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C.R.P.(PD)No.4871 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.12.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4871 of 2024

R.P.Narayanasamy

.. Petitioner

Vs

R.P.Ramachandran

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Order of return made in unnumbered I.A.S.R.No.27490 of 2024 dated 12.11.2024 in O.S.No.485 of 2021 on the file of the Hon'ble III Additional Subordinate Judge at Coimbatore.

For Petitioner : Mr.M.Venkadesh Kumar

ORDER

This civil revision petition arises against the order of rejection made by the Subordinate Judge at Coimbatore in I.A.Sr.No.27490 of 2024 in O.S.No.485 of 2021 dated 12.11.2024.



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O.S.No.485 of 2021 is a suit is for bare injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit schedule mentioned property. Summons was served on the defendant. The defendant also filed a detailed written statement. Thereafter, the matter was adjourned for the purpose of framing issues. It is currently posted for trial and is not in the list.

3. Pending this litigation between the parties, a suit for partition and separate possession, which had been presented in the year 2010, came to be decreed on 17.07.2019. Aggrieved by the same, the plaintiff in O.S.No.485 of 2021 had preferred an Appeal before the I Additional District Judge at Coimbatore in A.S.No.142 of 2019. This Appeal, and cross appeal were tried together. Both, the appeal and cross appeal, were dismissed by an order dated 07.03.2024. The said order is now under challenge before this Court in S.A.No.560 of 2024. As the defendant had been armed with a decree, he presented an application for rejection of plaint in I.A.SR.NO.27490 of 2024. The said application was returned by the learned III Additional Subordinate Judge with the following query:



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*"How this petition is maintainable
in this stage to be stated.
Hence returned.
Time 1 month."*

Hence, this revision.

4. I have heard Mr.M.Venkadesh Kumar for the civil revision petitioner and gone through the records.

5. At the stage of numbering, the Court, need not play the role of the adversary. In fact, an application for rejection of plaint in terms of Order VII Rule 11 is maintainable, even at the stage of Judgment, as per the Judgment of Supreme Court in the case of ***ITC Limited Vs. Debts Recovery Appellate Tribunal & Ors, AIR 1998 SC 634***. Therefore, the question of stage of the proceedings for deciding maintainability of the application does not arise. This is very clear from the terms of Order VII Rule 11 and the Judgment of the Supreme Court referred to above.

6. The learned Judge is also requested to take note of the Judgment of this Court in ***Selvaraj Vs. Koodankulam Nuclear Corporation Power Plant (CRP.(MD)Nos.915 of 2020 etc., batch dated 16.07.2021)*** The role



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of numbering an application is only a ministerial act. The learned Judge is always entitled to dismiss the petition, after receiving a counter affidavit from the plaintiff and after hearing arguments of the parties. He need not prejudge the maintainability of the application on the basis of the stage of the proceedings.

7. In the light of the above, this Civil Revision Petition is ordered. The order of the learned Trial Judge dated 12.11.2024 is set aside. The learned III Additional Subordinate Judge at Coimbatore shall number the application and issue notice to the plaintiffs, receive a counter and thereafter pass orders on the merits of the case. No costs.

02.12.2024

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
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Note to the office:

Registry is directed to return the original application and affidavit that has been enclosed with this revision to the learned counsel for the petitioner, after usual endorsement.



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To

The III Additional Subordinate Judge,
Coimbatore.



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LAKSHMINARAYANAN,J.

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