



C.R.P.(PD).No. 3163 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2024

CORAM

THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3163 of 2024

1.T.Sudhakar

2.S.Siva

3.S.Indira

...Petitioners

Vs.

M.Sheshadri

...Respondent

Prayer: Civil Revision Petition is filed under Section 227 of the Constitution of India against the order of rejection dated 08.12.2023 to take on file of the suit in O.S.Sr.No.9609 of 2023 passed by the Hon'ble Principal Subordinate Judge, Kanchipuram, without verifying and appreciating the documents of the petitioner for mandatory injunction to cancel the mortgage for non payment consideration and



encumbrance on minor interest without permission of the Court.

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For Petitioner : Mr. R.Baskar

ORDER

This petition arises against the order of the learned Principal Subordinate Judge, Kancheepuram, in rejecting the plaint even before numbering of the suit.

2. The Civil Revision Petition is preferred by the plaintiffs. According to them, the mortgage deed was executed in favour of the defendant on 23.06.2014. They would plead that the mortgage deed has been executed by the 1st plaintiff on behalf of the 2nd and 3rd plaintiffs, who are minors on that day and no amount was paid under the mortgage deed. They would further plead that they demanded the defendant to cancel the mortgage deed and he had not done so, on the



contrary, he had filed a suit for foreclosure in O.S.No.92 of 2023 on the file of the District Court II, Kancheepuram.

3. They would plead that they had filed a suit within a period of three years from the date of knowledge about the suit. The learned counsel for the petitioner would draw my attention to paragraph no.8 of the plaint to urge that the defendant himself had admitted the amounts said to have been paid under the mortgage deed as not paid. He would plead that this is not a case where the suit must be thrown out even without numbering.

4. The power of the Court to reject the plaint without numbering is no longer *res integra*. It has been settled by the Judgement of this Court in ***Selvaraj Vs. Koodankulam Nuclear Power Plant India Limited – (2021) 5 MLJ 467*** (By Justice N.Seshasayee). The learned Judge in the said case held that it is not the duty of the Court to enter the game of litigation between the plaintiff and the defendant. A



perusal of the order dated 08.12.2023 would clearly show that the Court has played exactly the role which the learned Judge pointed out it should not.

5. Limitation was a mixed question of law and fact and a reading of the plaint must disclose that the suit is barred by time, even then, it requires the Court to number the suit and thereafter reject it. If the suit is rejected without numbering, the same would not be registered in the suit register and the plaintiff would file a fresh suit invoking the provisions of Order VII Rule 13 of the Code of Civil Procedure. If after the service of summons the defendant takes a plea of limitation then I am certain that the Court will consider the said plea. The learned Judge is correct that this Court as well as the Supreme Court have held that the vexatious suits must be rejected at the first instance. However, no Court has directed that the plaint must be rejected even without numbering.



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6. As a reading of the plaint gives an explanation for the delay, the order dated 08.12.2023 is set aside. The learned Principal Subordinate Judge, Kancheepuram shall number the suit and issue summons to the defendant and if after the service of summons the defendant takes out an application for rejection of the suit, the Court is certainly entitled to pass appropriate orders, thereafter. I am interfering with the orders of the learned Principal Subordinate Judge, Kancheepuram, only on the strength of the Judgement of this Court in ***Selvaraj Vs. Koodankulam Nuclear Power Plant India Limited.***

7. In the result, the Civil Revision Petition is allowed. The order dated 08.12.2023 is set aside. The learned Principal Subordinate Judge, Kancheepuram shall number the suit if it is otherwise in order. No costs.

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Index : Yes/No

Internet : Yes/No



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To

The Principal Subordinate Judge,
Kancheepuram.



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V. LAKSHMINARAYANAN, J.

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