



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.09.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.1139 of 2021

1.R.D.Vijayalakshmi Nachiyar
2.R.Maathangi Nachiyar
3.R.Banumathi Nachiyar
4.R.Sathya Nachiyar

...Petitioners/Plaintiffs

Vs.

1.Sivaraj
2.Chandrakala
3.Radhika
4.Sam Narayanan
5.S.Amudha
6.Ram Kumari
7.Ganesh Kumari
8.Gayathri
9.A.Balashanmugam
10.Sundari
11.Dinakar Rajeswaran @ Dinakar Raja
12.Banumathi Nachiyar
13.Meenal
14.Vidyavathi
15.Sindhiya Saradha Devi
16.Sabari Mangalraj
17.Geetha Manickam
18.Vasanthapriya

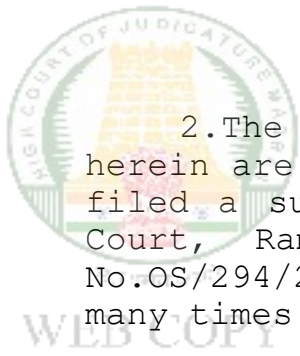
...Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the Principal District Court, Ramanathapuram, to take on its file the un-numbered O.S.Diary No.2233 of 2021 [Filing No.OS/294/2021] CNR.No.TNRM 010017902021, on the file of the Principal District Court, Ramanathapuram in refusing to number the plaint and successively returned with endorsement dated 09.07.2021 and 20.07.2021 and to number the suit thereby allowing the Civil Revision Petition.

For Petitioners :Mr.T.C.S.Raja Chockalingam
for Mr.A.Saravanan

O R D E R

This Civil Revision Petition has been filed to direct the Principal District Court, Ramanathapuram, to number the suit in O.S.Diary No.2233 of 2021 [Filing No.OS/294/2021] CNR.No.TNRM 010017902021.



2.The petitioners herein are plaintiffs and the respondents herein are defendants and these revision petitioners/plaintiffs have filed a suit for partition on the file of the Principal District Court, Ramanathapuram in O.S.Diary No.2233 of 2021 [Filing No.OS/294/2021] CNR.No.TNRM 010017902021. The plaint was returned many times.

3.The first return of the plaint on 09.07.2021, is as follows:

"1.When no cause of action is made out in the averments of the plaint, how the plaintiffs are seeking the relief of partition is to be explained.

2.As per the averments made in the plaint, joinder of cause of action not arose in respect of D11 to D18 with regard to partition. Hence, how this suit is maintainable as against D11 to D18 who are neither co-owner nor co-sharer as per the pleadings". Hence returned. Time 30 days.

4.Again it was represented and again returned on 20.07.2021. The second return of the plaint on 20.07.2021 is as follows:

"Returned on 20.07.2021

As per the averments plaintiffs, the defendants 11 to 18 are not the direct legal heirs of the deceased Dinakar Bahadur. The plaintiffs are seeking for partition instead of seeking the relief of declaration against the defendants 11 to 18. Hence previous return still hold good.

Times 30 days.

5.Both the grounds are not connected with each other. The Court should not have power to return the plaint in multiple times. 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. The words are cited in the Judgment in the case of **Selvaraj and Ors., Vs. Koodankulam Nuclear Power Plant India Limited and Ors., in CRP (MD) No.915,943,967,991 and 330 of 2020, dated 16.07.2021.** The aforesaid order was also discussed in the case of **Hindustan Petroleum Corporation V. C.M.Hariraj [MANU/TN/0287/2002]** reported in **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".

6.The Court while taking a case on file have to decide that whether there is any cause of action and it is not barred by any Act and whether it is also come within the jurisdiction of that Court. The cause of action could be decided after appearance of the defendants.

7.The revision petitioners/plaintiffs have filed the suit for partition and only the plaintiffs have right to implead necessary parties. It is not necessary to implead the parties, even, there is no relief against the parties and therefore, this Civil Revision Petition is liable to be allowed.

8.In view of the aforesaid reasons, this Civil Revision Petition is allowed. The learned Principal District Judge, Ramanathapuram, is directed to number the plaint, if it is otherwise in order. The revision petitioners are directed to represent the plaint along with the copy of the order of this Court. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

Note: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 District Judge,
Ramanathapuram.

+2 CC to M/s.A.SARAVANAN, Advocate (SR-28243[F] dated 06/09/2021)

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PS (CO)

KB(16.09.2021) 3P 4C