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C.M.A.Nos.3490 and 3501 of 2014 and 4562 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.07.2024**

CORAM

**THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE**

**C.M.A.Nos.3490 and 3501 of 2014 and 4562 of 2014**

**C.M.A.No.3490 of 2014:**

Appandai Nainar

... Appellant

Vs.

1.V.P.N.Babu

2.Pasvanatha Nainar (Died)

3.Rajakumari

4.Appadurai

5.Duraisamy

6.Mohan

(R3 to R6 brought on record as LR's  
of the deceased R2 vide Court Order  
dated 04.10.2021 made in C.M.P.No.16732 of 2021  
in C.M.A.No.3490 of 2021)

... Respondents

**PRAYER:** Civil Miscellaneous Appeals filed under Order 43 Rule 1 of C.P.C. against the order passed by the learned Principal District Court, Villupuram dated 06.01.2014 passed in I.A.No.295 of 2013 in I.A.No.288 of 2007 in O.S.No.59 of 2006.

For Appellant : Mr.J.Bharathiraja



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C.M.A.Nos.3490 and 3501 of 2014 and 4562 of 2014

For Respondents : Ms.Chithrasampath  
Senior Counsel  
for Mr.S.A.Thiyagarajan  
for R1

R2 - Died  
R3 to R6 - No Appearance

**C.M.A.No.3501 of 2014:**

Parswanatha Nainar (Died)  
2.Rajakumari  
3.Appadurai  
4.Duraisamy  
5.Mohan  
(Appellant Nos.2 to 5 brought on records as LR  
of the deceased sole appellant vide  
Court order dated 03.09.2021 made in  
C.M.P.No.2573 of 2021 in C.M.A.No.3501 of 2014) ... Appellants

Vs.

1.V.P.N.Babu ... Respondent

**PRAYER:** Civil Miscellaneous Appeals filed under Order 43 Rule 1 of C.P.C. against the order passed by the learned Principal District Court, Villupuram dated 06.01.2014 passed in I.A.No.295 of 2013 in O.S.No.59 of 2006.

For Appellants : Mr.R.Thirugnanam  
For Respondent : Ms.Chithrasampath  
Senior Counsel  
for Mr.S.A.Thiyagarajan



**C.R.P.No.4562 of 2014:**

Parswanatha Nainar (Died)

2.Rajakumari

3.Appadurai

4.Duraisamy

5.Mohan

(Appellant Nos.2 to 5 brought on records as LRs  
of the deceased sole appellant vide

Court order dated 09.06.2023 made in

C.M.P.No.2147 of 2021 in C.R.P.No.4562 of 2014) ... Appellants

Vs.

1.Sivasubramanian

2.Sivasankar

3.Balamurugan

... Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 06.01.2014 made in I.A.No.296 of 2013 in O.S.No.59 of 2006 on the file of the Principal District Court, Villupuram.

For Appellants : Mr.R.Thirugnanam

For Respondents : No Appearance

**COMMON JUDGMENT**

C.M.A.No.3501 of 2014 has been filed by the plaintiff in O.S.No.59 of 2006 on the file of the Principal District Court, Villupuram, challenging



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the order dated 06.01.2014 passed by the said Court in I.A.No.295 of 2013 in O.S.No.59 of 2006. I.A.No.295 of 2013 in O.S.No.59 of 2006 was filed by the second defendant, seeking to review the order passed by the Principal District Court, Villupuram dated 08.12.2009 passed in I.A.No.288 of 2007. By the said order, the plaintiff was directed to pay the deficit Court fee and was given a direction to represent the plaint within a stipulated time. Thereafter, the second defendant filed I.A.No.295 of 2013 in O.S.No.59 of 2006, seeking to review the order of the Court passed by the Trial Court in I.A.No.288 of 2007. Under the impugned order dated 06.01.2014 passed in I.A.No.295 of 2013 in O.S.No.59 of 2006, the Trial Court allowed the review application filed by the second defendant by giving the following reasons:

a) The Court fees, stamp papers were removed by the plaintiff and fresh green sheets had been inserted and stitched together with newly typed matters and the plaintiffs have amended the reliefs without leave of the Court by seeking for the relief of partition and separate possession despite the fact that the original suit was filed only for a bare injunction;

b) The plaintiff had re-presented the plaint without signature of the plaintiff in the verification column;



