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CRP.No.4273 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

CORAM

THE HON'BLE MR. JUSTICE P.DHANABAL

C.R.P.No.4273 of 2022

S.Prabhu

... Petitioners

Vs.

1. Santhi

2. Thamaraiselvi

3. State of Tamil Nadu
Represent by District Collector,
Collector Office,
Ariyalur

4. The Thasildar
Ariyalur Taluk
Ariyalur District

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the docket order dated 28.11.2022 passed in F.No.OS/583/2022 CNR TNAL020007502022 by the learned Principal Subordinate Judge, Ariyalur and consequently number the suit by taking the plaint on record.

For Petitioner : Mrs. J.B.Abithabanu
For R1 & R2 : Mr.s.Thanka sivan
For R3 & R4 : Mr.C.Sathish
Government Advocate



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ORDER

The Civil Revision Petition is filed as against the return made in unnumbered plaint by the learned Principal Subordinate Judge, Ariyalur, wherein the petitioner herein has presented the suit before the learned Principal Subordinate Judge, Ariyalur.

2. The main suit was filed for the relief of declaration to declare the adoption of the plaintiff and to declare the 1st and 2nd defendants are not legal heirs of Sakunthala and also to declare order passed in O.S.No.21 of 2022 under Lok Adalat case No.356 of 2022 dated 26.06.2022 by the District Legal Service Authority, Ariyalur is not binding the plaintiff. The said plaint was returned as against the order of return endorsement made by the Trial Court, the plaintiff has filed the Civil Revision Petition.

3. According to the petitioner, the petitioner has filed suit for relief of declaration and other reliefs and the suit was presented before the learned Subordinate Judge, Ariyalur on 03.11.2022 and the same was returned. Again, the plaintiff had presented the plaint and it was returned on



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22.11.2022 for some corrections and again it was represented on 24.11.2022.

Again, for the third time, the plaint was returned on 28.11.2022 for some alternations and corrections. The plaintiff complied all the necessary corrections and represented in time and the same was returned on 01.12.2022 without numbering. Hence, the present Civil Revision Petition has been filed to direct the learned Principal Subordinate Judge, Ariyalur to number the unnumbered plaint.

4. The learned Counsel for the petitioner would contend that the petitioner being plaintiff has filed the suit for the relief of (i) declaration to declare the adoption of the plaintiff (ii) to declare the 1st and 2nd defendants are not legal heirs of Sakunthala and also (iii) to declare order passed in O.S.No.21 of 2022 under Lok Adalat case No.356 of 2022 dated 26.06.2022 by the District Legal Service Authority, Ariyalur not binding the plaintiff. The said plaint was returned for some compliance and it was represented again. The plaint was returned on 28.11.2022 for want of evidence to show the adoption and maintainability of suit before the Court and also questioned the valuation fixed by the plaintiff. For that, the plaintiff represented the plaint by stating that the oral and documentary evidence will be produced at the time of



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trial. Since the incapable valuation, the minimum value was fixed at Rs.1,00,000/-. The plaint was represented thereafter again the suit was returned on 01.12.2022 that previous return was not complied with, and the legal heir documents to be filed. The suit itself filed for the relief of deciding the legal heir. While so, the filing of the legal heir document is not possible and already returns are complied with. Therefore the order passed by the trial Court refusing to number the plaint and returned the same is liable to be set aside and the suit is ordered to be numbered.

5. In support of his contention, the learned counsel for the petitioner produced judgment in the case of ***Aditya Bafna -vs- S.Muthulakshmi and others*** reported in ***CRP.No.2246 of 2021***.

6. On side of the respondent, M/s.S.Thanka Sivam appeared for Respondents 1 and 2, and this Court questioned the right of audience before numbering the plaint. However, he stated that the petitioner has filed false affidavit thereby it is liable to be prosecuted for fabricating false evidence. Thereby the case is thrown out before numbering the suit itself. Further he relied the judgments in the cases of (i) ***Ramjas Foundation and another -vs-***



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Union of India and others reported in ***(2010) 14 SCC 38*** and (ii) ***Citadel Fine Pharmaceuticals -vs- Ramaniyam Real Estates Private Limited and another*** reported in ***(2011) 9 SCC 147*** and also produced the copies of documents and typed set. Since the Civil Revision Petition is filed in respect of return of plaint before numbering the suit, the audience to respondent is not permissible and if at all, the petitioner aggrieves, he can take appropriate steps in the manner known to law through separate proceeding and not in this petition.

