



C.R.P.No.4033 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P. No.4033 of 2019

and

C.M.P. No.26450 of 2019

1. Thilagavathy W/o. Late R. Shankar
2. Santhi W/o. S. Anand
3. R. Pannerselvam S/o. Late Ranganathan

... Petitioners

vs.

- Rathnabai W/o. Late K. Thanikachalam
1. T. Guruprakash S/o. Late K. Thanikachalam
 2. Gunasundari W/o. Dhanavel
 3. Kamatchi W/o. Late Vadivelu
 4. Padma W/o. Sivaprakasam
 5. Anuj Tiles (Sankar Panner Kalyana Mandapam)
 6. Geetha W/o. Kandasamy

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order passed by the learned Principal District Judge, Tiruvallur made in I.A. No.1 of 2019 in unnumbered O.S. SR. No.5077 of 2019 dated 26.11.2019.



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For Petitioner : Mr. A.R. Suresh
For Respondents : Mr. R. Krishnaswamy [for R1 & R2]
R3 – died
R4 & R6 – Served – No appearance.
R5 – Not ready in notice.

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application filed by the respondents, seeking to record them as legal representatives of deceased sole plaintiff, along with 6th respondent, who was sought to be arrayed as 7th defendant.

2. The mother of the respondents 1,2 and 6 namely Rathnabai filed a Suit against the petitioners and respondents 3 to 5 seeking preliminary decree for partition in her 1/6th share in the suit properties and other reliefs. After presentation of the plaint, before numbering of the same, the sole plaintiff, the above said Rathnabai died. Therefore, the respondents 1 and 2 filed an I.A. No.1 of 2019 in unnumbered O.S. SR. No.5077 of 2019 seeking their impleadment as plaintiffs 2 and 3 in the place of deceased sole plaintiff Rathnabai. The said Rathnabai died leaving behind one son and two daughters. The respondents 1 and 2 are son and daughter of Rathnabai. The



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other daughter namely the 6th respondent herein failed to join the respondents 1 and 2 and therefore, she was sought to be added as 7th defendant in the Suit.

The Trial Court allowed the said application and aggrieved by the same, the petitioners, who are defendants 3 to 5, are before this Court.

3. The learned counsel appearing for the petitioners submitted that the application for bringing the legal representatives on record under Order XXII Rule 3 of Code of Civil Procedure is maintainable only if the sole plaintiff or one of the several plaintiffs died pending Suit that too when the right to sue survives to his legal representatives. It is submitted that in the case on hand, the plaint has not been numbered and in such circumstances, there is no suit pending and as a consequence, the application filed under Order XXII Rule 3 of Code of Civil Procedure is not maintainable when there is no Suit pending. In support of his contention, the learned counsel appearing for the petitioners relied on the judgment of this Court in ***Olympic Cards Limited vs. Standard Chartered Bank in O.S.A. No.175 of 2012.***

4. The word “Suit” is not defined under Code of Civil Procedure.



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However, in ***Hansraj Gupta and Ors. vs. Official Liquidators of The Dehra Dun-Mussoorie Electric Tramway Company Limited, reported in AIR 1933***

PC 63 : MANU/PR/0062/1932, the Privy Council defined the word “Suit” as *a civil proceeding commences with the presentation of the plaint.*

5. Therefore, “Suit” is a civil proceeding which commences with presentation of the plaint. Order XXII Rule 1 of Code of Civil Procedure says the death of plaintiff or the defendants shall not cause the Suit to abate if the right to sue survives. Therefore, the person to whom the right to sue or right to defend survives (legal representatives) are entitled to continue the Suit by coming on record.

6. In the case on hand, the plaint was already presented and the same was returned. Therefore, the legal representatives of deceased person who presented the plaint are entitled to continue the proceedings which was commenced with the presentation of the plaint. In other words, the legal representatives of the deceased plaintiff can re-present the plaint and proceed with the matter. In order to proceed with the matter, they are entitled to file



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an application to bring them on record by invoking Order XXII Rule 3 of Code of Civil Procedure. Order XXII of Code of Civil Procedure is not only applicable to the proceedings of the Suit after numbering, but also applicable to the proceedings prior to the numbering of Suit which commenced with the presentation of the plaint before the Court. As per the definition of the word “Suit”, in the *Hansraj Gupta* case decided by the Privy Council, the “Suit” is a civil proceeding commenced with the presentation of plaint. Therefore, the provision of Order XXII of Code of Civil Procedure is applicable to the Suit proceedings from the date of presentation of the plaint. In view of the same, this Court is not inclined to accept the submission made by the learned counsel for the petitioner that provisions of Order XXII of Code of Civil Procedure can be pressed into service only after numbering of the plaint.

