

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

+C.R.P.No.1841 OF 2024

% 10.01.2025

Gorripati Veera Venkata Rao
and others

.....Petitioners

And:

\$ Ethalapaka Vanaja and
others

....Respondents.

!Counsel for the Petitioners: Sri V.V. Ravi Prasad

^Counsel for the respondents : Nil

<Gist:

>Head Note:

? Cases referred:

- 1.2021 SCC OnLine Mad 2514
- 2.2023 (3) ALT 16 (AP)
- 3.2010(5) ALT 411 (S.B)
- 4.(2010) 7 SCC 417
- 5.(2017) 11 SCC 852
- 6.(2010) 12 SCC 112
- 7.(2020) 10 SCC 706
- 8.(2008) 17 SCC 117
- 9.(2023) 11 SCC 79
10. 2019 (4) ALT 321 (TS)
11. 2015 (1) ALT 352
12. 2004(1) An.W.R.252 (A.P)
13. 2024 SCC OnLine AP 5302
14. (2021) 6 SCC 418
15. (2019) 9 SCC 154
16. AIR 1963 SC 677
17. (2012) 5 SCC 370

HIGH COURT OF ANDHRA PRADESH

*** * * ***

C.R.P.No.1841 OF 2024

DATE OF JUDGMENT PRONOUNCED: 10.01.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

- | | |
|--|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the
fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

C.R.P.No.1841 OF 2024

JUDGMENT:

1. Heard Sri V.V. Ravi Prasad, learned counsel for the petitioners.

I. FACTS:

2. The petitioners in order to institute the suit for partition of plaint schedule property and to put them in their respective shares, submitted a plaint in the office of the Principal District Judge at Visakhapatnam, Numbered as G.R.No.10331/16-07-2024, which has finally been returned on 22.07.2024 with certain objections, of which reference would be made shortly.

3. Challenging the order dated 22.07.2024, the present civil revision petition under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners.

4. The respondents 1 to 5 are arrayed as defendants in the plaint. Since the suit has not been registered yet and it is at the stage of G.R number and the plaint has been returned, there is no question of issuing notice of this petition to the respondents.

5. The plaintiff – petitioners presented the plaint under Section 26 read with Order VII Rule 1 C.P.C on 16.07.2024.

II. OFFICE OBJECTIONS:

6. The plaint was returned to the petitioners with the following office objections:-

“Returned on 16.07.2024:

1. *Family pedigree (Genealogy) is to be filed.*
2. *E-mail Id's of both parties are to be furnished in cause title of plaint*
3. *Full details of Valuation and Court fee particulars are to be mentioned in para-V of plaint*
4. *Encumbrance certificate for plaint schedule property from 14.08.1946 till date is to be filed.*
5. *M.V. certificate for plaint schedule S.No.3/1A1 is to be filed.”*

7. The petitioners again represented the plaint on 22.07.2024 making the following endorsements:

“Represented on 22.07.2024:

1. Since, the suit is not between Maddula Family members and only between people claiming right from and through Maddula family members, it may not be necessary for the plaintiffs to file family pedigree. Further the plaintiff being outsiders to Maddula family and since the Maddula family as mentioned in the plaint is not a large family and since there is no confusion at all, it is respectfully submitted that there is no necessity of family pedigree.
2. Complied with.

3. Complied with.
4. It is respectfully submitted that EC for the schedule property from 1946 is impossible to be produced and it is also respectfully submitted that it is quite unnecessary.
5. It is submitted that the registration department is not giving M. V. Certificate basing on survey number but going by the area and D.No's of the property (or) the nearest Door Number.

Objections answered accordingly hence represented.”

8. Again the plaint was returned on 22.07.2024 with the following objections granting 7 days time to remove the objections:

“1. Objection Nos.1,3,4 and 5 dated 16.07.2024 are to be complied.

2. Documents if any showing joint possession of the property are to be filed.

3. Particulars of the schedule property are not filled with the schedule of doc No.11, explain.

4. As per the recitals of doc No.2, all the parties thereto including Maddula Sambasiva Rao, through whom D1 to D4 said to have traced their title, have partitioned all the properties. Explain on maintainability of the suit on joint possession.

5. Explain maintainability of the suit without seeking appropriate reliefs, if any, as per law on the Regd., development agreement coupled with GPA No.4152/2023 dated 08.05.2023 etc., duly paying CF in terms of the law

laid down by Hon'ble Supreme Court of India in Suhrid Singh vs. Randhir Singh (2010) 12 SCC 112 and J. Vasanthi & others vs. N. Ramani Kanthammal dated 10.08.2017 by impleading parties though as per law including Mumbai International Airport Pvt., Ltd., vs. Regency convention Center & Hotels & others dated 06.07.2010 and Rahul S. Shah for enabling the court to effectively and completely adjudicate the suit.

III. SUBMISSION OF LEARNED COUNSEL FOR THE PETITIONERS:

9. Learned counsel for the petitioners submitted that the petitioners complied with the objections at Sl.Nos.2 and 3 of the objection dated 16.07.2024. With respect to the objections at Sl.Nos.1,3,4 and 5 of the objection dated 16.07.2024 petitioners answered that the suit was not between Maddula family members and only between people claiming right from and through Maddula family members, it might not be necessary for the plaintiffs to file the family pedigree. Further, the plaintiffs being outsiders to Maddula family and since the Maddula family as mentioned in the plaint was not a large family and since there was no confusion at all, there was no necessity to file the family pedigree. With respect to objection No.4, the Encumbrance Certificate for the schedule property from 1946 till date to be filed,

the plaintiffs answered that it was impossible to produce such Encumbrance Certificate from 1946 and that was also quite unnecessary. With respect to objection of the Market Value Certificate for plaint schedule property in Sy.No.3/1A1, they answered that the Registration department had not been giving such certificate basing on the survey number but was going by the area and door numbers of the property or the nearest door number.

10. Learned counsel for the petitioners submitted that the return of plaint on 22.07.2024, was with the further objections, under Point No.2 documents if any showing joint possession of the property were to be filed and under Point No.3, particulars of the schedule property were not filed with the schedule of document No.11, and Point No.4 as per the recitals of document No.2, all the parties thereto including Maddula Sambasiva Rao, thorough whom D.1 to D.4 said to have traced their title have partitioned all the properties. Explain, on maintainability of the suit on joint possession. The petitioners had been further asked under Point No.5, to explain maintainability of the suit without seeking appropriate relief, if any, as per law on the registered development agreement coupled with G.P.A No.4152/2023

dated 08.05.2023 etc., and asking them to duly pay court fee in terms of the law laid down by the Hon'ble Supreme Court of India in *Suhrid Singh vs. Randhir Singh* (2010) 12 SCC 112 and *J. Vasanthi & others vs. N. Ramani Kanthammal* dated 10.08.2017 by impleading parties, as per law including *Mumbai International Airport Pvt., Ltd., vs. Regency convention Centre & Hotels & others* dated 06.07.2010 and *Rahul S. Shah* for enabling the court to effectively and completely adjudicate the suit.

