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C.R.P(PD)(MD).No.1596 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.04.2023

Pronounced on : 12.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE P.VADAMALAI**

C.R.P(PD)(MD).No.1596 of 2017

and

C.M.P(MD)No.9023 of 2017

Lisama Urumees

...Petitioner

Vs.

1.C.Shanthi

2.The Sub Registrar,  
Kodaikanal.

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.42 of 2017 on the file of the District Munsif Court, Kodaikanal and allow the present Civil Revision Petition.

For Petitioner : Mr.M.Saravanan

For R1 : Mr.K.Balasundaram  
Senior Counsel  
for M/s.Veera Association

For R2 : Mrs.K.Christy Theboral  
Additional Government Pleader



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## ORDER

This Civil Revision Petition is filed to strike off the plaint in O.S.No.42 of 2017 on the file of the District Munsif Court, Kodaikanal.

### 2. The brief facts of the case:

The revision petitioner is the first defendant in O.S.No.42 of 2017 on the file of the District Munsif Court, Kodaikanal. The first respondent has filed the main suit in O.S.No.42 of 2017 for declaration that the sale agreement dated 06.01.1977 created by the defendant is forged, illegal and unexecutable and consequential relief of permanent injunction. On service of suit notice along with the copy of plaint, the revision petitioner has filed this present Civil Revision Petition under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.42 of 2017 on the file of the District Munsif Court, Kodaikanal.

3. Heard both sides and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner has argued that the respondent has suppressed so many facts. The suit property is a land and houses and the same was originally belonged to



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one S.Sankar, S/o.K.S.Swaminathan. The said S.Sankar is the vendor of the petitioner. The first respondent's father named Sankar impersonated as original owner Sankar and executed a settlement in favour of the first respondent. The petitioner filed the suit in O.S.No.263 of 2011 against the first respondent's father Sankar and another and the same was decreed on 16.04.2014. Earlier, the petitioner had filed the suit in O.S.No.373 of 1992 on the file of the Principal Sub Court, Dindigul (O.S.No.19 of 1986 on the file of the Sub Court, Periyakulam) against the petitioner's vendor for specific performance in respect of sale agreement dated 06.01.1977 and the petitioner's vendor filed the suit in O.S.No.438 of 1992 for partition. The suit O.S.No.373 of 1992 filed by the petitioner was decreed and the suit in O.S.No.438 of 1992 was dismissed and the same was upheld by this Court in AS.No.293 of 1997 and Tr.A.S.No.1137 of 2001 on 15.4.2010. Now the case is pending before the Supreme Court in SLP (Civil) Nos.21400 and 21401 of 2010 and the Hon'ble Supreme Court has ordered *status-quo* as the petitioner filed an execution petition for getting the sale deed registered. While being the facts so, the first respondent has filed the present suit to declare that the sale agreement dated 06.01.1977 is forged and unexecutable. The petitioner's vendor Sankar passed away in the year 2012. The first respondent's father Sankar again attempted to grab the property and



hence, the petitioner filed a writ petition in W.P.No.6429 of 2017 before this Court against the first respondent, her father and others. Suppressing all these facts the first respondent filed the present suit, which is abuse of process of law. The first respondent is a stranger and has no *locus-standi* and therefore, the petitioner has filed this Civil Revision Petition to strike off the plaint in O.S.No.42 of 2017 on the file of the District Munsif Court, Kodaikanal. Therefore, this Civil Revision Petition may be allowed.

5. Per contra, the learned counsel for the first respondent has vehemently contended that the first respondent is not at all a party to the suits and appeal in A.S.No.293 of 1997 and O.S.No.263 of 2011. The suit property was sold by M/s.South Travancore Plantations Ltd., Company to the first respondent's father S.Shankar and her husband K.Chandrasekar by virtue of a sale deed dated 22.06.1972. All revenue records transferred in their names. Both have settled their respective half share to the first respondent. Since the original sale deed was misplaced, the first respondent made a paper publication and since there was no response, the first respondent lodged a police complaint. Thereafter, the first respondent has made averments and filed the present suit in O.S.No. 42 of 2017 on the file of the District Munsif Court, Kodaikanal as the



alleged sale agreement is forged and created by the petitioner. If the petitioner states that the present plaint is hit by earlier suits, the petitioner has to raise the same as a preliminary issue in the suit itself and he could not directly approach this Court under Article 227 of the Constitution of India for striking the plaint. As per the provisions of Order 7 Rule 11 of the Civil Procedure Code, there is a remedy available before the Civil Court itself. While numbering the plaint, the Court's duty is to scrutinise the plaint averments as a whole and when remedy is available under Civil Procedure Code, this Court shall not entertain this petition under Article 227 of the Constitution of India. Therefore, this Civil Revision Petition cannot be entertained by this Court. In support of his argument, the learned counsel for the respondent has relied on the judgment of this Court reported in **(2020) 17 Supreme Court Cases 260 (Shakti Bhog Food Industries Limited Vs. Central Bank of India and Anr.)** and **2022 AIAR (Civil) 879 (Mohamed Ali Vs. Jaya & Ors.)**

