



C.R.P.(MD) No.2014 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.2014 of 2023

S.Dawoodbadsha

... Petitioner

Vs.

1.D.Mahaboob John

2.K.Subulakshmi

3.B.Kannan

4.The Sub - Registrar

O/o. the Sub - Registrar office,
Alanganallur, Madurai District.

... Respondents

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 18.07.2023 in unnumbered O.S.No. of 2023 on the file of the District Munsif Court, Vadipatti.

For Petitioner : Mr.S.Ramsundarvijayraj

ORDER

This Civil Revision Petition is preferred as against the docket order dated 18.07.2023 passed in unnumbered O.S.No. of 2023 on the file of the District Munsif Court, Vadipatti.



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2. According to the petitioner, the docket order passed by the Trial Court is liable to be set aside for the reason that with regard to the maintainability of the suit, the Court has taken the role of the defendants by questioning the point of limitation and the transaction under Section 4(1) of the Benami Transaction (Abolition) Act, 1988 and with regard to the declaration of disputed documents as null and void, these are the matters to be adjudicated based on the pleading made by the respective parties.

3. On perusal of the records, it is seen that the learned District Munsif, Vadipatti has returned the plaint on the following grounds:-

Returned

- (1) How this plaint is maintainable without seeking the relief of declaration of title
- (2) How this suit is maintainable in view of Sec. 4(1) of Benami Transaction (abolition) Act, 1988.
- (3) How a declaration of a document as null and void alone be claimed when the executant of the document is having registered document in favour of his title.
- (4) Wherever the Doc. No. is mentioned the SRO details also to be mentioned.
- (5) The point of limitation to be clearly explained.

Accordingly returned.

Time 1 month.



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4. The question of maintainability of the suit on the point of limitation and benami transaction is mixed question of fact and law. Whether the suit is maintainable or not without prayer of declaration of title is to be considered only based on the pleading made by the plaintiff and the defendant. The Registry cannot take the role of the defendant by questioning all these facts at the time of numbering the plaint. Therefore, the impugned docket order is set aside.

5. A direction is given to the learned District Munsif, Vadipatti to number the suit if is otherwise in order and dispose the same on merits and in the manner known to law.

6. Accordingly, this Civil Revision Petition is allowed. No cost.

21.08.2023

NCC :Yes/No
Internet: Yes/No
Index: Yes/ No
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To
The District Munsif, Vadipatti.



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K.GOVINDARAJAN THILAKAVADI, J.

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