11. Learned counsel for the petitioners submitted that at the time of registration of the suit/at the stage of the G.R of the plaint, all those objections as raised by the office, including asking to submit encumbrance certificate, document to show joint possession, to explain and file the particulars of the document Nos.11 and 2; maintainability of the suit on joint possession; as also maintainability under objection No.5, deserved not to be raised. He submitted that such objections as raised by the office, which the petitioners had not complied, are not the objections contemplated by the procedural law, namely Code of Civil Procedure (CPC) or/and the A.P. Civil Rules of Procedure and Circular Orders, 1980 (in short the Rules, 1980), for registration of the plaint. He submitted that the maintainability of the suit, if the

suit is for all the reliefs, or proper reliefs or not, or appropriate reliefs, as well as the proof of the pedigree, all these matters, if required at all could be only after registration and institution of the suit, by the court, if so required on the judicial side, after giving opportunity to the parties. He submitted that such office objection at this stage of registration of plaint was un-called for and legally impermissible. The registration of the plaint could not be refused and the plaint could not be returned.

12. Learned counsel for the petitioners placed reliance in the following cases:-

- (1) **Selvaraj vs. Koodankulam Nuclear Power Plant India Limited¹,**
- (2) **Jellellamudi Jagadeesh and another vs. Jillellamudi Subbayamma and others²,**
- (3) **Mohd. Osman Ali vs. Second Junior Civil Judge, City Civil Court, Hyderabad and another³,**
- (4) **Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and others⁴,**
- (5) **J. Vasanthi and others vs. N. Ramani Kanthammal (died) represented by Legal representatives and others⁵**
and

¹ 2021 SCC OnLine Mad 2514

² 2023 (3) ALT 16 (AP)

³ 2010(5) ALT 411 (S.B)

⁴ (2010) 7 SCC 417

⁵ (2017) 11 SCC 852

(6) **Suhrid Singh alias Sardool Singh vs. Randhir Singh and others⁶.**

13. I have considered the aforesaid submissions and perused the material on record.

IV. PROCEDURAL PROVISIONS:

1) Code of Civil Procedure, 1908.

14. I shall first refer to the relevant provisions of C.P.C as under:

14.1. **Order 7 rule 1 C.P.C** provides for the particulars, which a plaint shall contain and reads as under:

“Rule 1: Particulars to be contained in plaint.—

The plaint shall contain the following particulars:

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;

⁶ (2010) 12 SCC 112

- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

14.2. **Order 7 Rule 3 of C.P.C** further provides for the plaint to contain where the subject matter of the suit is immovable property. It reads as under:

“3. Where the subject-matter of the suit is immovable property.—

Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

14.3. Order 7 rule 10 C.P.C provides for return of plaint. It reads as under:

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

Explanation-

For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.

(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.”

14.4. Order 7 Rule 14 C.P.C provides as under:

14. Production of document on which plaintiff sues or relies.—

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) Where any such document or a copy thereof is not filed with the plaint under this rule, it shall not be allowed to be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.

14.5. Order XIII Rule 1 C.P.C provides for production, Impounding and Return of Documents. It reads as under:

"Rule 1: Original documents to be produced at or before the settlement of issues—

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced:

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

(3) Nothing in sub-rule (1) shall apply to documents—

(a) produced for the cross-examination of the witnesses of the other party; or

(b) handed over to a witness merely to refresh his memory".

2) **A.P. Civil Rules of Practice, 1980**

15 A.P. Civil Rules of Practice and Circular Order, 1980, inter alia, provides for, the form of proceedings, presentation and

registration of plaint. The relevant Rules 8 to 11, 14, 16, 20, 21, 22 and 23, and Form 7 are reproduced hereunder:

15.1. Rule 8 Form of plaints, etc.:

All plaints, written statements, applications, affidavits, memorandum of appeal and other proceedings presented to the Court, shall be written, typewritten or printed, fairly and legibly on stamped paper or on substantial foolscap folio paper, with an outer margin of about two inches and an inner margin about one inch wide, and separate sheets shall be stitched together book wise. The writing or printing may be on both sides of the paper, and numbers shall be expressed in figures.

15.2. Rule 9 Cause-title of plaint etc.:

(1)A plaint, or original petition, shall be headed with a cause-title, as in Form No. 1. The cause title shall set out the name of the Court, and the names of the parties, separately numbered, and described as plaintiffs and defendants or petitioners and respondents as the case may be.

(2)Cause title of memorandum of appeal:—A memorandum of appeal shall be headed with a cause-title setting out the names of the courts to and from which the appeal is brought, the names of the parties, separately numbered and described as appellants and respondents, and also the full cause title of the suit or matter in the lower court, as in Form No. 2.”

(3)Cause-title of subsequent proceedings:—All proceedings, subsequent to a plaint or original petition shall be headed with cause-title as in Form No.1 and all proceedings subsequent to a

memorandum of appeal shall be headed with a cause title as in the first part of Form No.2.

15.3 “10.Names etc. of parties:

The full name, residence, and description of each party, and if such is the case, the fact that any party uses or is used in a representative character, shall be set out at the beginning of the plaint, original petition, or memorandum of appeal, as in Form No. 5, and need not be repeated in the subsequent proceedings in the same suit, appeal or matter.”

15.4 11. Address for Service:

(1) Every pleading shall contain the address for service, which shall be within the local limits of the jurisdiction of the Court in which the suit is filed or of the District Court in which the party ordinarily resides. The address for service shall contain particulars such as the Municipal or Panchayat number of the house, name of the street and locality.

15.5. “14. Proceedings in respect of immovable property:

Every plaint, original petition and memorandum of appeal, in which relief is sought with respect to immovable property, shall state, as part of the description thereof the registration district, sub-district, the name of the village, Municipality or Corporation in which the property is situate, the survey number or the house number, if any, the market value of the property and the value for purpose of court-fee and jurisdiction as computed according to provisions of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 and in cases where the court-fee payable on the rental

value, the annual rental value of the property for which it is let, and there shall be annexed thereto a statement duly filled in and signed by the party of the particulars mentioned in Form No. 8 In the absence of the said particulars, the proceedings may be received but shall not be admitted or filed until the provisions of this rule have been complied with.

15.6 “16 List of documents filed along with the plaint:

“Every plaint shall at the foot thereof, contain a list, to be signed by the plaintiff or his advocate, of the documents filed therewith, in Form No. 7 or a statement, signed as aforesaid, that no document is filed therewith.”

15.7. 20. “Presentation of proceedings:

(1) All plaints, written statements, applications, and other proceedings and documents may be presented to or filed in court by delivering the same by the party in person or by his recognized agent or by his Advocate or by a duly registered clerk of the Advocate to the Chief Ministerial Officer of the Court or such other officers as may be designated for the purpose by the Judge before 4.00 P.M. on any working day.

Provided that in case where the limitation expires on the same day they may be received by a Judge even after 4.00 P.M.

(2) The Officer to whom such documents were presented shall at once endorse on the documents the date of presentation, the value of the stamp fixed and if the proceedings, are thereby instituted, shall insert the serial number.

3. In case of paper bearing court fee stamps, he shall, if required issue a receipt in Form No. 17 in Appendix III – L to these rules.