6. On hearing both sides and on perusal of records, it is clear that the petitioner is the first defendant in O.S.No.42 of 2017 on the file of the District Munsif Court, Kodaikanal. The first respondent filed the main suit seeking declaration that the sale agreement dated 06.01.1977 executed by the petitioner/1<sup>st</sup> defendant is forged and unexecutable.



Both parties have vehemently contended about the earlier suit proceeding and the same is pending before the Hon'ble Supreme Court and the same cannot be decided in this revision. Because this revision is filed to strike off the plaint. On receipt of the present suit summons, the first defendant/revision petitioner herein, has directly filed this Civil Revision Petition under Article 227 of the Constitution of India, for striking off the plaint in O.S.No.42 of 2017 on the file of the District Munsif Court, Kodaikanal.

7. At this stage, the decision of this Court in the case of **K.Ponnammal and Ors V. V.Thayanban and Ors. reported in 2012 -2 Law Weekly-193**, is required to be referred to. In the said decision it is observed in paragraph Nos.1, 10, 18, 21 and 22 as follows:

*"1. Petitioners have filed this Civil Revision Petition under Article 227 of the Constitution of India seeking to strike off the plaint in the suit filed by the first respondent herein, viz. O.S. No.8134 of 2011 on the file of the XVI Assistant City Civil Court Judge, Chennai.*

*10. The only question therefore that falls for consideration is as to whether in the facts and circumstances of the case, can this Court, in exercise of its supervisory power under Article 227 of the Constitution of India strike off the plaint.*



18. *In the light of the principles laid down by the Supreme Court, in the aforesaid cases, it can safely be concluded that :*

(i) *power of judicial superintendence under Article 227 must be exercised sparingly only to keep the courts and tribunals within their bounds of authority and not to correct mere errors;*

(ii) *the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameter and not to correct an error apparent on the face of the record;*

(iii) *where the law provides remedy by filing an appeal or revision, then exercise of power under Article 227 may be refused, on the ground of availability of such alternative efficacious remedy by way of appeal or revision to the aggrieved party.*

21. *Apart from that the petitioners herein have other statutory alternative remedies available under the Code of Civil Procedure. The petitioners herein, who are the defendants in the pending suit, may also move the Court below by filing an application for rejection of the plaint under Order 7 rule 11 of the C.P.C.*

22. *It is, therefore, manifest that the respondents/petitioners herein instead of availing the remedies provided under the Code of Civil Procedure have erroneously invoked the jurisdiction of this Court under Article 227 of the Constitution of India".*



Further the judgment of the Hon'ble Supreme Court of India reported in **2022 AIAR (Civil) 879 (Mohamed Ali Vs. V.Jaya & Ors.)**, wherein it is held in paragraph No.13 as follows:

*"13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of selfimposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227....".*

So it is a settled principle law that when the plaint is filed under Civil Procedure Code and there is a remedy available under Order 7 Rule 11 of the Civil Procedure Code, to reject the plaint and this Court cannot entertain the revision to strike off the plaint under Article 227 of the Constitution of India.

8.The petitioner herein, who is the first defendant in the pending suit, may also move the Court below by filing an application for rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code, Order VII, Rule 11 reads as follows:

**"11.Rejection of plaint:-** *The plaint shall be rejected in the following cases:-*



- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9;*

*Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."*

Therefore, the petitioner has a remedy under the provisions of the Civil Procedure Code. When there is a law provides remedy by filing a petition under Order VII Rule 11 of the Civil Procedure Code for rejection of plaint, this Civil Revision Petition could not be entertained under Article 227 of the Constitution of India. The other rival arguments placed in respect of the suit need not be considered in this petition. The citation relied on by the respondent side squarely applies to the facts of



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this present case on hand. Therefore, this Court is of the view that this Civil Revision Petition cannot be entertained by this Court by exercising its power under Article 227 of the Constitution of India as there is a remedy available for the revision petitioners under the provisions of the Civil Procedure Code.

9. In the result, this Civil Revision Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

12.07.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1. The District Munsif Court,  
Kodaikanal

2. The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VADAMALAI, J.**

vsd

Pre - Delivery Order made in  
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