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C.R.P(MD).No.1146of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1146 of 2023

J.Thomas

... Revision Petitioner/Plaintiff

Vs.

S.Venkadeswaran

... Respondent/Defendant

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the docket order dated 06.02.2023 passed in O.S. S.R. No:6878 of 2022 on the file of the Learned Subordinate Judge,Tuticorin to take the returned plaint on file and number the same.

For petitioner : Mr.S.Siva Thilakar

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the docket order dated 06.02.2023 passed in O.S. S.R. No:6878 of 2022 on the file of the learned Subordinate Judge, Tuticorin to take the returned plaint on file and number the same.

2.The learned Subordinate Judge, Tuticorin has returned the plaint on the ground that the suit that has been filed is under valued.



3.It is submitted that the return is based on the test report received from the Nazir Office. The learned counsel for the petitioner has placed reliance a decision of this Court in the case of **Ganga Krishnan Vs. M/s.Bajaj Enterprises Pantheon Road** reported in **2011(1) TLNJ 210 (Civil)**, wherein it has been held that,

“8. At the stage of presentation of the Complaint, the Court has to go through the averments of the Complaint and to come to a conclusion about the nature of relief sought for by the Petitioner/Plaintiff. The necessity of asking for further relief than mere declaration of status or right, can be decided only after issuing summons to Defendants and after going through the contentions of the Defendants in answer to the claim of the Petitioner/Plaintiff. At the stage of presentation of the Complaint itself, the Court cannot decide the right of the Petitioner/Plaintiff and direct her to go for further reliefs also along with the declaration of his status or right in the suit property. On the face of the allegations made in the Complaint, it is found to be in order for a Suit for the relief of status declaration under Section 34 of the Specific Relief Act. Therefore, it has to entertain the Suit and to value the Suit only under **Section 25(d) of the Tamil Nadu Court Fees and Suit Valuation Act**. In case, the Suit is subsequently attracted under the Proviso to Section 34, it has to be converted into that of a Suit for declaration and for consequential reliefs and at the said contingency only it will be covered under **Section 25(b) of the Tamil Nadu Court Fee and Suit Valuation Act**. ”

4.It is also noticed in the judgment of Hon'ble Supreme Court in the case of **Shamsher Singh Vs. Rajinder Prashad and Others** reported in **1973 AIR 2384 : (1973) 2 SCC 524** held as follows:-



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“4.As regards the main question that arises for decision it appears to us that while the court-fee payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiff's suit will have to fail for failure to ask for consequential relief is of no concern to the court at that stage, the court in deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for.”

5.Therefore, the learned Subordinate Judge, Tuticorin is directed to number the suit and take up the issue regarding the valuation of the suit as a preliminary issue after service of summons to the defendant in the above suit.

6.With the above direction, this Civil Revision Petition is disposed of.
No costs. Consequently, the connected miscellaneous petition is closed.

27.04.2023

NCC : Yes/No
Index : Yes/No
Internet:Yes/No
dss

Note : The Registry is directed to return the original copy of the returned docket order to the petitioner for submitting before the Court.



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C.SARAVANAN,J.

dss

To

- 1.The Subordinate Judge,
Tuticorin.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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