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C.R.P.No.216 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.216 of 2023

and

C.M.P.No.1777 of 2023

1.K.Bhuvaneswari

2.Minor K.Dhakshan

S/o.Late Kumaran

Rep.by Mother & Natural Guardian

Mrs.K.Bhuvaneswari

... Petitioners

Vs.

1.R.Lakshmi

2.N.Selvi

3.R.Kalaiselvi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to direct the Learned XVI Additional Judge, City Civil Court, Chennai to number the Interlocutory Application in I.A.SR.No.74462 of 2022 in O.S.No.1978 of 2022 filed by the petitioners and to decide the same in accordance with law.

For Petitioners

: Mr.S.Ganesh



ORDER

WEB COPY The Civil Revision Petition has been filed to direct the Learned XVI Additional Judge, City Civil Court, Chennai to number the Interlocutory Application in I.A.SR.No.74462 of 2022 in O.S.No.1978 of 2022.

2. The revision petitioners are the defendants 2 and 3 in the suit filed in O.S.No.1978 of 2022, instituted by the respondents for Declaration. During the pendency of the suit, the revision petitioners filed an Interlocutory Application under Order 7 Rule 11 of C.P.C., to reject the plaint on the ground that there is no cause of action and on the ground of limitation.

3. The grievances of the revision petitioners are that the Interlocutory Application filed by them was not even numbered by the trial Court and the issues raised in the Interlocutory Application to reject the plaint was dealt with by the trial Court and the petition was returned.

4. The learned counsel for the revision petitioner states that no opportunity was granted to the revision petitioners even to place their contentions and submit the citations. The decision taken without



adjudication for returning the papers is improper.

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5. No doubt, the Suits, Interlocutory Applications or Petitions filed by the parties are to be scrutinized by the Court concerned and if the papers or documents are not in order, then the Court concerned is bound to return the papers for compliance of the defects. However, in the guise of compliance of the defects, the Court cannot take a decision in respect of the grounds raised in the petition and return the same.

6. A distinction is to be drawn with reference to the defects in the case papers filed by the parties and the grounds or issues raised in the petition. If at all the grounds raised in the petitions are to be considered, then the petitions are to be numbered and to be heard in the Open Court by affording opportunity to all the parties and thereafter, a decision is to be taken and orders are to be passed. If at all the decision is taken in respect of the grounds raised in the petition before numbering the case, then the parties are deprived of their opportunity to present their case before the open Court along with the citation or otherwise for the purpose of convincing the Court. Such an opportunity is a valuable opportunity and therefore, the grounds raised in the petitions or in the suits cannot be a reason for returning the



case papers and all those grounds on merits are to be heard in the open Court and thereafter, an order is to be passed, which is the established principle. Hearing of the case in the open Court would pave way for the parties to raise their grounds and objections, if any. Such a valuable opportunity cannot be denied to the parties. In the event of taking a decision unilaterally with reference to the grounds raised in the petition, the parties are deprived of their right to argue their case or to present their case along with supporting judgments or otherwise.

7. In the present case, the reason for return reveals that misjoinder of parties is not a ground for rejection and in the plaint, there is a disclosure for cause of action. It is a mixed question of law and fact as it cannot be said as imaginary cause of action. The reason stated for return would reveal that the trial Court has considered the issues and taken a decision on merits. Such a course of action is impermissible and the decision in this regard is to be taken only after hearing the parties in the open Court. Thus, the reason recorded for returning the papers are neither candid nor convincing and the return of case papers are to be made only with reference to the material defects and adjudication of grounds or issues for returning of the papers would not have been done.



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8. In view of the facts and circumstances, the revision petitioners are at liberty to re-present the case papers to the Court concerned and in the event of re-presentation, the Court concerned shall number the Interlocutory Application, if the papers are otherwise in order and accordingly, hear the matter in the open Court and thereafter, pass orders on merits and in accordance with law.

9. With this liberty, the Civil Revision Petition in C.R.P.No.216 of 2023 stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.02.2023

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Index : Yes

Speaking order

Neutral Citation : Yes

Note: Registry, High Court of Madras, is directed to return the original copy of the Interlocutory Application filed along with this revision petition within a period of one week from the date of receipt of a copy of this order.

To

The Learned XVI Additional Judge,
City Civil Court, Chennai.



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S.M.SUBRAMANIAM, J.

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