



CRP.(PD).No.764/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

CRP.(PD)No.764 of 2022

P.K.Selvaraj,
S/o.M.Kuppusamy,

...Petitioner

Vs

1.K.Tamilselvan,
S/o.P.Kalimuthu

2.R.Kalimuthu,
S/o.Ramasamy

3.K.Pandiyan
S/o.Kumaran.

...Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 04.02.2022 passed in unnumbered O.S.SR.No.240 of 2022 on the files of the Learned Principal District Judge, Namakkal and consequently direct the learned Principal District Judge, Namakkal to number the said suit and proceed further on merits in accordance with law.



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For Petitioner : Mr.N.Subramaniam

ORDER

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The revision petitioner herein has laid a suit, which is yet to be taken on record by the District Court, before which he filed it and the Civil Revision Petition is now instituted seeking a direction to the concern District Judge to number the Suit.

2.When the matter came up before this Court on 16.03.2022, this Court required the learned Principal District Judge, Namakkal to report why the ratio in *Selvaraj Vs. Koodakulam Nuclear Power Plant India Limited* [2021 (4) CTC 539] was not followed. A report indeed has been received.

3.To appreciate the line of contention taken by the revision petitioner and also the remarks offered by the learned District Judge in this report, in right perspective, this Court deems it necessary to out line the facts that led to the present situation ;-

- a) The first defendant herein is one Mr.K.Tamil Selvan. He instituted O.S.No.40 of 2011 against the Revision petitioner for recovery of money based on a pro-note. One R.Kalimuthu and K.Pandiyan are the



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attestors to the said document and they are arrayed in the proposed suit as defendants 2 and 3. The present revision petitioner as defendant contested the suit and his line of defence in that suit was that there is no privity of contract between Mr.Tamil Selvan and himself and that, Tamil Selvan did not possess any resources to make the advance under the said pro-note.

- b) In other words, the second aspect of defence was that there was no consideration passed under the promissory note. The suit went to trial and ultimately, came to be decreed. This was unsuccessfully challenged by the present revision petitioner in A.S.No.325 of 2019, before this Court.
- c) Be that as it may, Mr.Tamilselvan in a certain matrimonial proceedings has averred that he did not possess any resources. The context according to the present revision petitioner is significant in the sense in O.S.No.40 Of 2011 when he had alleged in his written statement that the plaintiff does not have the financial competency to advance the amount that he claims to have advanced to the revision petitioner. His response was that he went abroad, made money and utilized the same for advancing the loan to the revision petitioner. This was believed



both by the trial Court as well as by this Court in A.S.No.325 of 2019.

However, in the above referred to matrimonial dispute, the same Tamil Selvan has made a statement that he had never gone abroad and never made any money.

- d) This false statement, not only amounts to perjury in the earlier litigation but, falls in line with the revision petitioner's line of defence in O.S.No. 40 of 2011. It is in this backdrop he has laid the present suit on the ground that Tamil Selvan has played fraud both on him and the Court and required the Court to set aside the decree in O.S.No.40 of 2011 as a product of fraud.
- e) This plaint was not numbered and hence, he had approached this Court for a direction to the concerned District Court to number the same.

4.As has been earlier mentioned, a report of the learned District Judge has been obtained. The learned District Judge, while returning the plaint, has indicated two aspects-

- (a) How the plaint is maintainable when the decree in A.S.No.325 of 2019 has become final?
- (b) How the suit is maintainable before a District Court, since the present



valuation of the suit is below the pecuniary jurisdiction of the District Court?

5.Explaining the first aspect, on which the plaint was returned by the District Court, the learned counsel for the revision petitioner submitted that when once the present revision petitioner came to know of the statement made by Tamil Selvan in a matrimonial dispute, he has taken out two applications before the trial Court in O.S.No.40 of 2011, one for recalling the decree and another for initiating an action for perjury u/s 340 Cr.P.C. Both these applications were not taken on record and hence, the revision petitioner approached this Court in C.R.P.No.2464 of 2021 and 2466 of 2021.

6.Of them, C.R.P.No.2464 of 2021 is laid for recalling the decree passed in O.S.No.40 of 2011 and that came to be disposed of this Court Vide order dated 18.11.2021. In paragraph no.3 of the said order this Court has observed “... if the petitioner wants to have the decree set aside on the ground of fraud, it is well open to him to file properly constituted suit with proper pleadings as required under Order VI Rule 4 of the Code of Civil Procedure and seek declaration that the decree is nullity or that the decree is vitiated because of



fraud. An application to that fact, in my considered opinion, cannot be maintained since the allegations on fraud requires evidence which could be let in only in property constituted suit. Therefore, the Civil Revision Petition is dismissed. However, liberty is reserved to the petitioner to file a suit, if he is so advised."

7.It is based on this finding/observation of this Court, the present suit has been filed along with the plaint. Along with the plaint, the revision petitioner has enclosed as many as 25 documents. The 25th document so enclosed is the copy of the order in C.R.P.No.2464 of 2021, and this fact is also expressly presented in paragraph no.12 of the proposed plaint.

8.Turning to the approach of the learned District Judge, he has appreciated only part of the plaint and not the whole of it. If only this Court had not directed the revision petitioner to file a fresh suit with appropriate pleadings, the position taken by the learned District Judge cannot be faulted. However, here is the situation where the revision petitioner has rushed to the Court with an application to recall the decree on a certain perceived ground of fraud but, he has not been heard and this Court vide its order in C.R.P.No.2464 of 2021,



has directed him to file a fresh suit. If only the learned District Judge had turned to paragraph no.12 of the plaint and read the same alongside the copy of the order in C.R.P.No.2464 of 2021, then, he would not have created a situation for this Court to intervene now.

9.This Court has repeatedly instructed the District Judiciary that in all matters it is important to hear the learned counsel in the open Court. Maintainability of a suit is not something that can be debated in the Registry, and can be decided only by the Court after due hearing, for which, there has to be an audience. This aspect needs to be emphasized by the State Judicial Academy to all the Officers of the District Judiciary, but very frequently this Court comes across cases where the maintainability issue is decided at the Registry level.

10.Turning to the second part on Pecuniary Jurisdiction, this Court considers that the learned District Judge appears to have been on the right lines. The suit is valued below Rs.10,00,000/- and obviously the learned District Judge does not have jurisdiction over the same. But that is a larger issue which has to be considered at a later point of time and not at the point of inspection.



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11.It is hence, this Court now intervenes and directs the Principal District Judge, Namakkal to post the matter before the Bench and make such appropriate orders consistent with the legal principles enunciated in ***Selvaraj Vs. Koodakulam Nuclear Power Plant India Limited*** and also to appreciate the liberty granted by this Court to the revision petitioner in C.R.P. No.2464 of 2021.

12.The Civil Revision Petition is accordingly allowed. The Registry is now required to return the original plaint to the petitioner. The petitioner is now required to represent the same along with a copy of this Order to the Principal District Court, Namakkal within a period of 15 days from the date of receipt of a copy of this order, excluding the intervening summer recess, if in case it interferes the 15 days now stipulated. No costs.

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Index : Yes/No
Speaking Order/Non Speaking Order
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To
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The Principal District Court,
Namakkal.



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N.SESHASAYEE, J.,

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