4. Every plaint or proceeding presented to or filed in court shall be accompanied by as many copies on plain paper of the plaint or proceedings and the document referred to in Rule 16, as there are defendants or respondents unless the court otherwise dispenses with such copies of the documents by reason of their length or for any other sufficient reason.”

15.8. **“22. “Procedure on presentation:**

1) On presentation of every plaint the same shall be entered in Register No. 17 in Appendix II, Part-II, Volume II and examined by the Chief Ministerial Officer of the Court.

2). If he finds that the plaint complies with all the requirements, he shall make an endorsement on the plaint ‘Examined and may be registered’ with the date and his signature and placed before the Judge, The Chief Ministerial Officer shall also endorse on the plaint or proceedings if any caveat has been filed. If he thinks that the plaint shall be returned for presentation to the proper court or be rejected under Order VII Rule 11 or for any other person, he shall place the matter before the Judge for orders.

3). Subject to the provisions of sub-rule (2) any non-compliance with these rules or any clerical mistake may be required by the Chief Ministerial officer to be rectified. Any rectification so effected, shall be initialed and, dated by the party or his advocate making the same and the Chief Ministerial Officer shall note the number of corrections in the margin and shall initial and date the same. In the event of such rectification not being made within the time specified, the Chief Ministerial Officer shall place the matter before the Judge for Orders.”

15.9. **“23. Registration of plaint:**

“Where, upon examination, the plaint is found to be in order, it shall be entered in the register of suits, and the Judge shall pass orders as to the issue of summons or otherwise.”

15.10. Form No.7 as referred to in Rule 16 of the Rules, 1980 is as under:

“Form No.7:

Rules 16, 17 and 102 - List of documents under Order VII, R. 14 or Order XIII, R. 1 of the Code of Civil Procedure
(Cause title)

List of documents filed under Order VII, Rule 14 or Order XIII, Rule I of the Code of Civil Procedure

S.No.

Date if any of documents in Parties to the Description of vernacular and in English Parties to the document

Description of document

(Signed)

E.F.

Plaintiff (or Defendant) or Pleader for Plaintiff (or Defendant)”

15.11. Form No.7, refers to list of documents under Order VII rule 14 or Order XIII Rule 1 C.P.C which has been reproduced (supra).

V. **PROCEDURE HANDMAID OF JUSTICE:**

16. It is settled in law that Procedure is a handmaid of justice. Before proceeding further, this court consider it appropriate to refer the precedents on the point that the procedure is a handmaid of justice.

17. In ***Sambhaji v. Gangabai***⁷ the Hon'ble Apex Court held that all the rules of procedure are the handmaid of justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the Court helpless to meet extraordinary situations in the ends of justice.

18. Paragraph Nos.(10) to (14) of ***Sambhaji*** (supra) read as under:

“10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing

⁷ (2008) 17 SCC 117

procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.

11. The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the Judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. ...

13. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. ... A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. ...

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

19. In ***Sugandhi v. P. Rajkumar***⁸ the Hon'ble Apex Court reiterated that the procedure is a handmade of justice. Procedural and technical hurdles shall not be allowed to come in the way of the Court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, Courts must lean towards doing substantial justice rather than relying upon procedural and technical violation.

20. In ***Abraham Patani v. State of Maharashtra***⁹ the Hon'ble Apex Court observed and held that when dealing with matters of procedure the old adage of procedural laws being the handmaid of justice must be kept in mind. It was observed that procedural rules must not be allowed to defeat the basic purpose of a statute or hamper the pursuit of justice.

21. Paragraphs-65 to 69 of ***Abraham Patani*** (supra) read as under:

“65. Adverting to the first submission, we acknowledge the unambiguous language of Section 91 which contemplates an application being submitted by the Commissioner, Respondent 3. However, when dealing with such matters of procedure the old adage of procedural laws being the handmaid of justice must be kept in mind. As has been exhaustively and extensively reiterated by this Court in the past, procedural rules must not be allowed to defeat the

⁸ (2020) 10 SCC 706

⁹ (2023) 11 SCC 79

basic purpose of a statute or hamper the pursuit of justice unless violation of the procedure would itself amount to grave injustice.

66. In *Sangram Singh v. Election Tribunal* [*Sangram Singh v. Election Tribunal*, 1955 SCC OnLine SC 21 : (1955) 2 SCR 1 : AIR 1955 SC 425] this Court in the context of procedural rules held : (AIR p. 429, para 16)

“16. ... It is “procedure”, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties; not a thing designed to trip people up. *Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is “done” to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.*”

(emphasis supplied)

67. Similarly, in *Ghanshyam Dass v. Union of India* [*Ghanshyam Dass v. Union of India*, (1984) 3 SCC 46] the ethos behind “adjective law” was elaborated upon while dealing with issuance of notice under Section 80 of the Civil Procedure Code : (SCC p. 54, para 12)

“12. In the ultimate analysis, the question as to whether a notice under Section 80 of the Code is valid or not is a question of judicial construction. The Privy Council and this Court have applied the rule of strict compliance in dealing with the question of identity of the person who issues the notice with the person who brings the suit. This Court has however adopted the rule of substantial compliance in dealing with the requirement that there must be identity between the cause of action and the reliefs claimed in the notice as well as in the plaint. *As already stated, the Court has held that notice under this section should be held to be sufficient if it substantially fulfils its object of informing the parties concerned of the nature of the suit to be filed. On this principle, it has been held that though the terms of*

the section have to be strictly complied with, that does not mean that the notice should be scrutinised in a pedantic manner divorced from common sense. The point to be considered is whether the notice gives sufficient information as to the nature of the claim such as would the recipient to avert the litigation.”

(emphasis supplied)

68. In the same vein, *Sugandhi v. P. Rajkumar* [*Sugandhi v. P. Rajkumar*, (2020) 10 SCC 706 : (2021) 1 SCC (Civ) 116] promoted an approach that sought to achieve substantial justice when confronted with breaches of procedural law, especially when the other party did not suffer any significant prejudice. This Court opined : (SCC pp. 708-709, para 12)

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute.”

(emphasis supplied)

69. A Constitution Bench of this Court in *State of U.P. v. Babu Ram Upadhyaya* [*State of U.P. v. Babu Ram Upadhyaya*, 1960 SCC OnLine SC 5 : (1961) 2 SCR 679 : AIR 1961 SC 751] , while laying down the test for determining if the legislature intended for a provision to be directory or mandatory in nature, held as follows : (AIR p. 765, para 29)

“29. ... For ascertaining the real intention of the legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby *the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.*”

(emphasis supplied)”

VI. **Judgment in “Selvaraj”:**

22. In **Selvaraj** (supra), the batch of the cases was filed raising the familiar grievance and a common complaint.

22.1. The Madras High Court in **Selvaraj** (supra) observed as under:

“When a plaint is presented before the Registry on the Original Side of the District Judiciary, the Registry while scrutinizing it for evaluating its merit for registration, raises baffling if not mindless objections, most of which may be relevant only for final adjudication and not for registering the plaint. And these objections eventually bear the signature of the judicial officer concerned and hence they become the Court’s objections.