7. This Court in O.S.A. No.175 of 2012 relied on by the learned counsel for the petitioner, while interpreting provision of order XXIII Rule 1 of Code of Civil Procedure regarding withdrawal or abandonment of the claim, observed that proceedings prior to registration of the Suit are only preliminary in nature and abandonment of the Suit claim before the



registration of the Suit would not constitute withdrawal or abandonment of the Suit within the meaning of Order XXIII Rule 1 of Code of Civil Procedure so as to operate as a legal bar for a subsequent Suit.

8. Order XXIII Rule 1 of Code of Civil Procedure reads as follows:-

“1. Withdrawal of suit or abandonment of part of claim.—(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of



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such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under sub-rule

(1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff”.

A reading of the above provision would make it clear that bar created under Order XXIII Rule 1 of Code of Civil Procedure is only in case of abandonment of the claim after institution of the Suit. This Court while interpreting Order XXIII Rule 1 of Code of Civil Procedure specifically held that institution of Suit means numbering of the Suit and inclusion of the same in the Register of Suits. The relevant observation of this Court reads as follows:-

“16. Rule (1) of Order IV of C.P.C. provided for institution of Suits. Rules 3 and 4 of Order IV contains the statutory prescription that the plaint must comply with the essential requirements of a valid plaint and then only the process of filing would culminate in the registration of a Suit. Rule 21 of Civil Rules of Practice contains the



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basic difference between presentation and institution. There is no dispute that the date of filing the plaint would be counted for the purpose of limitation. However, that does not mean that the Suit was validly instituted by filing the plaint. The plaint, which does not comply with the rules contained in Order VI and VII, is not a valid plaint. The Court will initially give a Diary Number indicating the presentation of Suit. In case the plaint is returned, it would remain as a “returned plaint” and not a “returned “suit””. The act of numbering the plaint and inclusion in the Register of Suits alone would constitute the institution of Suit. The stages prior to the registration of Suit are all preliminary in nature. The return of plaint before registration is for the purpose of complying with certain defects pointed out by the Court. The further procedure after admitting of the plaint is indicated in Rule 9 of Order VII. This provision shows that the Court would issue summons to the parties after admitting the plaint and registering the Suit. Thereafter only the defendants are coming on record, exception being their appearance by lodging caveat. Even after admitting the plaint, the Court can return the plaint on the ground of jurisdiction under Rule 10 of Order VII of C.P.C. The fact that the plaintiff/petitioner served the defendant / respondent the copies of plaint / petitions before filing the suit / petition would not amount to institution of suit / filing petition. It is only when the Court admits the plaint, register it and enter it in the Suit register, it can be said that the Suit is validly instituted.



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17. *It is therefore clear that any abandonment before the registration of Suit would not constitute withdrawal or abandonment of Suit within the meaning of Order XXIII Rule 1 C.P.C., so as to operate as a legal bar for a subsequent Suit of the very same nature. It is only the withdrawal or abandonment during the currency of a legal proceedings would preclude the plaintiff to file a fresh suit at a later point of time on the basis of the very same cause of action”.*

9. The reading of the above judgment would make it clear that such restrictive meaning was given to the word “Suit” only for the purpose of Order XXIII Rule 1 of Code of Civil Procedure. Therefore, the restrictive meaning given to the expression “institution of Suit” for the purpose of Order XXIII Rule 1 of Code of Civil Procedure cannot be extended for other provisions including Order XXII of Code of Civil Procedure. As per the definition of the Privy Council in ***Hansraj Gupta and Ors. vs. Official Liquidators of The Dehra Dun-Mussoorie Electric Tramway Company Limited*** referred above, “Suit” means a civil proceeding instituted by the presentation of plaint. Even in the judgment cited by the learned counsel for the petitioner in ***Olympic Cards Limited*** case, this Court observed that for the purpose of calculating



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the limitation, Suit is deemed to be presented on the date of presentation of
WEB COMPLAINT. Therefore, the restrictive meaning given to the expression “institution
of Suit” for the purpose of Order XXIII Rule 1 of Code of Civil Procedure in
the above mentioned case was not extended for other purposes including
calculation of limitation for filing of the Suit.

10. Therefore, I have no hesitation in holding that the Suit proceeding
commences with presentation of plaint and as a necessary consequence, Order
XXII is applicable to the stage even prior to numbering of plaint.

11. In view of the discussion made earlier, I do not find any error in the
order passed by the Trial Court warranting interference in this revision.

12. Accordingly, this Civil Revision Petition stands dismissed. No
costs. The connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No

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To

The Principal District Judge, Tiruvallur.

S.SOUNTHAR, J.

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