



C.R.P.(NPD).No.1038 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.1038 of 2021

R.D.Murthy @ R.Dhakshinamoorthy

... Petitioner

VS

1.L.Bhuvaneshwari

2.Vijayamanikandan

3.A.Vidhyalakshmi

4.D.S.Nagarajan

5.D.Senthil

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 01.07.2020 passed by the learned District Munsif, Tiruvarur in Unnumbered O.S.No. of 2020.

For Petitioner : Mr.S.Giri Tharan

For R5 : Mr.R.Suryaprakash

For R4 : Died

For R1, R2 and R3 : Not Ready in Notice



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the Trial Court rejecting the plaint filed by the petitioner even without numbering.

2. The learned counsel appearing for the petitioner submitted that petitioner filed a suit seeking declaration that Sale Deed executed by the defendants 1 to 4 in favour of 5th defendant dated 02.05.2018 was null and void. The said plaint was rejected even without numbering. The learned counsel further submitted that when the plaint is rejected before numbering, the same cannot be treated as a deemed decree and therefore, the civil revision petition is maintainable.

3. I had an occasion to consider this question, whether an order rejecting unnumbered plaint can be treated as deemed decree for the purpose of filing an appeal in ***T.Kumar Vs.Pavai Varam Educational Trust reported in AIR 2023 Mad 42 = Manu/TN/9817/2022***, wherein the relevant



observation reads as follows:-

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““6. The contention of the learned counsel for the petitioner cannot be accepted in the light of the clear wordings of Section 2(2) of Code of Civil Procedure. The definition of the expression 'decree' contains three limbs:

- (i) The first limb of the definition defines the expression decree by words;*
- (ii) The second limb of definition is an inclusive definition, it brings an order rejecting the plaint and an order determining any one of the questions under Section 144 of CPC within the fold of definition of decree.*
- (iii) The third limb of definition is an exclusive definition, it excludes any adjudication from which an appeal shall lie as an appeal from an order and any order dismissing the suit for default from the purview of definition of expression 'decree'.*

7. A close scrutiny of the definition of the expression 'decree' would make it clear that the draft man himself had a doubt that order of rejection of plaint may not come within the wordly definition of the expression 'decree'. Since it will not come within the definition as found in first limb of Section 2(2) of CPC, he had chosen to bring it under the inclusive definition by including it in the second limb of definition. Therefore,



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Section 2(2) of Code of Civil Procedure does not make any distinction between the rejection of plaint before numbering and after numbering. In such case, an order of rejection of plaint even before numbering of the same, shall be treated as a deemed decree and consequently the revision is not maintainable, in view of availability of regular appeal remedy under Section 96 of CPC.

8. It is also useful to refer to the judgement of this Court reported in MANU/TN/2570/2016 (A.Ramanathan vs. Tamarai Mills Ltd) wherein this Court after referring to the unreported judgement of the Division Bench of this Court made in C.R.P.(PD). No. 1211 of 2013 dated 28.08.2014 observed as follows:-

"12. The Division Bench of this Court, in the unreported Judgment dated 28.08.2014 referred supra, has clearly held that if a Court of Law passes an order for rejection of plaint, under Order 7 Rule 11 of Civil Procedure Code, it has the force of "Decree" and therefore, regular "Appeal" lies under Civil Procedure Code and in fact, no "Revision" would lie."

9. In view of the discussions made above, this Court has no hesitation in holding that this Civil Revision Petition challenging the order passed by the Court below rejecting the plaint in unnumbered stage is not maintainable."



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4. In view of the law laid down in the above mentioned case law, against the order impugned in this revision, an appeal shall lie before the regular Appellate Court.

5. Accordingly, the Civil Revision Petition is dismissed as not maintainable with liberty to the petitioner to challenge the order rejecting the plaint by way of filing a regular First Appeal before the Appellate Court. No costs.

08.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

Note: The Registry is directed to return the copy of the original impugned order dated 01.07.2020 made in Unnumbered O.S.No. of 2020 to the learned counsel for the petitioner.

To

The District Munsif,
Tiruvavur.



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S.SOUNTHAR, J.

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