➤ Secondly, that plaints are repeatedly returned for curing defects, with [https://www.mhc.tn.gov.in/judis/CRP\(MD\)](https://www.mhc.tn.gov.in/judis/CRP(MD)) Nos.915, 943, 967, 991 & 330 of 2020 the Registry/Court raising its objections in installments.

➤ That a plaint is not taken up for scrutiny for weeks or months, and is neither taken on file, nor returned for weeks to months on end. (Even in this batch there was a CRP(PD) 943/2020 which made a complaint falling in this variety)”

22.2. The Madras High Court in **Selvaraj** (supra) observed that the immediate consequence of those practices carried with it the grim potentiality of defeating the very purpose of filing the suit, and putting serious obstacles in the path of access to justice. While the cause of action to bring an action at law belongs to the plaintiff, the rights and the remedies attached to its violation belong to the substantive law. The pursuit of justice however, goes through a procedural process, and this is statutorily governed Vide a century old Civil Procedure Code. Stricto sensu, the procedural aspect of registering the plaint must be, and at all times, ought to be uniform. If all those who are enjoined with the responsibility of registering the plaint understand the procedure involved in the same way, then there is little reason for its differential-application. The Madras High Court provided a checklist for the Registry of the District Judiciary on what it may do, or refrain from doing while scrutinizing the plaint. Observing that to declare this aspect of law was not just part of the judicial

power of the Court but was part of its constitutional duty under [Article 227](#) of the Constitution of India.

22.3. In **Selvaraj** (supra), the Madras High Court considered the procedural law for registration of plaint, under different heads 'Registration of Plaint'; 'Return of plaint'; 'understanding the procedure'. Order IV, VI, VII, Explanations: (a) cause of action (b) Exclusion of civil court jurisdiction, (c) Limitation, (d) Valuation etc. It observed that in the context of registration of the plaint, the concern was how far the Court should filter the plaint for the extent of its conformity with Order IV Rule 1. It differentiated a 'judicial act' from an 'administrative act' that the courts perform. The registering of plaint was held to be a ministerial act observing that a rule of thumb that distinguishes the adjudicatory/judicial act of the court from its administrative/ministerial act was that the former always required an application of judicial mind where the Court was required to understand the contents of the plaint on a plane of law, whereas the administrative/ministerial act of scrutinizing the plaint did not require any elaborate distillation of fact-finding. It observed that there was a clear distinction in law between "presentation of a plaint" and "institution of a suit". The

procedure involved in vetting a plaint for numbering in the pre-registration stage must be considered only as a preliminary stage, and for curing defects at that stage a plaint could be re-turned as part of the activities of the preliminary stage. It raised the issue, but, how far can the Court/Registry stretch the process for vetting the plaint for defects, during the preliminary stage. It then observed that when the Code has set out the parameters, no Court shall overstep the procedure prescription. Law of procedure is a handmaid of justice, and a rule book of fairness with inherent flexibility and elasticity. Its object was to aid the furtherance of justice and not to impede it.

22.4. In **Selvaraj** (supra), the Madras High Court summed up, the conclusions and to facilitate the process of scrutiny of plaint, at the presenting stage also tabulated the manner of doing so, in paras 50 to 56 which are reproduced hereunder:

“50. To sum up, the Court may reject the plaint before numbering and entering it in the Register of Suits, if from a reading of the plaint, it is seen that the suit is barred by any law, or if it suffers from any procedural infirmity, adumbrated supra. The Court, at that stage, cannot and is not expected to conduct a roving enquiry into the merits of the matter by testing the correctness of the plaint-averments even prior to its institution.

51. In *S. Parameswari v. Denis Lourdusamy*, [(2011) 5 CTC 742], this Court had held that after one return, the Court should post the matter in open Court, and invited arguments of the counsel on the question of maintainability and pass a judicial order. If the objection is

upheld, the aggrieved party could work out his/her rights. In *Muthuganesah v. Thillaimani*, [(2016) 2 LW 340], this Court had pointed out:

“3. The court, while admitting the plaint, can scrutinise the other aspects, namely the cause of action, valuation, payment of court fee, jurisdiction and limitation. The court can also verify whether the plaint has been filed in the proper form and whether the necessary requirements of plaint have been complied with. The question as to whether any other person should have been made a party is outside the purview of the scrutiny of the trial court at the time of admitting the plaint. The above said aspects are with reference to the merits of the return made by the trial court.

4. Once certain defects are pointed out by the court and the plaint is returned and the plaintiff or plaintiffs, re-present the same stating that the plaint has been properly prepared and filed and asking the court to hear regarding the necessity to comply with the returns made by the court, the court can return the plaint provided its view that the compliance with the returns are mandatory and it is conceded by the plaintiff. If the plaintiff makes it clear that he is not prepared to comply with the returns and the plaint as filed by him should be taken on file, the trial court should reject the plaint rather than returning the plaint stating the very same reason.”

52. This Court only adds a rider to it : In all cases where the Court chooses to reject the plaint for not curing the defects mentioned (which may include the issue on exclusion of jurisdiction) it is necessary for the Court to follow the dictum in *S. Parameswari v. Denis Lourdusamy*, [(2011) 5 CTC 742] and post the matter before Court, with or without the request of the plaintiff or the counsel concerned, and hear them. The duty to hear before a decision is made constitutes the soul of procedural fairness inbuilt in the Civil Procedure Code, and cannot be compromised.

53. Now, to facilitate the process of scrutiny of plaint at the preliminary, preregistration stage in the manner herein above stated, this Court tabulate the same below:

Heads	Permissible during scrutiny of plaint	Not permissible
<i>Cause title and form of pleading (Order VI Rule 3)</i>	<i>Yes. Can be verified if there is a substantial compliance of Appendix A.</i>	
<i>Parties to suit Order VII Rule 1</i>	<i>Yes. Required to the extent required, and if</i>	

(a) to (b) and Rule 4	the suit is laid in a representative capacity.	
Maintainability (cause of action) Sec.9 & Order VII Rule 1(e)	Yes. Only to the extent of ascertaining if the plaintiff has a legally recognised enforceable right on a plain reading of the plaint, and no more.	Ø Sufficiency or adequacy of pleading cannot be gone into. Hence grounds of fraud as in Order VI Rule 4 CPC cannot be insisted. Ø Proof of any of the allegations in the plaint should not be sought. Ø Merits of the matter or correctness of the pleadings cannot be gone into.
Maintainability (Jurisdiction) Sec.9 CPC	Ø If the inherent jurisdiction of the Court is barred in granting the relief sought by any statute. Ø Caution must be exercised before returning a plaint. The entire plaint, the cause of action and the relief sought must be understood as are stated or disclosed in the plaint alone need to be considered. Ø The statutory provision barring the institution of the civil suit or excluding the civil court's inherent jurisdiction to take cognizance of the civil dispute must be strictly understood.	
Maintainability (Limitation)	Yes. Where a suit is <i>ex facie</i> barred by limitation. Only the allegation in the plaint should be the basis. However, where	Newer or clarificatory material or proof of any fact pertaining to limitation should not be insisted.

