



CRP(MD)No.2540 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.2540 of 2022
and
CMP(MD)No.12469 of 2022

R.Umasankar

: Petitioner

Vs.

1.Kollencode Vattavilai Sree
Badrakali Devaswom,
Rep. by its President

2.V.Ramachandran Nair

3.V.Mohan Kumar

4.K.Srinivasan Thampi

5.S.Sajikumar

6.R.Sathikumaran Nair

7.S.Bijukumar

8.C.Srikumaran Nair

9.V.Biju

10.A.Sathikumaran Nair



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11.P.Bhuvanachandran Nair

12.R.Srikandan Thampi

13.T.Manikandan Nair

14.T.Vijayakumaran Thampi

15.V.Sathasivan Nair

16.B.Manikandan Nair

17.K.Sabarikanth

: Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to direct the Sub Court, Kuzhithurai, to number the unnumbered O.S.No. 2833 of 2022 dated 30.03.2021 and dispose of the same.

For Petitioner : Ms.A.Amala

ORDER

The petitioner has proposed to file a suit before the Sub Court, Kuzhithurai, in O.S.No.(A)2833 of 2022 to declare the election conducted in the first respondent trust as null and void. The plaint was returned by the Court stating that since the Sub Court, Kuzhithurai, as the Scheme Court, has framed and passed



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'Scheme Decree', it does not vested with the jurisdiction. The petitioner has re-presented the plaint stating that the present suit is filed not for framing any scheme but for challenging the election conducted by the trust committee. Even then, the plaint was returned and aggrieved over the repeated returns by the Sub Court, the petitioner has moved the instant revision petition.

2.It appears that previously a suit in O.S.No.44 of 1984 was filed before the Sub Court, Kuzhithurai, for framing of a scheme for the trust. The issue went upto the stage of appeal before this Court in A.S.No.168 of 1984, where new scheme was framed through compromise on 23.04.1986. Thereafter, the bye-laws of the trust were amended on 23.03.2003. Alleging that the election was conducted violating the bye-laws, the petitioner has proposed to file the present suit.

3.The learned Subordinate Judge returned the plaint questioning the jurisdiction of the Scheme Court to entertain a fresh suit, which was filed challenging the election conducted by the trust. But there is no specific reference in the return as to the bar for the Scheme Court, if any, to entertain the present suit. By returning the plaint, the entitlement of the petitioner is denied at the threshold.



4.This Court in the decision **Selvaraj v. Koodankulam Nuclear Power Plant India Limited**, reported in (2021) 4 CTC 539, has elaborately discussed the role of the Courts while returning the plaint. The aspect regarding returning the plaint on the question of jurisdiction was also discussed and the same is usefully extracted as follows:-

“47. ... In the context of the power to reject the plaint before its registration as a suit, an aspect that haunts the exclusion of jurisdiction is the bar to grant a certain relief. The cases falling under the category of bar of jurisdiction needs to be clearly demarcated from cases where there exists no statutory embargo for the institution of the suit but where the reliefs claimed may not pass legal muster. Here, the Court needs to bear in mind that the right to have access to a Court and to initiate a legal proceeding is one thing, and the entitlement of the suitor to a particular relief is quite another. Maintainability at the stage of numbering has nothing to do with whether the plaintiff is or is not entitled to a particular relief which cannot be decided at that stage. For instance, a decision on whether on the basis of pleaded facts, a contract cannot be enforced in view of the bar under Section 14 of the Specific Relief Act or that the relief sought for is hit by Section 41 of the Specific Relief Act cannot be determined before the suit is numbered and instituted. (The case involved in CRP(MD) 991 of 2020 is an example) Hence, the appropriateness or otherwise of the relief(s) claimed cannot be a matter for legal scrutiny at the stage of numbering.”



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5. After one return, the Courts should list the matter in the open Court for providing an opportunity of hearing on the maintainability and should pass a judicial order, enabling the aggrieved person to workout his remedy before the appropriate forum if the suit is found to be not maintainable. In the case on hand, the trial Court appears to have returned the plaint more than once without hearing the Counsel for maintainability. In this regard, in the decision in **Selvaraj's** case (referred to supra), it has been held as follows:-

“52. This Court only adds a rider to it : In all cases where the Court chooses to reject the plaint for not curing the defects mentioned (which may include the issue on exclusion of jurisdiction) it is necessary for the Court to follow the dictum in S. Parameswari v. Denis Lourdusamy, [(2011) 5 CTC 742] and post the matter before Court, with or without the request of the plaintiff or the counsel concerned, and hear them. The duty to hear before a decision is made constitutes the soul of procedural fairness inbuilt in the Civil Procedure Code, and cannot be compromised.”

6. In view of the foregoing discussions and the decision referred to supra, this revision petition stands disposed of, with a direction to the learned Subordinate Judge, Kuzhithurai, to list the proposed suit in O.S.No.(A)2833 of



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2022 in the Open Court and take a decision on the maintainability of the suit, after hearing the plaintiff's Counsel, in accordance with the principles enumerated in *Selvaraj's* case (supra). There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
gk

12.01.2023

Note: Registry is to return the original plaint, after taking sufficient copies and after getting due acknowledgments.

To

The Subordinate Judge,
Kuzhithurai.



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B.PUGALENDHI, J.

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