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c) The plaintiff had committed a deliberate fraud upon the Court and the same is nothing short of abuse of process of Court that while representing the plaint, the stamp papers which bore the seal of Sub Court, Tindivanam and District Munsif Court, Gingee had been removed and the fees stamps bearing the seal of the year 2006 had been stitched together with insertion of new green sheets with typed matters seeking the relief of partition and separate possession and that too without the signature of the plaintiff in the verification column;

d) A person who seeks the relief of the Court must come to the Court with clean hands. But, while re-presenting the plaint which was subjected to return by District Munsif Court, Gingee in O.S.No.570 of 1995, the plaintiff has not come forward to pay Court fees on the suit valuation of Rs.82,27,685/- despite the order passed by the High Court of Madras in C.R.P.No.1724 of 2004;

e) The relief of partition and separate possession have been sought for by the plaintiff without the leave of the Court by filing an amendment application.



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2. Aggrieved by the order dated 06.01.2014 passed by the Principal District Court, Villupuram, I.A.No.295 of 2013 in O.S.No.59 of 2006 allowing the review application and consequential order rejecting the plaint filed by the plaintiff, the plaintiff has filed C.M.A.No.3501 of 2014.

3. C.M.A.No.3490 of 2014 has been filed by the eighteenth defendant in the suit O.S.No.59 of 2006. Since he is sailing with the plaintiff in the suit, he has also challenged a similar order dated 06.01.2014 passed by the very same Court in I.A.No.295 of 2013.

4. C.R.P.No.4562 of 2014 has been filed by the plaintiff. He has challenged the separate order passed by the very same Court dated 06.01.2014 passed in I.A.No.296 of 2013. Under the said order, consequent to the order dated 06.01.2014 passed in I.A.No.295 of 2013 wherein the review application was allowed and on an application filed by the second defendant, the Trial Court has ordered for striking off the plaint from the file of the Court and return the same to the plaintiff for seeking appropriate remedies before the appropriate forum.



5. Since the issues involved in C.M.A.Nos.3490 and 3501 of 2014 and C.R.P.No.6562 of 2014 are one and the same, they are disposed of by a common order.

6. At the outset, the learned Senior counsel appearing for the respondents would submit that the present appeals are not maintainable for the following reason:

a) Under the impugned orders, the plaint has been rejected. Therefore, a regular first appeal will have to be filed and the plaintiff will have to pay the Court fees for the same.

7. However, the learned counsel for the appellant would submit that since the review application has been allowed by the Trial Court which is challenged in these appeals, the present appeals are maintainable. He would rely upon Order XLI Rule 1 (w) of C.P.C.

8. However, the learned Senior Counsel appearing for the respondents would submit that since under the impugned orders, rejection of plaint has been ordered, necessarily, the present appeals are not maintainable and



regular first appeals will have to be filed by the plaintiff by paying the requisite Court fees.

9. The learned counsel for the appellant, also relies upon a decision of the Himachal Pradesh High Court in the case of ***Kuldip Chand and Others Vs. Shiv Ram and Another reported in AIR 2000 Himachal Pradesh 119.*** However, as seen from the said decision, the facts and circumstances are different from the facts and circumstance of the present case. In the case on hand, as observed by the Trial Court as well as by the High Court under the impugned order, it is an admitted fact that the plaintiff had amended the plaint while re-presenting the plaint before the appropriate forum without seeking leave of the Court and had also amended the plaint prayers by including the relief of partition and separate possession despite the fact that original suit was filed only for bare injunction.

