



C.R.P. NO.828 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM:

THE HON'BLE DR.JUSTICE D.NAGARJUN

C.R.P.NO.828 OF 2023

1.Sidhan
2.Lakshmi

... Petitioners

Vs.

1.Perumal
2.Periyasamy
3.Govindammal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India with a prayer to direct the learned Subordinate Judge, Sankari to number the plaint filed by the petitioners in O.S.(SR) No.374 of 2023 dated 10.01.2023 and proceed the Suit in accordance with law.

For Petitioners : Mr.V.Vijayakumar

ORDER

Heard Mr.V.Vijayakumar, learned counsel on record representing the petitioners.

2.This Civil Revision Petition is directed against the return of



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unnumbered Suit in O.S.SR.No.374 of 2023 dated 10.01.2023 by the learned Subordinate Judge, Sankari.

3.The learned counsel for the petitioners has taken this Court to the objections taken by the learned Subordinate Judge for numbering the plaint, which reads as follows:

"Returned: 10.01.2023

- 1) *Original owner and origin of the suit property not furnished at this stage how the plaintiff seeking partition relief based on patta 2022.*
- 2) *This suit shall be filed through online mode after rectification of defects.*
- 3) *All the parties not added in the plaint as per patta.*
- 4) *Counsel for plaintiff not sign in each page of plaint.*
- 5) *Whether the 2nd marriage of the 1st defendant with Peramayee with consent of the 1st wife? Or not is to be explained.*
- 6) *The father of the plaintiffs is alive how the 2nd wife's childrens are entitle to share in the ancestral property. 2nd wife's son & daughter are not entitle to share in the*



ancestral property.

Time one month. “

4.Subsequently, the petitioners represented the plaint on 12.01.2023. However, on the very same day itself, the learned Subordinate Judge has returned it again endorsing as follows:

“Returned: 12.01.2023

1) Previous ret'd. dt. 10.1.23 Sl.No.1 to 3, 5, 6 are not yet complied. Hence ret'd.

2) The citation produced by the plaintiff not relevant to the relief of claim.

Time one month.”

5.Again, the petitioners resubmitted the same on 23.01.2023. However, the learned Subordinate Judge has again returned it on 01.02.2023 endorsing as follows:

“Returned: 01.02.2023

Previous ret'd. dt. 12.01.2023 Sl.Nos.1 & 2 are not yet complied. Hence, ret'd.

Time one month.”

6.Most of the objections taken by the Court are in respect of



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the facts, which are likely to fall for consideration during the course of trial. The Courts are expected to be very cautious in returning the plaint, if the plaint does not disclose the cause of action, if there was no limitation and if there are issues with regard to the jurisdiction and other similar technical aspects, the plaint can certainly be returned.

7.The learned counsel for the petitioners has brought to the notice of this Court the order of this Court in ***M/S.STATCO INFRAPROJECTS PVT. LTD., VS. M/S.NARENDRA PROPERTIES LTD., [CRP (PD) NO.1640 OF 2018 DATED 20.07.2018]*** wherein it is observed as under:

“4.1.In Masood’s case, this Court has extracted what this Court has declared in re Manakkal Kumaran [AIR (29) 1942 Madras 446], which this court now considers apt to reproduce.

..... The Court has no power, so far as I am aware, to compel any party to pray for any particular relief. In this case the petitioner alleges that the decree and subsequent proceedings in execution of the decree in O.S.No.23 of 1932 are null and void, and not binding on him. But he does not ask the Court to make any



declaration to that effect, or to set them aside as void against him. The learned District Munsif has ordered him to add a prayer for the cancellation of the decree. He does not wish to do so, and I am not aware of any power in the Court to compel him. The order of the lower Court directing amendment of the prayer is accordingly cancelled. It remains for the lower Court to determine, on the plaint as it is, what is the proper court-fee, and to dispose of the plaint according to law. I make no order as to costs of this petition.

4.2.The above passages sums up what the court ought to do at the point of institution of a suit. As a broad guideline, it may be stated that when a plaint is presented, the Court is expected to verify:

a)Whether a plain reading of the plaint discloses a cause of action in law?

b)Whether the immovable property litigated upon is properly described?

c)Whether the court has territorial or pecuniary jurisdiction.

d)If the plaint, even if all the facts stated therein are presumed to be true, is the suit barred by limitation.

e)Whether proper court fee is paid?



If any factual interpretation is required, particularly for (a), (b) or (d), the Court should refrain from returning the plaint at the point of institution of the suit.

5.1 It may be added here that it is not an infrequent or an uncommon experience where the Courts are seen prescribing the prayers which a litigant should seek, or, how the prayer must be phrased. Granting relief, which includes appropriate moulding of relief, is within the exclusive authority of the court, and this it is required to exercise at the exit point of a litigation, when the suit is being disposed. Therefore, neither the Court, not its Chief Ministerial Officer manning its registry should suggest the nature of prayer a litigant should seek. A Court will be on a dangerous course, if it were to impose fetters on its duty to do justice in a cause at the entry point of a litigation, by limiting the choice of reliefs to be sought to the one contained in its menu of reliefs. The court may not anticipate the shape a case may assume after the defendant enters appearance.

5.2. At no time, the court is required to evaluate the motive for instituting the suit when a plaint is presented before it. It has to wait, till the defendant enters his



appearance and inform the Court of the motive behind the suit. Having stated thus, it is necessary to caution the Courts to exercise vigilance over an unhealthy practice of a specific variety that hijacks the agenda of the Courts: There are few litigants as well as few Advocates (generally they form an alliance) who will institute the suit and seek some interim orders. If the order is not granted, they will suppress this suit, and file a fresh suit on identical cause of action, or by introducing cosmetic changes to the cause of action, and seek substantially the same interim relief. Depending on the affordability of the litigant, this pattern can multiply. This is a gross abuse of judicial process, and here the court shall be stern in its approach to litigation. However, its conclusion that a plaintiff has abused judicial process must be founded on suppression of the earlier suit in the plaint in the subsequent case but not otherwise. While the Court does not exist to discipline the litigant or his attitude, it must also be stated that it also does not exist to condone abuse of its process either. This menace can be easily checked if only the registry is alerted about the earlier suit or proceeding with appropriate software in place.”

8. In the impugned return endorsement, learned Trial Judge



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has raised objections touching the core issues like how plaintiff can file suit for partition based on patta, whether second marriage of first defendant is with consent of first wife etc. The issues will have to be considered after filing of written statement by defendants and cannot be basis for return the plaint. Hence, Court is not expected to return the plaint questioning the merits of the case.

9. In view of the above, the petitioners are directed to resubmit the plaint within a period of two weeks from the date of receipt of a copy of this order and on such resubmission, the learned Subordinate Judge, Sankari is directed to consider the objections, keeping in view of the orders passed by this Court and pass appropriate orders, on merits and in accordance with law, as expeditiously as possible, not later than two weeks thereafter.

10. The Civil Revision Petition is disposed of at the admission stage itself, with the above observation and direction. No costs.

11. Registry is directed to return the original plaint filed by the



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petitioners, after substituting the same by a Photostat copy, to the learned
counsel on record representing the petitioners.

13.04.2023

Index : Yes/No
Internet : Yes/No
TK

To

The Subordinate Judge
Sankari.



WEB COPY



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DR.D. NAGARJUN, J.

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