	<i>the plaintiff pleads exemption from the law of limitation under Order VII Rule 6, this should be left to be tested post registration of the suit at the appropriate stage.</i>	
<i>Maintainability Territorial and Pecuniary jurisdiction Order Sec.15 to 21 r/w Order VII Rule 1(f)</i>	<i>Yes.</i>	
<i>Money suits Order VII Rule 2</i>	<i>If precise amount is stated</i>	<i>However, sufficiency of the description cannot be gone into.</i>
<i>Description of Property Order VII Rule 3</i>	<i>Yes</i>	<i>Again, if there is any variance of extent or boundary description with any title deed, even that may be formally notified for a possible typographical or clerical mistake, but if any explanation is offered justifying the extent stated, the plaint has to be registered. This is because, looking for proof and correctness of pleadings is not contemplated at the stage when the suit is registered.</i>
<i>Relief Order VII Rule 7 and 8</i>	<i>Yes, but limited to ascertaining if a relief at all is sought</i>	<i>Appropriateness or suitability of the relief sought cannot be gone into. This is not Court's job. Seeking the relief is the prerogative of the plaintiff. The fact that the Court may</i>

		not grant it ultimately is a matter for adjudication, and is part of its judicial act and not part of its ministerial act of numbering the plaint. [See AIR 1942 Mad 446]
Valuation court fee	and Yes. But the basis for the the valuation must be as stated by the plaintiff. If any objection as to valuation must be done, then the defendant can always raise it during the first hearing under Sec.12(2) of the Tamil Nadu Court Fee & Suit Valuation Act, 1955	Proof of value of subject matter of the suit such as expert's valuation report cannot be insisted.
Documents	If enclosed can be verified with the list provided in the plaint the possibility of laying a suit 24 × 7. No law compels any person to possess all the documents all the time either. A cause of action for the suit invariably arises at a time convenient to the defendant, but it is the plaintiff who has to	Production of the documents cannot be insisted. It needs to be realised that, given the level of poverty and illiteracy in this country it cannot be expected that every one will possess all the documents all the time, anticipating approach the Court to protect his/her right. All that the plaintiff therefore needs is only a cause of action and not proof of it when he enters the court-system.
Documents		This apart After all under Order VII Rule 14(3) CPC documents, including title documents can be produced subsequently. Production of documents may be relevant for considering the granting of

Signing the plaint Order VI Rule 14	Yes	<i>interim relief, but is not mandatory for numbering the suit.</i>
Verification of plaint Order VI Rule 15	Yes	
	1. Copy of plaint and affidavit. 2. Vakalath. 3. Any application for leave to sue 4. Process along with	
Accompanying papers	copies of plaint.(Plaint cannot be returned for not providing it since under Order VII Rule 9, they have to be provided only after the suit is numbered and the Court orders summons to the defendant) 5. Any other applications with affidavit	
Others	Any formal typographical or clerical error apparent on the face. Any doubt as to pecuniary or territorial jurisdiction. This is consistent with Order VII Rule 1(a) CPC	

Related Aspects:

54. Where the plaint is sought to be rejected on any of the grounds provided under Order VII Rule 11 even during the pre-registration stage, the matter must be posted before the open court, and the plaintiff or his/her counsel must be heard in the matter.

55. For curing any of the permissible defects, no court shall return the plaint more than once. This has been deprecated by this Court even in *S. Parameswari v. Denis Lourdusamy*, [(2011) 5 CTC 742] referred to above. In other words, returning the plaint multiple times on multiple grounds is a sin in procedure and the Court/Registry needs to become adequately aware about it. In spite of the fact that the decision in *S. Parameswari's* case was pronounced a decade ago, even in this batch of cases this Court has witnessed that some of our Courts and their registry continue to flout it.

56. This apart, in all cases where the plaint is presented, a decision as to numbering in the manner indicated in the tabulation provided in paragraph 31 shall be taken not later than three working days (excluding the date of presentation and any intervening holidays)."

VI. **ANALYSIS:**

1) **Rules:**

23. Now coming to rules, a perusal of the aforesaid provisions shows that Rule 20 of the Rules, 1980, which is for the presentation of proceedings, under sub rule (1) Provides that all plaints, written statements and other proceedings and documents may be presented or filed in the court in the manner prescribed. Rule 22, which is with respect to the procedure on presentation, of plaint provides that on presentation of every plaint, the same shall be entered in Register No.17, in Appendix-II, Part-II Volume II, and be examined by the Chief Ministerial Officer of the Court. If he finds that the plaint complies with all the requirements, he shall make an endorsement on the plaint "Examined and may be Registered", with the date and his

signature and shall place before the Judge. The Chief Ministerial Officer shall also endorse on the plaint or proceeding, if any caveat has been filed. If he thinks that the plaint shall be returned for presentation to the proper court or be rejected under Order VII Rule 11 or for any other reason, he shall place the matter before the judge for orders.

24. Rule 16 of the Rules, 1980, provides for list of documents filed along with the plaint. As per this rule every plaint shall at the foot thereof, contain a list, to be signed by the plaintiff or his advocate, of the documents filed therewith, in Form No.7, or a statement, signed as aforesaid, that no document is filed therewith. Form 7 does not provide for any specific description of document only description of the document, inter alia, is to be mentioned which the plaintiff is filing with the plaint in Form No.7. It refers to Order VII Rule 14 and Order XIII Rule 1 C.P.C.

25. Order VII Rule 14 C.P.C provides for the production of documents where a plaintiff sues upon a document or relies upon documents in his possession or power in support of his claim. Such documents, upon which he places reliance or sues, are to be entered in a list and to be produced in court when the plaint is presented. Under Order VII rule 14(3) even at a later stage the

court may permit the plaintiff to file such documents which he ought to have produced in court by the plaintiff when the plaint was presented or to be entered in the list, i.e with the leave of the court.

26. Order XIII Rule 1 CPC relates to the production of original documents on or before the settlement of issues. All the documentary evidence, in original where the copies have been filed along with the plaint or written statement shall be produced on or before the framing of issues. As per Sub Rule (2) the court shall receive the documents so produced.

2) **ENCUMBRANCE CERTIFICATE:**

27. The aforesaid provisions do not specifically provide that the encumbrance certificate, is one of such documents which shall be entered in the list and filed with the plaint. So, it cannot be that for non-production or not entering in the list the encumbrance certificate, with the plaint would result in return of the plaint at the stage of registration. None of the provisions show it mandatory to file the encumbrance certificate along with the plaint. Further, whether the encumbrance certificate would be document upon which the plaintiff, sues or relies upon, is a question, to be seen on the pleadings of the plaint. Plaintiff may not be suing or

placing reliance for his claim on encumbrance certificate. Even the encumbrance certificate may not be in possession or power of the plaintiff to attract the provisions of Order VII Rule 14 C.P.C. Even if, it be taken that encumbrance certificate is one such document as contemplated by Order VII Rule 14, in a specific plaint case, and the plaintiff does not comply with the requirement of Order VII Rule 14, the plaint can still not be returned to compel the plaintiff to file encumbrance certificate at the stage of registration of the plaint, as, if necessary, it can be filed later on with the leave of the court under Order VII Rule 14(3) CPC.

