



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.No.3872 of 2023

and

CMP.No.23892 of 2023

P.Murugesan

... Petitioner

Vs.

1. Mrs.Sivagami
2. G.Thangaraasu
3. C.Murugesan

... Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order in CFR No.14917 of 2022 dated 25.07.2023 passed by the learned District Court, Erode.

For Petitioner : Mr.P.Vijendran

ORDER

The petitioner has filed this petition to set aside the order in CFR No.14917 of 2022 dated 25.07.2023 passed by the learned District Judge, Erode.



WEB COPY

2. Challenging the order passed by the learned trial Judge, the plaintiff has preferred this revision. Before the trial Court the plaintiff has filed a suit for partition as a plaintiff claiming right over the property, as it is a joint family property against the defendants. The 3rd defendant is the purchaser of the portion of the suit property and also contended that the "Will" relied on by the defendant on 02.01.2004, as such is not maintainable. Hence he prayed for declaration to declare the Will relied on by the first defendant as null and void and also to declare the sale deed standing in the name of D3 as null and void. In the month of November 2022, the same was returned by the learned trial Judge on various dates and stated that at the earlier point of time, the suit as such is not maintainable under the territorial Jurisdiction of the Court. After re-presentation, again, it was returned that valuation of the suit property was not correct. Thereafter, it was re-presented by the plaintiff, and again it was returned by the learned trial Judge holding that the legal heirs have not been impleaded and finally the said plaint was returned stating that the legal heirs of Kuppanna Gounder has not been properly impleaded. Accordingly, the plaint was rejected.

3. The learned counsel for the revision petitioner submitted that while



numbering the plaint, the learned trial Judge need not be having elaborate facts and exercise the power at admitting stage for numbering the plaint and finally apply mind to take the case on file. For this purpose, the learned counsel for the revision petitioner relied on the following Judgments of this Court reported in **2021(4)CTC 539, [Selvaraj and others V. Koodankulam Nuclear Power Plant India Ltd.,]** wherein it has been held as follows:

Code of Civil Procedure, 1908 (5 of 1908), Order 6 & 7 - Distinction between Adjudicatory / Judicial Act of Court and Administrative / Ministerial Act - Judicial Act requires Court to understand contents of Plaint and apply its judicial mind to it - Administrative act does not require elaborate fact - finding exercise - Numbering of plaint / Application only Ministerial Act.

..... Maintainability (Territorial and Pecuniary Jurisdiction) Section 15 to 21 r/w Order 7, Rule 1(f)

..... If any explanation is offered justifying the extent stated, the plaint has to be registered. This is because, looking for proof and correctness of pleadings is not contemplated at the stage when the suit is registered.



WEB COPY

....*Proof of value of subject matter of the suit such as expert's valuation report cannot be insisted.*

.....

8. *There is an inherent right in every person to bring Suit of a Civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit howsoever frivolous the claim, the the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the Suit.*

.....

30. *In S.Parameswari v.Denis Lourdusamy, 2011 (5) CTC 742, this Court had held that after one return, the Court should post the matter in open Court and invited arguments of the counsel on the question of maintainability and pass a judicial order. If the objection is upheld, the aggrieved party could work out his / her rights. In Muthuganesah v. Thillaimani, 2016(1) MWN (Civil)503:2016(2)LW340, this Court had pointed out:*

3. ... *The question as to whether any other person should have been made a party is outside the purview of the Scrutiny of the Trial Court at the time of admitting the plaint.*

4. On a perusal of the present plaint, it is seen that the plaintiff filed a



suit for partition against the defendant. Considering the circumstances, contending that the suit property are two undivided family properties and they stand in the name of the first defendant, as well as the sale deed stands in the name of the 3rd defendant. On a bare perusal of the plaint in Para No.5, the plaintiff has stated the particulars of the legal heirs available as on date and even in the Para 7 and 8 also, the plaintiff stated that how the suit property become a Hindu undivided family property. So, the averments in the plaint are sufficient to take care on file, and if at all the legal heirs have not been added, the same can be decided at the time of trial. The suit can't be barred for non joinder of necessary parties at the numbering stage itself. The learned trial Judge extracted all the defence which is available to the defendants and Trial Court is only to number the plaint if it is in order. Furthermore, so far as the plaint averments, are concerned it is sufficient to take the case on file if it is in order otherwise, the learned Trial Judge may apply his judicial mind to find out that the plaint averments are in order.

5. Therefore, the findings of the learned trial Judge are set aside and the suit is to be taken on file within a period of one week from the date of



receipt of a copy of this order. Accordingly, the Civil Revision petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

6. Special training has to be offered to the Presiding Officer as to how to handle the case on the Judicial side and perform the same in the Court as he is unable handle Civil cases. Registry is directed to return the original petition within one week.

18.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
rri

To

1. The District Judge, Erode.
2. The Section Officer,
VR-Section, High Court of Madras.
3. The Judicial Academy, Chennai.

T.V.THAMILSELVI, J.



WEB COPY



ri

C.R.P.No.3872 of 2023
and
CMP.No.23892 of 2023

18.10.2023