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C.R.P.No.3553 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3553 of 2024

1. G.Thangaraj

2. Poongodi

... Petitioners

Vs

1. State of Tamil Nadu,
Represented by the District Collector,
Salem.

2. The Revenue Divisional Officer,
Attur.

3. The Tahsildar,
Attur.

4. The Village Administrative Officer,
Paithur (North), Attur Taluk.

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleased to set aside the docket order dated 08.08.2024 in O.S.SR.No.7794 of 2024 on the file of Subordinate Court, Attur, Salem District.



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For Petitioners : Mr.D.Shivakumaran
For Respondents : Mr.Abishek Murthy
Government Advocate

ORDER

This Civil Revision Petition has been filed against the docket order passed by the Subordinate Court, Attur, Salem District, on 08.08.2024 in O.S.SR.No.7794 of 2024.

2. The brief facts of the case is that the petitioners/plaintiffs have filed a suit before the Subordinate Court, Attur on 18.07.2024 against the respondents seeking to declare that the plaintiffs have acquired and preferred title to the suit properties by adverse possession and to grant permanent injunction restraining the respondents/defendants and their men in any way interfering with the plaintiffs' possession and enjoyment of the suit properties. The said suit was returned on 23.07.2024 stating that *“the suit property belongs to the Government at this stage, how this suit is maintainable”* and on 24.07.2024, the plaintiffs has represented the suit as follows :-



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“The plaintiffs claim to have perfected their title by adverse possession for more than the statutory period of 30 years. Only because the suit property originally belonged to the State Government and is now mentioned in the revenue accounts as the property of State Government the suit is filed claiming title under the law and principle of adverse possession. The authority by the Supreme Court reported in 2019 SAR (Civil) 945 is squarely on the point. The principle of adverse possession arises only on the basis of title in the opposite party initially till it was acquired by the plaintiffs by adverse possession. This position is made clear in para VIII of the plaint. Hence the suit may be numbered and further proceedings ordered.”

Thereafter, once again on 25.07.2024, the suit was returned by the learned Subordinate Judge, Attur and the petitioners/plaintiffs have represented the same on 29.07.2024. Thereafter, the case was taken up in the open Court and after a detailed hearing, an impugned order came to be passed by the learned trial Judge on 08.08.2024 rejecting the plaint. Challenging the same, the present Civil Revision Petition has been filed.

3. Learned counsel for the petitioners submitted that the impugned order rejecting the plaint under Order VII Rules 11 of CPC, even prior to number the same suffers from illegality and improper exercise of jurisdiction and it is liable to



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be set aside. He further submitted that the Court cannot conduct a trial and seek documents as proof even before numbering the same. 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.

4. Per contra, the learned Government Advocate submitted that the order under challenge is an order of rejecting the plaint, which amounts to be a decree under Section 2(2) of CPC and against the order of rejection, only an appeal will lie and the revision under Article 227 of the Constitution of India cannot be maintainable. He further submitted that even in the judgment passed by this court in **Selvaraj's** case (*referred supra*), this Court has held that the suit can be rejected under Order VII Rule 1(f) even during the pre-registering stage and in such circumstances, the matter must be posted before the open Court and the judgment may be passed after hearing the counsels on both sides. In this matter, the learned counsel for the plaintiffs was heard, written arguments were filed and only thereafter, the order of rejection has been passed. Therefore, the order of rejection is deemed to be a decree under Section 2(2) of CPC and in such



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circumstances, only an appeal is maintainable and not revision under Article 227 of the Constitution of India. In support of his contention he relied upon the judgment of this Court in C.R.P.No.3671 of 2022 dated 01.12.2022.

5. Heard the learned counsel appearing for both sides and perused the materials available on record.

6. It is seen that the suit filed by the petitioners/plaintiffs against the respondents Government for declaration and permanent injunction was returned and despite being represented twice, an order of rejection was passed on 08.08.2024 by the Subordinate Court, Attur, Salem District. It has been observed by this Court in C.R.P.No.3671 of 2022 dated 01.12.2022 as follows :-

“3. As per the definition of the expression “decree” in the Code of Civil Procedure, an order rejecting the plaint is a deemed decree. It would be useful to refer the definition of the expression decree in the Code of Civil Procedure which reads as follows:-

*“(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [***]*



section 144, but shall not include--

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.-*A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final;”*

4. Therefore, as per the definition of the expression 'decree' as found in Code of Civil Procedure, by virtue of inclusive definition, the expression 'decree' deemed to include the rejection of plaint. Once we come to the conclusion an order of rejection of plaint is a deemed decree under Code of Civil Procedure, a regular appeal will lie against any decree under Section 96 of Code of Civil Procedure. Therefore, the petitioner is not entitled to invoke the supervisory jurisdiction of this Court, when a regular appeal remedy is available under Section 96 of Code of Civil Procedure.

5. The learned counsel for the petitioner submitted that only in cases where the plaint is rejected after numbering of the suit, it can be treated as deemed decree. In the case on hand, the plaint has been rejected even without numbering and therefore, the petitioner is entitled to invoke the supervisory jurisdiction under Article 227 of Constitution of India.

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



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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, 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.””



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

8. Accordingly, the Civil Revision Petition is disposed of with liberty to the revision petitioners to file regular appeal challenging the order of rejection of plaint treating it as a decree. It is needless to say that the petitioners are entitled to exclude the time taken by him in *bonafidely* prosecuting the Civil Revision Petition before this Court by filing appropriate application under Section 14 of the Limitation Act, 1963. No costs.

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Index : Yes / No

Neutral Citation : Yes / No

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

To

The Subordinate Court, Attur, Salem District



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A.D.JAGADISH CHANDIRA, J.

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