, but limited to ascertaining if a relief at all is sought	Appropriateness or suitability of the relief sought cannot be gone into. This is not Court's job. Seeking the relief is the prerogative of the plaintiff. The fact that the Court may not grant it ultimately is a matter for adjudication, and is part of its judicial act and not part of its ministerial act of numbering the plaint. [See AIR 1942 Mad 446]
Valuation and court fee	Yes. But the basis for the valuation must be as stated by the plaintiff. If any objection as to valuation must be done, then the defendant can always raise it during the first hearing under Sec.12(2) of the Tamil Nadu Court Fee & Suit Valuation Act, 1955	Proof of value of subject matter of the suit such as expert's valuation report cannot be insisted.



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Heads	Permissible during scrutiny of plaint	Not permissible
Documents	If enclosed can be verified with the list provided in the plaint	Production of the documents cannot be insisted. It needs to be realised that, given the level of poverty and illiteracy in this country it cannot be expected that every one will possess all the documents all the time, anticipating the possibility of laying a suit 24 x 7. No law compels any person to possess all the documents all the time either. A cause of action for the suit invariably arises at a time convenient to the defendant, but it is the plaintiff who has to approach the Court to protect his/her right. All that the plaintiff therefore needs is only a cause of action and not proof of it when he enters the court-system.
Documents		This apart After all under Order VII Rule 14(3) CPC documents, including title documents can be produced subsequently. Production of documents may be relevant for considering the granting of interim relief, but is not



Heads	Permissible during scrutiny of plaint	Not permissible
Signing the plaint Order VI Rule 14	Yes	
Verification of plaint Order VI Rule 15	Yes	
Accompanying papers	1. Copy of plaint and affidavit. 2. Vakalath. 3. Any application for leave to sue 4. Process along with copies of plaint. (Plaint cannot be returned for not providing it since under Order VII Rule 9, they have to be provided only after the suit is numbered and the Court orders summons to the defendant) 5. Any other applications with affidavit	
Others	Any formal typographical or clerical error apparent on the face. Any doubt as to pecuniary or territorial jurisdiction. This is consistent with Order VII Rule 1(a) CPC	

Related Aspects:

32.1 Where the plaint is sought to be rejected on any of the grounds provided under Order VII Rule 11 even during the pre-registration stage, the matter must be posted before the open court, and the plaintiff or his/her counsel must be heard in the matter.

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32.2 For curing any of the permissible defects, no court shall return the plaint more than once. This has been deprecated by this Court even in **S. Parameswari v. Denis Lourdusamy**, [(2011) 5 CTC 742] referred to above. In other words, returning the plaint multiple times on multiple grounds is a sin in procedure and the Court/Registry needs to become adequately aware about it. In spite of the fact that the decision in **S. Parameswari's case** was pronounced a decade ago, even in this batch of cases this Court has witnessed that some of our Courts and their registry continue to flout it.

32.3 This apart, in all cases where the plaint is presented, a decision as to numbering in the manner indicated in the tabulation provided in paragraph 31 shall be taken not later than three working days (excluding the date of presentation and any intervening holidays).

33. The next aspect pertains to the compliance - part of the parameters hereinabove declared. This must be administratively decided by the High Court. The State Judicial Academy may also spare its attention in these aspects.

34. Before parting with this case, this Court wishes to remind the District Judiciary that any Civil Revision Petitions arising out of a pending case [titled CRP (PD)] fundamentally challenges a procedural error. The number of instances this Court chooses to interfere with any order so challenged is the measure of the quality of our District Judiciary in handling procedure. An effective District Judiciary with a right feel for procedural law, therefore, is of enormous support to this Court, as it may reduce both the inflow of, what this Court may term as avoidable litigation, and the instances it may have to interfere with the orders under challenge before it.

Over to the CRPs:

35. Turing to the merits of the cases in this batch, the grounds of return are already outlined in paragraph 2 (A) to (E), supra and the views of this Court are set out in the table below.



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CRP (MD) No	Views of the Court
915 of 2020	Here the suit was laid on the ground that the suit property was not acquired. But at the first instance, the plaint was returned on the ground as if the challenge was to the land acquisition. Secondly, the suit is laid under Sec.6 of the Specific Relief Act, where recovery of possession can be sought without establishing title. The distinction is well brought out in Sec.6(4). Third ground was that suit is not maintainable since under Sec.6(2) of the Specific Relief Act, no suit is maintainable against the Government. Here, the Court went in wrong in presuming that Government and its Companies are the same. To conclude the trial Court got all its points wrong.
991 of 2020	Here the suit was laid for a declaration to declare that few cheques issued by the plaintiff to the defendant are not supported by consideration. It is a suit for negative declaration to negate the presumption under Sec.118(a) of the Negotiable Instruments Act. There was another prayer for a prohibitory injunction that the defendant should be restrained from encashing these cheques. The Court returned the plaint as it sensed a bar under Sec41(b) of the Specific Relief Act.



