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*C.R.P.(NPD) No.5088 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 11.12.2024**

CORAM

**THE HON'BLE JUSTICE N.SATHISH KUMAR**

**C.R.P.(NPD) No.5088 of 2024**

Ramesh

... Petitioner/Plaintiff

-VS-

1. Selvaraj
2. Sathish
3. Divya
4. Lawrance Sagayaraj
5. Fransis Xaviyar

... Respondents/Defendants

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair order and decretal order of the Court of the Principal District Judge, Kallakurichi in unnumbered O.S.No. of 2024 (Cr.19 No.8136 of 2024 dated 02.09.2024 and 8303 of 2024 dated 06.09.2024) in deciding the case on merit after rejecting the plea on maintainability smacks of “gross material impropriety” is manifestly erroneous, illegal, incompetent, unconstitutional, irregular and is liable to be set aside.

For Petitioner : Mrs.V.Srimathi

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**ORDER**

A challenge has been made to the impugned order dated 30.09.2024 made in unnumbered O.S.No. of 2024 (Cr.19 No.8136 of 2024



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dated 02.09.2024 and 8303 of 2024 dated 06.09.2024), by which, the plaint was rejected even before numbering the suit.

2. Since the Trial Court has passed the order without serving notice to the respondents and without even numbering the suit, notice to the respondents is dispensed with.

3. A suit had been filed by the plaintiff / revision petitioner herein for declaration and injunction. It is the case of the plaintiff / revision petitioner herein that the property was originally owned by one Ramanuja Udayar and his wife Aaththakannu Ammal, to whom the plaintiff/revision petitioner is the maternal grand son. The maternal grandparents had two daughters and one son and they had settled the property in favour of one of the daughters, viz., Vadamalli by way of settlement deed dated 11.04.1981 and the said Vadamalli died on 14.03.2021 without any issues. It is the further case of the petitioner that the husband of Vadamalli / 1<sup>st</sup> defendant herein married one Selvi and through their wedlock, two children were born. According to the petitioner, as the property had been inherited by



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Vadamalli from her parents, the property would revert back to her father's side as per Section 15(2) of the Hindu Succession Act. Under that premise, the suit had been filed.

4. It is also the case of the petitioner that when the matter was posted for maintainability, the Trial Court had gone into the merits of the case and rejected the plaint itself. In fact, the Trial Court has given a finding in respect of the merit of the case, as the order has been passed without even serving notice to the defendants and even before numbering the suit.

5. This Court is of the view that the plaint has been rejected by the Trial Court without giving any opportunity to the plaintiff to establish his rights and the case had been thrown out even before its numbering. The Trial Court ought to have granted an opportunity to the parties to contest the matter. If the plaint is thrown out even before numbering the suit, that will take away the statutory rights under law. For example, the plaintiff may require amendment during pendency of the suit at any time and the said right would also be shut, if the impugned order is allowed to sustain. Taking



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**N.SATHISH KUMAR,J.,**  
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note of the manner in which the suit had been dealt with, in my view, the order impugned herein is liable to be set aside.

6. Accordingly, this Civil Revision Petition is allowed and the impugned order is hereby quashed. The Trial Court is directed to number the suit after giving opportunity to both parties, especially defendants and decide the issue on its own merits. No costs.

**11.12.2024**

Index: Yes/No  
Internet: Yes/No  
Speaking Order/Non Speaking Order  
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**To:**

The Principal District Judge,  
Kallakurichi.

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