



C.R.P.(MD)No.1037 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.1037 of 2020

1.J.Janaf Miyan Marakkayar (died) ... 1st Petitioner / 1st Plaintiff

(Cause title accepted vide Court order dated

27.11.2020, made in CMP(MD)No.6038/2020)

2.J.Janaf Syed Malukku Methar ... 2nd Petitioner /2nd Plaintiff

3.Balkies Beevi

4.Nihmathullah

5.Ayesha Begam ... Petitioners 3 to 5

Vs.

1.Ramzan Begum

2.Mejak,

3. Yobu,

4.Esakku,

5.Mookandi

6.T. Aron,

7.U. Kasirajan

8.P. Dhanaraj

9.K. Selvakumar

10.Jegatheesh

11.M. Kailasam ... Respondents/Defendants

1/7



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PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 05.02.2020 passed in O.S.No.184 of 2007 on the file of Additional District Munsif cum Judicial Magistrate Court, Sivagiri.

For petitioners : Mr.F.X.Eugene
For Respondents : Mr.S.P.Maharajan for R1
: Mr.P.Jeganathan for R2 to R11

ORDER

This civil revision petition has been filed against the fair and decreetal order dated 05.02.2020 passed in O.S.No.184 of 2007 on the file of Additional District Munsif cum Judicial Magistrate Court, Sivagiri.

2.The only limited grievance that has been expressed by the petitioners herein, who is the plaintiff before the trial Court is that he has filed the plaint for declaration and consequential injunction, in which the respondent also appeared and filed his written statement. A plea was raised by the defendant stating that a preliminary issue must be framed with regard to the pecuniary jurisdiction of the trial Court. To that effect a petition that was taken up for hearing and after hearing both sides, the



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trial Court by the impugned order found that the pecuniary jurisdiction of the suit exceed the jurisdiction. So it was ordered to be returned for being presented before the appropriate court having jurisdiction. Time was fixed as two months.

3.The grievance of the petitioners is that the trial Court without following the proper procedure set out in Order VII Rule 10 (A) of C.P.C, has passed the order without mentioning the Court to which it must be presented. Order VII Rule 10 of C.P.C. is extracted hereunder.

“10. Return of plaint.—(1)[Subject to the provisions of rule 10A, the plaint shall] at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

(2) Procedure on returning plaint. —On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

[10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.—(1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the



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plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.]

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court—

(a) specifying the Court in which he proposes to present the plaint after its return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,—

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),—

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the



suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

4. So, the counsel for the respondent submitted that he has no objection to remand the matter back to the trial Court to make fresh order on this issue. In that event if any limitation intervened, the trial Court may also take into account and may make an order to that effect in the fresh order. In the meantime, the petitioners, as the plaintiffs may also file a proper valuation slip before the trial Court. Pending revision petition, the first petitioner reported to be dead and his legal heirs are already on record. Memo was also filed to that effect and recorded. The same cause title may be adopted by the trial Court at the time of passing fresh order.



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5. Accordingly, the matter is remanded back to the learned Additional District Munsif cum Judicial Magistrate, Sivagiri for passing fresh orders as stated earlier. Let the above said process be completed within a period of one month from the date of receipt of a copy of this order.

6. With the above said directions, this civil revision petition stands allowed. No costs.

10.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The Additional District Munsif cum Judicial Magistrate,
Sivagiri.

2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN,J.

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