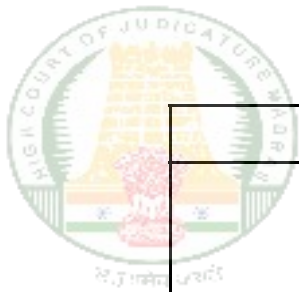
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CRP (MD) No	Views of the Court
991 of 2020	Sec.41(b) provides that <u>no injunction shall be granted to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought.</u>It only means that injunction may not be granted from instituting or prosecuting a suit before the higher Court. A plain reading the plaint indicates that the plaintiff has instituted another suit for recovery of money in O.S.201/2019 before the Principal District court, Nagercoil, against the same defendant, and the defendant is not stated to have filed any suit for realisation of amounts under the cheques involved in the suit. The trial court appears to have lost its way when it overlooked the fact that the plaintiff's primary relief is for declaration. Secondly, bar under Sec.41 (b) operates only against the Court, and it does not raise any maintainability issue. In any event, the return falls foul of the parameters set out in paragraph 31, supra, and must, therefore, be set aside.



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CRP (MD) No	Views of the Court
967 of 2020	Here the prayer is for a prohibitory injunction that the plaintiff should not be harassed in the matter of realisation of debts by the defendant. Court says that injunction is available only against the property. What the Court has missed is that a prohibitory injunction is available to prevent an injury to a right. Law speaks only of right, and not of property. Sec.38 of the Specific Relief Act merely speaks of a potential breach of a legal obligation. Sec.38(3) of the Act is more illustrative and not exhaustive. This apart another ground under which the Court has returned the plaint further under Sec.41(d) of the Act. This provision only restrains the court from granting injunction that would stifle prosecution. The plaintiff only seeks that he should not be extra-legally harassed by the defendant, and he does not whisper anything about any resort to lawful means for recovery of money by the defendant. The Court appears to have read too much in the plaint and the prayer, where there is none.



CRP (MD) No	Views of the Court
330 of 2020	Here, the plaintiff seeks declaration of title, in which a validity of a certain sale deed dated in 1971 that presumably deals with the suit property on the allegation that the vendor thereunder did not have title to the same, and that the said sale is a fraudulent sale. Significantly, there is no prayer to declare that the said sale deed was fraudulent. But the Court has returned the plaint on the ground that the plaintiff has not given the date of his knowledge about the alleged fraud. In the context of the prayer, it is hard to fathom how this fact is relevant.

Conclusion:

36. 1 This Court finds that in all these cases, the concerned court (s) have conducted mini-trials at the stage of numbering the suit which is, ex-facie, inconsistent with the parameters set out, supra. Consequently, CRP(MD)Nos.915, 967, 991 and 330 of 2020 are allowed and the orders under challenge are set aside. The respective trial courts shall now number the plaint before it and proceed to dispose the suit(s) in accordance with law.

36.2 So far as CRP(MD) 943 of 2020 is concerned, here the grievance was that the Court concerned neither register the case nor return the plaint for curing defects for close to two months since the presentation of the plaint. This Court therefore, sought an explanation from the concerned Court, and it was informed that the plaint was registered as a suit. Hence nothing survived in this case and is closed. No costs.



37.The Registry is directed to return the respective original plaint to the petitioners in CRP(MD)Nos.915, 967, 991 and 330 of 2020.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Tsg

To

1.The Sub Court, Vallioor.

2.The Principal District Judge,
Thoothukudi.

3.The Principal District Munsif Court,
Thirumangalam.

4.The District Munsif-cum-Judicial Magistrate Court,
Bhoothapandy.

5.The District Munsif Court, Melur.

6.The District Collector,
Thoothukudi District.

7.The Tahsildar
Thoothukudi Taluk, Thoothukudi.

8.The Principal District Judge, Kanyakumari at Nagercoil.

Copy to

The Section Officer,E.R.Section,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.D.NALLATHAMBI, Advocate (SR-23063 & 23064[F] dated
19/07/2021)

CRP(MD) Nos.915, 943, 967, 991 & 330 of 2020

16.07.2021

VR(CO)

TR(17.08.2021) 33P 12C