



C.R.P.No.1624 of 2020
and C.M.P.No.9843 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1624 of 2020

and

C.M.P.No.9843 of 2020

1.Sara Begam

2.Jerina Begum

3.Sabeena

4.Minor. Rahana

5.Minor. Sahaha

... Petitioners

(Minors rep. by the mother and next friend Sabeena)

Vs.

1.Thangarasu

2.Sarojini

3.Thangalakshmi

4.Mahadevan

5.Jothimalar

6.The Inspector General of Registration,
Head Office Vanchiyoor,
Trivandaram, Kerala - 695 035.

7.The District Registrar, Registration Office, Thodupula,
Idukki District, Kerala - 685 508.

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8.The Sub Registrar, Registration Office, Kattapana,
Idukki District, Kerala - 685 508.

9.The Inspector General of Registration, Head Office,
100 Santhome High Road, Chennai - 4.

10.The District Registrar, Registration Office, Ariyalur,
Ariyalur District.

11.The Sub Registrar, Sub Registrar Office, Perambalur,
Perambalur Taluk and District. ... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the
Constitution of India against the fair and decretal order dated 16.12.2019
passed in I.A.No.1 of 2019 in O.S.No.235 of 2018 on the file of the Sub
Court, Perambalur.

For Petitioners	: Mr.V.Lakshminarayanan
For R1 to R5	: Mr.N.Subramanian
For R9 to R11	: Dr.S.Suriya, AGP

ORDER

The present Civil Revision Petition is filed against the fair and
decretal orders dated 16.12.2019 passed in I.A.No.1 of 2019 in
O.S.No.235 of 2018 on the file of the Sub Court, Perambalur.



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2.The revision petitioners are the defendants 7 to 11 in O.S.No.235 of 2018 on the file of Sub Court, Perambalur. The respondents/plaintiffs filed the suit for cancelling two sale deeds registered by the third defendant, Sub Registrar, Kattappana, in document nos.104/1996 & 105/1996 dated 08.01.1996 and also for a direction to the defendants to pay compensation of Rs.1,50,000/- to the plaintiffs by way of damages for the mental agony undergone by them. The defendants 1 to 6 are government officials. Admittedly, the suit was filed without issuing notice under Section 80 of the Code of Civil Procedure.

3. The defendants 7 to 11 are private parties and they filed an application under Order VII Rule 11 CPC to reject the plaint in I.A.No.1 of 2019 on the ground that the suit filed by the plaintiffs against the government is not maintainable since Section 80 CPC notice has not been issued to them. It is also contended by them that the petition to dispense with such a notice under Section 80 (2) CPC was also not allowed by the Court and hence, the suit in O.S.No.235 of 2018 should



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be rejected.

4.The respondents/plaintiffs filed their counter and after full contest, the learned Subordinate Judge, Perambalur, dismissed the petition vide her orders dated 16.12.2019 by observing thus :

"10.It is argued that the respondents have already given suit notice to the 1st defendant and 3rd defendant prior to filing of this suit and same has been marked Ex.R9. Ex.R9 reveals that the suit notice to the Inspector General of Registration, Thrivandrum and the Sub Registrar Kattapana of Kerala State has been duly issued by all these respondents on 22.02.2018 itself about the institution of the case. Only after that notice, this suit has been filed in this Court on 23.08.2019. Though Ex.R9 notice has been issued only against 1st and 3rd defendants and not to other defendants, the actual active defendants who have allegedly refused for the cancellation of document are the 1st and 3rd defendants. So it is proved that the active defendants in this case have clear notice about the facts of the case even prior to the



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WEB COPY *filing of this suit.*

11.Under the above said circumstances there is no question of filing this suit by the respondents without any notice to the defendant/namely the Sub Registrar and Registration Department. Even if it is assumed that the notice is not issued it is only procedural irregularity which can be rectified. But after filing this suit, these 1 to 6 defendants have knowledge about this case and government pleader has appeared for all those 1 to 6 defendants and case is pending for filing written statement. So, under such circumstances the question of rejection of plaint as per Order VII Rule 11 of CPC will not rise as taken by these petitioners who are the independent parties in this case. Hence this Court is of the considered view that this petition deserves no merits."

Aggrieved over the same, the present Civil Revision Petition is filed by the defendants 7 to 11.

5.Heard Mr.V.Lakshminarayanan, learned counsel appearing for the revision petitioner, Mr.N.Subramanian learned counsel



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appearing for the respondents 1 to 5 and Dr.S.Suriya, learned Additional Government Pleader appearing for the respondents 9 to 11.

6. Mr.V.Lakshminarayanan, learned counsel appearing for the revision petitioner contended that the suit in O.S.No.235 of 2018 was filed even without issuing notice under Section 80 CPC to the government officials, who are shown as defendants 1 to 6 in the suit and no order was passed in the petition to dispense with the notice under Section 80 (2) CPC.