7. At this juncture, it is relevant to refer the judgment of Hon'ble Supreme Court in ***P.K.Palanisamy vs. N.Arumugam reported in 2009 9 SCC Page 173***, wherein the Hon'ble Supreme Court held in Para 22 that “we have, however, serious reservations as to whether the Civil Court could hear a defendant before registering a Plaint, the Code does not envisage such a situation, when a Suit is filed, the Civil Court is bound by the procedures laid down in the Code. The defendant, upon appearing however in certain situations, may question the order passed by the Civil Court at a later stage”. Therefore in view of the above settled position of law, the right to audience to the respondent is declined.



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8. As far as the return made by the trial Court is concerned, the trial Court sought for the Legal heir Certificate from the petitioner/plaintiff and the said suit itself filed for relief of declaring the legal heirs and thereby, there is no chance to produce the Legal heir certificate at the time of numbering. The Court need not insist to produce all the documents at the time of presenting the plaint itself. The plaintiff has produced the copy of the order passed in Lok Adalat and also reduced other documents along with plaint. Therefore the trial Court need not expect all the documents. It is true that at the time of filing of the plaint, all the documents have to be produced. But at the same time, the Court need not insist to file the documents at the stage of numbering itself.

9. The learned counsel appearing for the petitioner has relied the judgment in *Adit Bafna vs. S.Muthulakshmi and others in C.R.P.(NPD) No.2246 of 2021*. On a careful perusal of the said judgment, it will not be applicable to the present facts of the case, because, in this case, Suit is filed before the Sub Court, Ariyalur and the judgment relied by the petitioner's counsel is in respect of Civil Revision Petition filed before the High Court.



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10. At this juncture, it is appropriate to refer the judgment of High Court in ***R.Manickam and another vs. The Sengunthar Charitable Trust represented by its Secretary and others reported in 2009 (5) CTC 550***, in which, this Court in Para 10 held as follows:-

“10. The litigants would be put to difficulties in case the Court of original jurisdiction drag them from pillar to post, even before registering the Complaint. The attempt of the Court before registering the Complaint should be to ascertain as to whether the procedural requirement for filing such a suit has been complied with by the Plaintiff. The statutory provisions as contained under Order VII Rule 1 of the Code of Civil Procedure prescribes the particulars to be contained in the complaint. In addition to the institution of the suit of general nature, there are suits in particular case like the Suit by or against the Government or public officers in their official capacity, inter-pleader Suits, Suits relating to public nuisance or other wrongful acts affecting the public at large as well as Suits relating to public charities within the meaning of Section 92 of the Civil Procedure Code. There is a prescribed procedure contemplated for institution of such specified Suits. The Court was obliged to examine as to whether the plaintiff has complied with such fundamental procedures and in case of such compliance, the Court has no other alternative than to register the Complaint. The Court was not powerless even after registering the Complaint. The statutory provision as per Order VII, Rule 11 of the Code of Civil Procedure enables the Court to reject the Complaint at any point of time. It is not necessary to file written statement by the defendant for the purpose of exercising the jurisdiction to reject the Complaint”.



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Therefore the return order passed by the trial Court directing to produce the Legal heir document dated 01.12.2022 is unsustainable and the same is liable to be set aside.

11. The trial Court is directed to number the plaint with the available documents if otherwise in order. With the above said direction, the Civil Revision Petition is disposed of. There shall be no order as to costs.

24.04.2024

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Internet : Yes/No

Index: Yes/No

Speaking Order: Yes/No

NCC : Yes / No

To

1. State of Tamil Nadu
Represent by District Collector,
Collector Office,
Ariyalur

2. The Thasildar
Ariyalur Taluk
Ariyalur District



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3. The Principal Subordinate Judge,
Ariyalur.

P.DHANABAL, J.

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