



C.R.P.No.1844 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1844 of 2024
and C.M.P.No.9718 of 2024

M/s.P&C Energy Infra Private Limited,
Rep. By its Director Mrs.Sowmiya
W/o.Mr.S.C.Sivakumar
Having Office at
SF.No.87/2A, P&C Garden,
Mogappair West, Chennai – 600 037.

... Petitioner

Vs.

1.Dharma Pharmacy Private Limited,
Having Office at
23, Parameswari Nagar 2nd Street,
Adyar, Chennai – 600 020.

2.Dharmalingam

3.Anbu Krithiga

4.Mageswari

5.Hinduja Leyland Finance Limited,
Rep. By its Branch Manager,
No.27A, Developed Industrial Estate,
Guindy, Chennai – 600 032.

6.The Sub Registrar,



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SH 57, Ramanujar Nagar,
Sriperumbudur,
Kancheepuram.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 10.04.2024 passed in O.S.SR.No.4025 of 2024 by the learned V Assistant City Civil Judge, Chennai for maintainability in numbering the suit and direct the Registrar of the City Civil Court, Chennai to number the suit, by allowing the present civil revision petition.

For Petitioner : Mr.G.Veerapathiran

For R6 : Ms.Amrita Dinakaran
Government Advocate

ORDER

The petitioner filed a civil suit before the V Assistant City Civil Court, Chennai in O.S.S.R.No.4025 of 2024. The Court below raised four objections in numbering the suit, which are as follows:

- 1) How this Court has territorial jurisdiction when the suit of property lies outside the jurisdiction of this Court.
- 2) How the present suit is maintainable when already O.S.No.88 of 2024 was pending on the file of the District Court, Kancheepuram.



- 3) Two more docket sheets to be attached.
- 4) List of documents needs revision.

2.The petitioner suitably replied to the objections raised by the Court below, which are as follows:

1. **With regard to Return No.1** it has been clearly explained in para No.19 of the plaint that the suit is maintainable as per the proviso to section 16D of CPC. As per the aforesaid provisions if the relief is prayed only against the personal remedies of the defendants then the suit is maintainable where the defendants are voluntarily resides in this case permanent injunction are prayed for only against the defendants either mortgaging or encumbering of the suit property which was situated outside the jurisdiction of this Hon'ble Court.
2. In a reported case of our High Court in CRP.No.592 of 2008 The Hon'ble Judge of our High Court has held that the suit in maintainable if the personal remedies are claimed. Hence this Court has got the jurisdiction to entertain the suit.
3. **With regard to return No.2** the suit in O.S.No.8 of 2024 filed before the District Judge Kancheepuram is only with regard to the relief of permanent injunction restraining the defendants from interfering with the possession of the



plaintiff.

4. On the other hand this suit is one for injunction from encumbering the suit property when the defendant attempted to encumber after filing of the suit before the District Judge. Hence the suit is maintainable.
5. **With regard to the return No.3** also complied.
6. **With regard to the return No.4** also complied.

Thereafter, by impugned order dated 10.04.2024 the Court below was not inclined to entertain the suit and returned the plaint. Against which, the present civil revision petition is filed.

3.The contention of the learned counsel for the petitioner is that the learned Judge failed to follow the procedure under Section 16(d) of Criminal Procedure Code. The Court below took a stand that the property is situated outside the jurisdiction which is an error apparent on the face of the record. The suit has been filed against the personal remedy from the defendants and hence the Lower Court ought not to have returned the suit on the ground of maintainability. The Lower Court failed to follow the decision of this Court in CRP(NPD).No.592 of 2008, wherein this Court held that the suit seeking relief of compensation for wrong to immovable property held by the



defendant can be entirely obtained by instituting a suit within the local limits of whose jurisdiction the property situated or in the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain. Admittedly, in this case, the defendants 1 to 5 are within the jurisdiction of Chennai and the cause of action also arose in Chennai. The defendants 1 to 4 borrowed a loan from the 5th defendant on 09.06.2015, the properties were mortgaged with the 5th defendant on the same day of the mortgage and it was registered with 6th defendant on 09.10.2020. The defendants 1 to 4 failed to repay the said loan and notice under Section 13(2) of the SARFAESI Act was issued by the 5th defendant and as per the orders of the learned Chief Judicial Magistrate, Kancheepuram District @ Chengalpattu, the Advocate Commissioner took possession and handed over the same to the 5th defendant and the 5th defendant is attempting to bring the property for auction through their authorized officer. Again notice was issued on 25.09.2023 and brought the properties for auction on 16.10.2023. Subsequently, the defendants 1 to 4 moved the Debt Recovery Tribunal, Chennai to stop the auction by way of filing S.A.No.531 of 2023 and S.A.No.532 of 2023, in which they also filed interim applications in SIA.Nos.1511 and 1512 of 2023 and an conditional



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order was passed which was not complied with. Subsequently, the 5th defendant was permitted to bring the property for auction. The petitioner/plaintiff is the successful bidder in the auction and purchased the property. The petitioner/plaintiff deposited a sum of Rs.13,11,00.000/- and after receipt of payment, sale certificate dated 18.10.2023 along with possession was issued by the 5th defendant and from then onwards, the petitioner is in peaceful and legal possession and enjoyment of the said property. On 02.02.2024, the defendants 1 to 4 attempted to interfere with the possession of the said property of the plaintiff, therefore the petitioner gave a complaint to the Police on 02.02.2024.

4.Earlier, the petitioner filed a suit in O.S.No.88 of 2024 before the District Court, Kancheepuram praying to pass a judgment and decree injuncting the defendants 1 to 4 or any person through them in any manner alienating or dealing with the suit schedule property either by way of sale, mortgage or lease except in accordance with law. In such circumstances, returning the suit on the ground of maintenance without consideration is not proper. In all fairness, the Lower Court ought to have numbered the suit, considered the petitioner's claim and in the event of finding that the relief



sought for cannot be granted by the said Court, then only appropriate orders could have been passed. Without even numbering, the suit cannot be returned for maintainability, numbering the suit is only a ministerial duty and not a judicial act. In support of his contentions, the learned counsel further relied upon the order of this Court in C.R.P.Nos.915, 943, 967, 991 & 330 of 2020, wherein this Court considered all the contingent circumstances in filing of the suit, in entertaining the suit and numbering the suit and what are the documents and prayers to be looked into.

5.Considering the submissions made and on perusal of the materials, it is seen that at the time of presenting the suit detailed scrutiny is not required. In view of the same, the petitioner is directed to represent the suit, the Lower Court to number the suit and thereafter, on application of judicial mind, appropriate orders can be passed. The petitioner is directed to represent the suit within a period of thirty days from the date of receipt of original papers from the Registry.

6.In the result, the civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.



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Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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Note: The Registry is directed to return the original papers to the petitioner forthwith.

To

The V Assistant City Civil Judge,
Chennai.



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M.NIRMAL KUMAR, J.

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