7.This Court directed the Subordinate Judge, Peramabalur, to send a report with regard to the orders passed in the petition under Section 80 (2) CPC. Accordingly, the learned Subordinate Judge, Peramabalur, sent a communication to the Registry in D.No.648 of 2021 dated 20.10.2021 stating that along with the plaint in O.S.No.235 of 2018, a petition was filed by the plaintiffs under Section 80(2) CPC to dispense with the notice to the defendants 1 to 6 under Section 80(1) CPC. However, the said petition was not put up before the Subordinate



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WEB COPY Judge, Perambalur and hence, no order was passed.

8.In the decision in "*State of Kerala and Others Vs. Sudhir Kumar Sharma*" reported in "(2013) 10 SCC 178" relied upon by the learned counsel for the revision petitioners it has been held thus :

19.It is an admitted fact that no order had been passed on the application filed under Section 80(2) of the CPC whereby leave of the court had been sought for filing the suit without complying with the provisions of Section 80(1) of the CPC. In our opinion, a suit filed without compliance of Section 80(1) cannot be regularized simply by filing an application under Section 80(2) of the CPC. Upon filing an application under Section 80(2) of the CPC, the Court is supposed to consider the facts and look at the circumstances in which the leave was sought for filing the suit without issuance of notice under Section 80(1) to the concerned Government authorities. For the purpose of determining whether such an application should be granted, the court is supposed to give hearing to both the sides and consider the nature of the suit and urgency of the matter before taking a final decision. By mere filing of an application, by no stretch



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of imagination it can be presumed that the application is granted. If such a presumption is accepted, it would mean that the court has not to take any action in pursuance of such an application and if the court has not to take any action, then we failed to understand as to why such an application should be filed.

20. It is an admitted fact that no order had been passed on the application filed under Section 80(2) of the CPC. Till a final order is passed granting the said application, in our opinion, the irregularity in filing of the suit continues. If ultimately the application is rejected, the plaint is to be returned and in that event the application filed on behalf of the appellants under Order VII Rule 11 is to be granted. If the application filed under Section 80(2) is ultimately granted, the objection with regard to non issuance of notice under Section 80(1) of the CPC cannot be raised and in that event the suit would not fail on account of non- issuance of notice under Section 80(1) of the CPC.

21. We reiterate that till the application filed under Section 80(2) of the CPC is finally heard and decided, it



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cannot be known whether the suit filed without issuance of notice under Section 80(1) of the CPC was justifiable. According to the provisions of Section 80(2) of the CPC, the court has to be satisfied after hearing the parties that there was some grave urgency which required some urgent relief and therefore, the plaintiff was constrained to file a suit without issuance of notice under Section 80(1) of the CPC. Till arguments are advanced on behalf of the plaintiff with regard to urgency in the matter and till the trial court is satisfied with regard to the urgency or requirement of immediate relief in the suit, the court normally would not grant an application under Section 80(2) of the CPC. We, therefore, come to the conclusion that mere filing of an application under Section 80(2) of the CPC would not mean that the said application was granted by the trial court.

22. In the aforesaid circumstances, we hold that the trial court had wrongly rejected the applications filed by the appellants under Order VII Rule 11 of the CPC. The trial court ought to have heard and decided the application filed under Section 80(2) of the CPC before



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WEB COPY *hearing the applications under Order VII Rule 11 of the CPC.*

23. As a result of the above discussion, the appeal is allowed. The impugned judgment delivered by the High Court confirming the order of the Trial Court dated 30th September, 2001 is quashed and set aside. The order of the Trial Court rejecting applications under Order VII Rule 11 is also quashed and set aside. It is directed that the trial court shall first of all decide the application filed by respondent no. 1 under Section 80(2) of the CPC and only after final disposal of the said application, the applications filed by the appellants under Order VII Rule 11 of the CPC shall be decided."

9.Per contra Mr.N.Subramanian, learned counsel appearing for the respondents 1 to 5 contended that the private parties shown as defendants 6 to 11 cannot take a plea that no notice under Section 80 of the Code of Civil Procedure was issued to the government officials prior to filing of the suit. He therefore, prayed for dismissal of the present Civil Revision Petition. However, he fairly conceded that the trial Court



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may be directed to pass orders in the application filed under Section 80(2) CPC as per the decision rendered by the Hon'ble Supreme Court in "*State of Kerala and Others Vs. Sudhir Kumar Sharma*" (cited supra).

10.In the circumstances, the Civil Revision Petition is disposed of with a direction to the trial Court to take up the application filed by the plaintiffs under Section 80 (2) CPC and pass necessary orders after giving opportunity to all the parties concerned. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
mtl

To

- 1.The Sub Court, Perambalur.
- 2.The Section Officer, VR Section, High Court, Madras.

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