28. So, this court is of the view that, at the stage of registration of plaint asking for filing the encumbrance certificate and raising such, as an objection and in case of non compliance, returning the plaint, is legally not permissible nor justified by the rule position.

29. In **Jillellamudi Jagadeesh** (supra), the plaint was returned with various objections, at the time of its registration, and on resubmission was returned again on different objections. This court considered the point: **“whether roaming enquiry is necessary at the time of number the suit.”** And held that, at

the stage of numbering the plaint, the courts normally shall not go into the merits of the matter. If on perusal of the plaint, the plaint disclosed cause of action, the court shall number the suit. If the plaintiff failed to prove his claim/case during the trial, eventually he would be non-suited. But, if the plaint disclosed cause of action, whether the relief, the plaintiff was entitled or not, would depend upon the evidence to be let in. At the stage of numbering of the suit, court, normally, shall not go into merits of the suit and decide as to whether the plaintiff would get the relief or not.

30. Paras 14 to 17 of **Jillellamudi Jagadeesh** (supra), are as under:

“14. At the stage of numbering the plaint, the Courts normally shall not go into merits of the matter. If on perusal of the plaint and if plaint discloses cause of action, the Court shall number the suit. if the plaintiff fails to prove his claim/case during the trial, eventually he will be non-suited. But if the plaint discloses cause of action whether the relief, the plaintiff entitled or not, will depend upon the evidence to be let in. At the stage of numbering of the suit, court, normally, shall not go into merits of the suit and decides as to whether the plaintiff gets the relief or not.

15. In **Syed Hadi Ali Moosavi Vs. Syeda Taquia Moosavi and Ors.**¹⁰, the learned single Judge of the Telangana High Court held as follows:

“16. ... it was not proper for the Court below to express any opinion thereon at the stage of numbering of the plaint, particularly, when as pointed above, it was unnecessary for the petitioner to seek its cancellation.

17. As regards the reason (d) assigned by the Court below regarding defective description of the suit schedule property that the total extent of the property is not specifically mentioned in the schedule, it is not a ground to reject the plaint and at best the Court below can ask the party to submit the extent and incorporate the same in the plaint.

18. Regarding the reason (e) given by the trial Court that petitioner did not mention which part of the property is in his possession, that may be a matter to be gone into while considering grounds of relief in the suit and it is not a ground to reject the plaint.

19. As regards reason (f) that the plaint did not disclose proper and valid cause of action is concerned, para 12 of the plaint deals with the same. It cannot, in my opinion, be said to be inadequate warranting rejection of the plaint at the stage of numbering of the suit. Eventually, Court directed the Wakf Tribunal to number the suit.

16. In **Pranit Projects Pvt. Ltd. vs. Goundra Yadaiah**¹¹, while placing reliance upon Full Bench decision of this Court, in **Chillakuru Chenchuram Reddy Vs. Kanupuru Chenchurami Reddy** (ILR 1969 AP 1042), that at the initial stage, the plaint averments and the documents in support of the plaint are only decisive and after appearance, pleadings of the defendants that also to be considered in deciding the sufficiency of Court Fee and this

¹⁰ 2019 (4) ALT 321 (TS)

¹¹ 2015 (1) ALT 352

aspect of sufficiency of Court Fee is a mixed question of fact and law and not possible to reject the plaint straight away as sought for by the defendants and all the disputed facts raised require elaborate and roving enquiry that can be possible only by trial.

17. In **R.V. Bhuvaneswari and Ors. Vs. Ponnuboina Chencu Ramaiah and Ors.**¹², the composite High Court observed that one of the plaint averments to the effect that alleged alienation by way of sale deed was sham and nominal and alienator had no right to sell the joint family properties, without there being any division and the question whether the possession was joint at the time of alleged alienation is to be decided after trial of the suit and not at the stage of numbering of suit by the office of the Court.”

31. In **Mohd Osman Ali** (supra), the suit was filed seeking declaration of correct date of birth, which was returned directing the plaintiff to file all his original certificates for proving his correct date of birth. The High Court of Judicature at Hyderabad held that, when a party files a suit in accordance with the procedure prescribed under the Code of Civil Procedure and the Civil Rules of Practice, it is no part of the duty of the Court to examine, at the stage of scrutiny and registration of the suit, whether the plaintiff had adduced sufficient documentary evidence in support of his prayer in the suit. If the plaintiff failed to file proper material to substantiate his pleas, he could be doing so at his peril. But the

¹² 2004(1) An.W.R.252 (A.P)

Court could not at the scrutiny stage, insist on the plaintiff to file the documents, which, in its opinion, were relevant for granting relief. In **Mohd Osman Ali** (supra), direction was given to the II Junior Civil Judge, City Civil Court, Hyderabad, to entertain the suit filed by the plaintiff with the material that had been filed by him and adjudicate the same in accordance with law.

32. Para No.3 of **Mohd Osman Ali** (supra) deserves reproduction as under:

“3. Having considered the submissions of the learned Counsel for the petitioner, I find force therein. When a party files a suit, in accordance with the procedure prescribed under the Code of Civil Procedure and Civil Rules of Practice, it is no part of the duty of the Court to examine, at the stage of scrutiny and registration of the suit, whether the plaintiff has adduced sufficient documentary evidence in support of his prayer in the suit. If the plaintiff fails to file proper material to substantiate his pleas, he will be doing so at his peril. But the Court cannot, at the scrutiny stage, insist on the plaintiff to file the documents, which, in its opinion, are relevant for granting relief. Therefore, the learned II Junior Civil Judge, City Civil Court, Hyderabad, is directed to entertain the suit filed by the plaintiff with the material that has been filed by him and adjudicate the same in accordance with law.”

33. This court would also refer to a recent judgment of this Court in **Golivi Ramanamma and Challa Lakshmi and others**¹³. It was observed that to avoid the multiplicity of the proceedings, the parties should file the Encumbrance Certificate along with the plaint, which will ease future litigation. Even the courts at the numbering stage, in a given case, direct the parties to file encumbrance certificate. Underscoring the encumbrance certificate at the stage of numbering of the suit, it was observed inter alia that, the dispute could be adjudicated effectively; even the subsequent purchaser as well could be added and that the plaintiff would always be in an advantageous situation. This Court further observed that prominently the trial courts do not insist on filing of an encumbrance certificate at the stage of numbering the suit, however expressed the opinion that insistence of filing of encumbrance certificate at the stage of the numbering of the suit may arrest further delays and speed up the trial of the suit at various stages.

34. In **Golivi Ramanamma** (supra), the plaintiff had filed the suit for specific performance of agreement of sale against the sole defendant. The trial commenced. When the suit was coming

¹³ 2024 SCC OnLine AP 5302

up for argument, the plaintiff filed I.A to implead the subsequent purchasers, who had purchased the suit property or part thereof, after the legal notice was issued to the defendant in the suit, by the plaintiff prior to institution of the suit, but before its institution. The application was rejected. Challenging the same, the C.R.P was filed. The main issue was if the order rejecting the impleadment application of such a subsequent purchaser was justified and if such a subsequent purchaser was a necessary party to be impleaded in the suit. It was in that context that the observations were made, highlighting the importance and usage of encumbrance certificate in judicial proceedings, by emphasizing that upon the filing of encumbrance certificate, the dispute could be adjudicated effectively, and who were the subsequent purchasers could also be ascertained at the initial stage of the suit. However, the filing of the encumbrance certificate at the stage of registration of the plaint mandatorily, or/and the effect or consequence of not filing it with the plaint that, it would result in return of the plaint or the plaint shall not be registered, it has not been so held, in **Golivi Ramanamma** (supra). The question if the encumbrance certificate, is necessary

at the time of registration of the plaint was also not involved in **Golivi Ramanamma** (supra).