10. However, in the decision relied upon by the learned counsel for the appellant, it was a regular case where a review application was allowed and only in the said circumstances, the appeal was held to be maintainable as per Order XLI Rule 1 (w) of C.P.C. relied upon by the learned counsel for



the appellant. Therefore, the said decision has no applicability to the facts and circumstances of the case considering the observations recorded by the Trial Court under the impugned order which has been extracted by this Court in the opening part of this order.

11. The learned counsel for the appellant had also relied upon a judgment of the Honourable Supreme Court in the case of ***Hanamanthappa and Another Vs. Chandrashekarappa and Others reported in AIR 1997 SC 1307*** for the purpose of his contention that there is no requirement for the plaintiff to seek leave of the Court for amending the suit prayers pursuant to directions issued by this Court to re-present the plaint before the appropriate forum. However, as seen from the said decision relied upon by the learned counsel for the appellant, only the averments were altered and not the original reliefs. But, in the instant case, not alone the averments in the plaint but also the suit prayers have been amended by the plaintiff without seeking leave of the Court. Therefore, the decision relied upon by the learned counsel for the appellant reported in ***AIR 1997 SC 1307*** is also not applicable to the facts of the instant case.



12. The order dated 06.01.2014 passed in I.A.No.296 of 2013 in the application filed by the defendant Nos.33 to 35 in the suit is a consequential order passed by the Trial Court pursuant to the order dated 06.01.2014 passed in I.A.No.296 of 2013, wherein, the review application filed by the second defendant came to be allowed. In the consequential order dated 06.01.2014 passed in I.A.No.296 of 2013, the Trial Court has ordered for striking off the plaint and returning the plaint to the plaintiff for seeking appropriate remedy before the appropriate forum.

13. Striking off the plaint is only a consequential order pursuant to the allowing of the review application, I.A.No.296 of 2013 dated 06.01.2014 wherein apart from allowing the review application, the Trial Court had directed rejection of plaint under Order VII Rule 11 of C.P.C. Admittedly, till date, no regular first appeals have been filed by the plaintiff, aggrieved by the order for rejection of plaint passed by the Trial Court dated 06.01.2014 passed in I.A.No.296 of 2013 which order was passed along with allowing of the application filed by the second defendant, seeking for review of the earlier order passed by the Trial Court directing the plaintiff to re-present the plaint before the appropriate Court by paying the requisite Court fees. The



observations recorded by the Trial Court under the impugned order with regard to the conduct of the plaintiff is not in dispute as admittedly without seeking the leave of the Court, the plaintiff has re-presented the plaint seeking for new prayers though the original prayer was only for a bare injunction. The findings with regard to the conduct of the plaintiff in these appeals have not been challenged.

14. The learned Senior Counsel appearing for the respondents also drew the attention of this Court to a judgment of this Court in the case of ***Govindarajan Padayatchi Vs. Premananda Vijayakumar and Others reported in 2013 (6) CTC 467*** and would submit by relying upon the said decision, that any order passed in any I.A., seeking for rejection of plaint will amount to order disposing the suit and only a regular first appeal is maintainable. This Court is in agreement with the view taken by another learned Single Judge of this Court in the aforesaid decision.

15. For the foregoing reasons, both the C.M.As. as well as the C.R.P. does not deserve any merit and the same will have to be dismissed.



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**ABDUL QUDDHOSE. J.,**

ab

16. Accordingly, C.M.A.Nos.3490 and 3501 of 2014 and C.R.P.No.4562 of 2014 are dismissed. No Costs.

**01.07.2024**

Index : Yes/No  
Speaking Order : Yes / No  
Neutral Citation Case: Yes / No  
ab

To

1. The Principal District Court, Villupuram.
2. The Section officer, Record Section, High Court of Madras.

**C.M.A.Nos.3490 and 3501 of 2014 and 4562 of 2014**