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CRP (PD) No. 3006 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.01.2022**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No. 3006 of 2021

1.S.Renuka Devi

2.K.S. Isthuthi Uphashana

... Petitioners/Plaintiffs

Vs

K.Shanmugasundaram

... Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the learned Principal District Judge, Erode, to number the plaint in C.F.R.No. 5008 of 2021 on the file of Principal District Court, Erode and allow the Civil Revision Petition.

For Petitioners : Mr. S.Kaithamalai Kumaran

ORDER

In view of the fact that challenge in this Revision is to the returns of the plaint made by the learned Principal District Court, Erode, notice to the respondent is deemed unnecessary.

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2. The plaintiffs' suit for partition and maintenance. The first plaintiff is the wife of the defendant and the second plaintiff is the daughter. The first plaintiff sought for maintenance and the second plaintiff and partition and separate possession of her $\frac{1}{2}$ share in the suit properties.

3. The plaintiffs would contend that though the suit first item was purchased in the name of the mother of the defendant in the year 1970 and the same was settled on the defendant during the year 2010 by his mother. The same would part take the character of the joint family property as the funds for the purchase made in the year 1970 came out of joint family. As regards the other properties also, a similar plea was taken by the plaintiffs. The learned District Judge returned the plaint raising a query as to how the suit is maintainable during the life time of the first defendant and also on the ground that since the first defendant had obtained the first item of the property under settlement deed dated 09.07.2010 the second plaintiff would not get a right by birth over the said property. The plaint was represented with an endorsement stating that the properties were purchased from and



out of the joint family nucleus and therefore, the second plaintiff would become coparcener by birth in view of the amended provisions of Section 6 of the Hindu Succession Act.

4. The learned District Judge, again returned the plaint on the very same grounds. From a reading of the return endorsements, it is seen that the learned District Judge had worn the hat of the defendant and had raised the issues that would be raised by the defendant in the suit.

5. This Court has in Selvaraj -Versus- Koodankulam Nuclear Power Plant India Limited Represented through its Project Director reported in 2021(4) CTC 539 held that the Court cannot, before numbering the suit, raise the issues which ought to be raised by the defendant in the suit and refuse to number the suit.

6. The returns made by the learned District Judge are apparently against the spirit of the Judgment of this Court referred to above. Hence, there will be a direction to the learned District Judge to number the suit. Issue notice to the defendant and proceed with the same in accordance with



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law.

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7. The original plaint is directed to be returned to the counsel for the petitioner, who would represent it along with copy of this order within a period of four weeks from the date of receipt of a copy of this order. Upon such representation, the learned Principal District Court, Erode, is directed to number the suit within a period of two weeks there from.

8. With the above said direction, this Civil Revision Petition is allowed. No costs.

04.01.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. Principal District Court, Erode.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

R.SUBRAMANIAN, J.

Vsg

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