35. The stage of registration of the plaint is ministerial. When after such registration, the matter reaches to the court, it is for the court to consider if all the relevant documents in support of the pleadings have been filed or not, and if some more documents are required by the plaintiff to file, the court may pass order accordingly on the merits of the matter or may also grant time to bring on record such other material, not before the court.

36. In the present case, the stage is of registration of the plaint. What document is required in support of the pleadings to number the plaint, is not for the registry to decide, unless filing of such documents is a procedural requirement for registration of the plaint under the procedure and the rules. At the stage of registration of the plaint, which is ministerial act and not the exercise of the judicial function, it cannot be by the registration officer or officer acting in such capacity for determination as to what documents the plaintiff should file in support of its pleadings. If the document/material filed with the pleading, is sufficient or not, to make out a case, is not the function of the registry. The registry has to see only the compliance of the procedural

requirement at the time of numbering the plaint, as per the Civil Procedure Code and the Rules, 1980.

37. A perusal of the aforesaid provisions of the Code of Civil Procedure as also the Rules, 1980 does not show that filing of the encumbrance certificate at the stage of the plaint registration is required by such rules. The registry while raising the objection also, did not point out specifically any of the procedural rules which make it mandatory to annex the encumbrance certificate with the plaint. This Court is of the view that filing of the encumbrance certificate with the plaint, may be advisable; may give strength to the plaint pleadings; may even make out a case in favour of the plaintiff and may be an effective document to effectively adjudicate so many issues in the suit and may be also arresting further delays or multiplicity of the proceedings, but still in the absence of the rule, making its filing mandatory with the plaint, the plaint cannot be returned or its registration refused by the registry for not filing the encumbrance certificate with the plaint.

iii) **Maintainability of suit:**

38. So far as the objection with respect to the maintainability of the suit is concerned, the objection is to explain the

maintainability without seeking appropriate reliefs, if any, as per law on the registered development agreement, coupled with GPA etc., duly paying Court Fee. In this respect, in the objection raised, mention of the judgments of the Hon'ble Apex Court in the cases of ***Suhrid Singh @ Sardool Singh*** (supra), ***J. Vasanthi*** (supra), ***Mumbai International Airport Pvt.Ltd.*** (supra) and ***Rahul S. Shah v. Jinendra Kumar Gandhi***¹⁴ was made.

39. In ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (Dead) Through LRs***¹⁵ the Hon'ble Apex Court considered and observed that truth is guiding star in the judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. So, that is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth. That was a case arising out of a suit. The Hon'ble Apex Court observed that world over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are

¹⁴ (2021) 6 SCC 418

¹⁵ (2012) 5 SCC 370

being deployed to ensure that the scope of the factual controversy is minimized. It was observed that in civil cases, adherence to Section 30 Code of Civil Procedure would also help in ascertaining the truth. The Hon'ble Apex Court further observed that pleadings are the foundation of litigation. In pleadings, only the necessary and relevant material must be included and unnecessary and irrelevant material must be excluded. In civil cases, pleadings are extremely important for ascertaining the title and possession of the property in question. In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. The Hon'ble Apex Court also gave illustrations, not exhaustive, as to what details must be given in a suit a person claims possession. Apart from the pleadings, it was observed that the Court must insist on documentary proof in support of the pleadings. All those documents would be relevant which come into existence after the transfer of title or possession or the encumbrance as is claimed. While dealing with the civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate

orders. It was observed that if the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission. On vague pleadings, no issue arises. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case. It was further observed that in dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case.

40. In **Rahul S. Shah** (supra), the Hon'ble Apex Court issued directions, to all courts dealing with suits and execution proceedings, to be followed, to reduce delays in execution proceedings and in larger public interest to sub serve the process of justice, so as to bring an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law. One of the directions was that in a suit relating to delivery of possession, the court must examine the parties to suit under Order 10 in relation to third party interest and further exercise the power under Order XI Rule 14 C.P.C asking parties to disclose and produce documents, upon oath, which are in possession of

the parties including declaration pertaining to third party interest in such properties.

41. From the aforesaid judgments, it is settled that the Court has to ascertain the pleadings if the necessary pleadings, are there for the claim made or the relief claimed and if the pleadings are there, if they are supported by documents or not, but this function is to be discharged by the Court on the judicial side at the stage as contemplated in C.P.C as laid down in ***Maria Margarida Sequeria Fernandes*** and **Rahul S. Shah** (supra). These judgments, do not say that all these should be checked at the stage of the registration/numbering of the plaint by the Registry and for non-compliance the plaint should not be registered or numbered, or that the matter should not be placed before the Court. So, the objection raised by the Registry of the learned trial Court on the maintainability of the suit based on ***Maria Margarida Sequeria Fernandes*** (supra) and **Rahul S. Shah**, for non-registration of the plaint is unsustainable. Such objection may be on the judicial side and before the court.

42. The maintainability of a suit is always a question which is to be decided by the Court. The present stage is the registration of the plaint. After registration and placing of the plaint before the Court for consideration, such question of maintainability may be considered and answered. It is not the stage to raise the question of maintainability, unless the maintainability of the suit on the face of it is barred, by some statute, or the jurisdiction of the Civil Court is ousted on the face of the legal provisions. In such a case, also, the Registry can raise the objection, note down the objection about maintainability, but, it cannot insist to explain before the Registry, and satisfy about the suit maintainability. The Registry has no power to decide such objection. After raising the objection on maintainability of the suit, the matter is to be placed before the Court, where the plaintiff has to satisfy the Court about the maintainability. Deciding the maintainability of the suit is a judicial function and not a ministerial function. Consequently, even if there be a valid objection to the maintainability of a suit, the plaint is not to be refused registration nor is to be returned by the Registry but is to be placed before the court, pointing out such objection.

