

**Kanagu and Another Vs. Daniel John and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/1188076](http://sooperkanoon.com/1188076)

**Court :** Chennai Madurai

**Decided On :** Sep-28-2016

**Judge :** D. Krishnakumar

**Appeal No. :** CRP (PD) (MD) No. 1979 of 2016

**Appellant :** Kanagu and Another

**Respondent :** Daniel John and Another

**Judgement :**

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to set aside the docket order dated 7.9.2016 and to direct the Subordinate Judge, Thoothukudi to number the unnumbered O.S.No....of 2016.)

1. This revision is filed against the docket order, dated 7.9.2016 and to direct the Subordinate Judge, Thoothukudi to number the unnumbered O.S.No....of 2016.
2. The revision petitioners herein has filed a suit for partition and for separate possession of the suit property. The Subordinate court, Thoothukudi has returned the plaint on 15/9/2015 stating as follows:

Returned:

1. How the suit is maintainable to be stated. Since partition asked to the purchaser, not to the co-sharer is to be stated.

2. Court fee paid to be corrected.

3. Fresh docket sheet to be attached Represented one month.

3. Again on 23.09.2015, the plaint was represented. After several returns and representations, the plaint was finally returned on 7.9.2016 stating that:

Returned

1. Citation given by the counsel is not reliable to the suit. Hence returned.

Represent one month.

Against the said return, the Petitioner has filed the present Civil Revision Petition.

4. The original owners have executed a sale deed in favour of the defendants. Now they are all joint pattadhars in the suit. Therefore at this stage, the Trial Court cannot go into the merits of the case. If at all the suit/plaint is bad for non-jointer of necessary parties, it can be decided only at the time of final disposal. Hence the return of the plaint by the trial Court is erroneous.

5. The revision petitioners filed the suit for partition and for separate possession and the trial Court has returned the plaint for the reason that the co-sharers of the revision petitioners have not been impleaded as a party-defendant in the said suit. Even though the said defect was explained by the revision petitioners, that was not accepted by the trial Court and the plaint was again and again returned for complying with the said defects. However, taking into consideration of the above said facts and circumstances, the Sub Court, Thoothukudi at this stage ought to have numbered the suit and cannot return the said plaint itself for non-jointer of necessary parties, who are the erst-while co-sharers. If at all, the co-sharers were not impleaded in the suit, it can be decided only after numbering of the suit and it is for the parties to object that the suit is bad for non-jointer of necessary parties. In view of the above, this Court is inclined to pass the following order:

6. The revision Petitioner is directed to re-submit the plaint in the above unnumbered O.S.No....of 2016 before the Sub-Court, Thoothukudi within a period of two weeks from today. On such representation, the Sub-Court, Thoothukudi is

directed to number the above plaint, subject to the condition that the Petitioners have complied with the defects already pointed out by them. The Court below is at liberty to point out any other defects, if so warranted and it is for the Petitioners to rectify the same as per the returns made by the Court below, without prejudice to the rights, to raise all the contentions at the later stage, including maintainability of the suit.

7. With the above observations and directions, the Civil Revision Petition is disposed of. No costs.

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