



C.R.P.No.794 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.794 of 2024

Suresh Khanna

... Petitioner

Vs

1. I.Siraj Ahamed
2. S.Wasim Ahmed
3. N.Sundar
4. S.Ramesh
5. S.Rajkumar
6. S.Babu
7. S.Sarath Babu
8. S.Shailaja
9. Suneetha Suresh
10. Hemnath
11. Tanushya

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to set aside the impugned order returning the un-numbered plaint dated 01.12.2023 passed in O.S.SR.No.17212 of 2023 by the City Civil Court, Chennai.



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For Petitioner : Mr.E.Prabu

ORDER

This Civil Revision Petition has been filed against the impugned order returning the un-numbered plaint dated 01.12.2023 passed in O.S.SR.No.17212 of 2023 by the City Civil Court, Chennai.

2. The brief facts of the case is that the petitioner/plaintiff had filed a suit on 10.11.2023 for declaring the sale deeds executed in favour of the defendants as null and void and also for partition and separate possession of the plaintiff's 1/5th share in the suit schedule property. The trial Court had returned the bundle on 16.11.2023 raising various queries and despite the reply given by the plaintiff/petitioner to the queries on 30.11.2023, the trial Court had returned the plaint once again on 01.12.2023. Challenging the same, the present civil revision petition has been filed. The queries made by the trial Court and the reply given by the learned counsel for the petitioner before the trial Court are extracted hereunder:-



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Queries made in O.S. Sr.17212/23 as and when returned by the registry on 16.11.2023

1. Whether the suit is filed in time?
2. How the Plaintiff is entitled to pay C.F. U/S 37(2) TNCF Act & when Plaintiff is not in possession of suit property?
3. Legal heir certificate of Plaintiff's father &Guptha to be filed.
4. C.F to be corrected as per market value of property.
5. Schedule of property to be stated as per doc 1 to 3
6. Title deed document stands in the name of Plaintiff's father to be filed.
7. Plaintiff's share need correction
8. Process to be filed with proper enclosure
9. Clean copy to be filed
10. Verification of Prayer to be stated
11. One more outer docket has to be stitched.

Time ten days.





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dated 05.01.2022 made in C.R.P.(PD)(MD) No.1 of 2022 and in **Selvaraj Vs. Koodankualam Nuclear Power Plant India Ltd. (2021 SCC OnLine Mad 2514)** Hence, at the stage of numbering, the plaintiff cannot be called upon to produce a certain document which in the opinion of the court is necessary in proving the right and title of the plaintiff. The Plaintiff has given particulars about his ancestors and also about the legal heirship, which has to be accepted as it is. The registry cannot adorn the role of the defendants. In any event the legal heirship certificate is not conclusive proof or document of proof as to who are all the legal heirs of the deceased. Not obtaining the legal heirship certificate is not a bar for filing the suit. Further, the plaintiff specifically pleaded that, the suit schedule properties are the ancestral properties of the plaintiff's father Sathrasala Sugunakar. The registry cannot demand title documents as if it is going to pronounce judgement at the stage of numbering. However, the plaintiff expresses his willingness to conduct trial, to file proof affidavit and willing to get a decree if the registry is empowered to do so.

Query No.7to11:

The typographical mistake in the share of the plaintiff has been corrected. Process already filed with proper enclosures. Clean copy filed. Verification of prayers was also made.

All the queries are complied with and the citations referred in answer to the queries along with the reported decision of Hon'ble Madras High Court some other relevant citations were also filed. Complied the queries and represented.

[Signature] 30/11/23
Counsel for Plaintiff



3. Learned counsel for the petitioner submitted that the Courts do not have any power to return the plaint except under the circumstances set out under Order VII Rule 10 CPC. He further submitted that when the plaint or any original petition is presented, the Registry, during the scrutiny, should not act as a defendant/respondent and raise objection, which a defendant/respondent might take after entering appearance. The Registry should not return the plaint multiple times and the plaint can also not be returned as to the valuation of the plaint for the purpose of Court fee. He further submitted that the trial Court had committed a grave illegality in totally ignoring the reported decisions of the Hon'ble Apex Court as well as this Court, thereby, he seek to set aside the impugned order and also to direct the trial Court to take the plaint on file. He also submitted that the Court, after one return, should post the matter in open Court and should invite 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 rights. In support of his contention, he relied on the judgment passed by this Court in the case of *Selvaraj and Others vs. Koodankulam Nuclear Power Plant India Limited and others* reported in (2021) 3 LW 677.



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4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. On perusal of records, it is seen that the suit filed by the petitioner seeking for a declaration and partition and separate possession, was returned by the trial Court on the grounds of limitation and court fee. In the decision referred *supra*, this Court, referring to the various earlier decisions, had set out parameters regarding numbering of the suits and held that the Court may reject the plaint before numbering and entering it in the Register of Suits, if from a reading of the plaint, it is seen that the suit is barred by any law, or if it suffers from any procedural infirmity, adumbrated *supra*. The Court, at that stage, cannot and is not expected to conduct a roving enquiry into the merits of the matter by testing the correctness of the plaint averments even prior to its institution.

6. In view of the above, this Civil Revision Petition stands allowed and the impugned order passed by the City Civil Court, Chennai, in O.S.SR.No.17212 of 2023 on 01.12.2023 is hereby set aside and the learned trial Judge is directed to



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call the case in the open Court, hear the counsel and pass appropriate order on merits in accordance with law, within a period of two weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes / No

Neutral Citation : Yes / No
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To
The City Civil Court, Chennai.



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A.D.JAGADISH CHANDIRA, J.

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