43. In ***P. Surendran v. State by Inspector of Police***¹⁶ the facts were that the First Information Report was registered against three co-accused under different sections of Indian Penal Code and Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act). The accused/petitioner filed anticipatory bail application which was dismissed by the District Principal Judge. He filed anticipatory bail application before the High Court of Madras. The Registry refused to number and list the matter before the Court, raising the objection on maintainability of the anticipatory bail in view of the alleged offence under SC/ST Act. The accused replied the objection, but the High Court Registry rejected to numbering the case and dismissed the anticipatory bail application on its maintainability under SC/ST Act. Aggrieved by such non-registering the case, the petitioner/accused approached the Hon'ble Apex Court. The question was whether the Registry could have questioned the maintainability of the anticipatory bail application. The Hon'ble Apex Court observed that the nature of judicial function is well settled under our legal system. Judicial function is the duty to act judicially, which invests with that

¹⁶ (2019) 9 SCC 154

character. The distinguishing factor which separates administrative and judicial function is the duty and authority to act judicially. Judicial function may thus be defined as the process of considering the proposal, opposition and then arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice. The Hon'ble Apex Court referred to its previous Constitution Bench judgment in ***Jaswant Sugar Mills Ltd. v. Lakshmi Chand***¹⁷, in which the criteria was formulated to ascertain whether a decision or an act is judicial function or not. It was observed that the act of numbering a petition is purely administrative. The objections taken by the Madras High Court Registry on the aspect of maintainability required judicial application of mind by utilizing appropriate judicial standard. It was held that the maintainability being judicial function, the High Court Registry could not have exercised such judicial power to answer the maintainability of the petition, when the same was in the realm of the Court. It was held that the power of judicial function cannot be delegated to the Registry, and direction was issued to the Registry to number the petition and place before the appropriate Bench.

¹⁷ AIR 1963 SC 677

44. Paragraphs-8 to 11 of **P. Surendran** (supra) read as under:

“8. We may note that the aforesaid amendment has been constitutionally challenged in various writ petitions listed before a different bench of this Court along with the R.P. (Crl.) No. 228 of 2018, titled **Union of India v. State of Maharashtra and Ors.** However, the question before this Court herein is different, distinct and limited. We are only concerned with the question whether Registry could have questioned the maintainability of the Petition.

9. The nature of judicial function is well settled under our legal system. Judicial function is the duty to act judicially, which invests with that character. The distinguishing factor which separates administrative and judicial function is the duty and authority to act judicially. Judicial function may thus be defined as the process of considering the proposal, opposition and then arriving at a decision upon the same on consideration of facts and circumstances according to the Rules of reason and justice. A Constitution Bench of five judges in **Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand and Ors.** AIR 1963 SC 677, formulated the following criteria to ascertain whether a decision or an act is judicial function or not, in the following manner-

(1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rule;

(2) it declares rights or imposes upon parties obligations affecting their civil rights; and

(3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

(emphasis added)

The act of numbering a petition is purely administrative. The objections taken by the Madras High Court Registry on the aspect of maintainability requires judicial application of mind by utilizing appropriate judicial standard. Moreover, the wordings of Section 18A of the SC/ST Act itself indicates at application of judicial mind. In this context, we accept the statement of the Attorney General, that the determination in this case is a judicial function and the High Court Registry could not have rejected the numbering.

10. Therefore, we hold that the High Court Registry could not have exercised such judicial power to answer the maintainability of the petition, when the same was in the realm of the Court. As the power of judicial function cannot be delegated to the Registry, we cannot sustain the order, rejecting the numbering/registration of the Petition, by the Madras High Court Registry. Accordingly, the Madras High Court Registry is directed to number the petition and place it before an appropriate bench.”

(iv) **OTHER OBJECTIONS:**

45. **Mumbai International Airport Private Limited** (supra) is on the point of Order I Rule 10(2) C.P.C, as to which is necessary or proper party to be impleaded in a suit.

46. In **J. Vasanthi and others** (supra) in regard to a suit for declaration that the sale deeds were fabricated and foisted, the issue was what could be the proper court fee as also the locus

standi of the defendant, to raise plea of valuation for the payment of proper court fee on the subject matter or under valuation.

47. **Suhrid Singh** (supra), is on the point of the court fee payable in regard to the prayer for declaration that the sale deeds were void and not 'binding on the co-parcenary', and for the consequential relief of joint possession and injunction.

48. The aforesaid cases in **Mumbai International Airport Private Limited** (supra), **J. Vasanthi** (supra) and **Suhrid Singh** (supra) are not on the point of at the stage of registration of the plaint, but, even from those judgments, it follows that the objection as regards necessary/proper party in a suit or the valuation/under valuation of the suit; or court fee are to be considered and decided by the court.

49. So far as the objection with respect to filing of pedigree genealogy of Maddula family members between the person claiming right from and through Maddula family members, it may not be necessary for the petitioners to file family pedigree. At the stage of registration of the plaint, insisting, filing the family pedigree was not required, such insistence should not have been made for registration of the plaint. If, during course of trial, it was

found necessary that the plaintiff had to prove the family pedigree, appropriate steps could have been taken at that stage, i.e., after the institution of the suit. Further, the family pedigree is a question which is to be proved on evidence. At this stage, only the plaint is required to be considered to comply with the procedure and the formalities, as required under Civil Procedure Code read with Civil Rules of Practice, 1980. Such is also not the requirement under the Rules.

VII. **SUM UP:**

50. All the rules of procedure are handmaid of justice. Procedural law is always subservient to and is in aid to justice and not an obstruction. To restrict the litigant seeking for justice at the entry point, the stage of registration and numbering of the plaint, by raising the objections not provided or contemplated by the provisions of the Code of Civil Procedure or/and the A.P. Civil Rules of Practice and Circular Order, 1980, or such objections which are required to be decided on the judicial side and based on such objections not to register or number the plaint and return the same again and again, results in keeping such person away from the Court, which certainly results in delaying dispensation of justice. Many plaints may accompany the applications for grant of

temporary injunction or grant for relief of urgent nature. The Registry must not be oblivious of such aspect. It must be vigilant to protect the rights of the litigants to have access to justice, knocking the doors of the court at the stage of numbering/registration. It shall ensure, not to insist compliance with such objections, which are not contemplated by the Code of Civil Procedure or Civil Rules of Practice, at the stage of registration of plaint or which the registry in the discharge of its ministerial function has to consider. Even if the objections have the backing of the rules and there is non-compliance, the plaint should not be returned, frequently, to comply with the objections, in spite of re-submission with the reply. Registry, with the objections and note/reply, should place the matter before the Court for consideration and appropriate orders. The court has the power to dispense with or grant time to comply with the procedural requirements and at the same time, in appropriate cases, where justice so demands, to pass appropriate orders safeguarding the interest of the persons approaching the court.

VIII. **Result:**

51. For all the aforesaid reasons, this civil revision petition is allowed with direction to the Registry of the Principal District

Judge, Visakhapatnam, to register the plaint and place the same before the Court concerned.

52. The Registrar (Judicial), High Court of Andhra Pradesh shall ensure the return of the plaint filed with C.R.P to the petitioner's counsel, duly keeping on record set thereof as per the procedure while returning the plaint.

53. Let a copy of this judgment be sent to all the learned Principal District Judges of all the Districts in the State of Andhra Pradesh.

54. The learned Principal District Judge(s) shall issue necessary directions to registry of their respective District Judiciary that while registering/numbering plaint, they shall, specifically refer to the provisions under which such objection is raised, so as to enable the parties or their counsels to effectively deal with such objections.

55. Registry is also directed to send a copy of this judgment to the Director, A.P. State Judicial Academy, Mangalagiri, Amaravati.

56. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

Dated:10.01.2025

Note:

L.R copy to be marked

Issue CC in one week.

B/o.

Gk

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

C.R.P.No.1841 OF 2024

Date:10.01.2025.

Gk.