

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12-04-2016

PRONOUNCED ON : 11-05-2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P.(PD) No.2267 of 2015

and

M.P.Nos.1 and 2 of 2015

1.A.R.Suresh
2.Jayalakshmi Ganesan
3.S.Ganapathi
4.R.Murali

... Petitioners

vs.

1.M/s.Tek Smart Group
Rep by its Sole Proprietor
Mr.S.Magesh
No.3/545, East Coast Road
Neelankarai
Chennai - 115

2.M/s.Poornaa Firm
Represented by its Partner
Ravirathnam
No.3/545, East Coast Road
Neelankarai
Chennai - 115

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to call for the plaint and the entire records relating to the suit in O.S.No.461/2015 on the file of the Court of District Munsif at Alandur and strike off and expel the suit and quash the same.

For Petitioner : Mr.D.Sadhasivan

For Respondents : Mr.K.M.Vijayan, Senior Counsel
for Mr.S.P.Harikrishnan for R1
Ms.R.T.Shyamala for R2

ORDER

The defendants 1 to 4 in O.S.No.461/2015 pending on the file of the District Munsif Court, Alandur are the petitioners in the civil revision petition filed under Article 227 of the Constitution of India seeking an order striking off the plaint in the above said suit.

2. M/s.Tek Smart Group represented by its Sole Proprietor Mr.S.Magesh, the first respondent in the civil revision petition is the plaintiff in the above said suit and the suit has been filed against the petitioners in the civil revision petition and against the second respondent in the civil revision petition, praying for a permanent injunction restraining them from evicting the first respondent herein/plaintiff without adopting due process of law and for cost.

3. For the sake of convenience the parties are referred to in accordance with their ranks in the original suit and their ranks in the civil revision petition may also be indicated at appropriate places, if necessity arises.

4. The suit came to be filed on the basis of the contention of the plaintiff that the 5th defendant (second respondent) and its partners being the owners of the suit property, leased out the same to the plaintiff under a registered lease deed dated 30.03.2015 for a monthly rent of Rs.75,000/-; that the plaintiff paid them a sum of Rs.5,00,000/- as

advance and got possession of the suit property on 30.03.2015 itself; that the plaintiff levelled the land spending a sum of Rs.10,00,000/- to make it suitable for the plaintiff's business of selling blue metal, cement, sand etc. relating to construction business; that the defendants 1 to 5, who waited for the plaintiff to complete the levelling of the land, thereafter tried to trespass into the suit property and evict the plaintiff forcibly; that a complaint lodged at J-8 Police Station was not enough to prevent the defendants from making a further attempt and that hence, the plaintiff was constrained to file the suit for the above said reliefs.

5. The defendants 1 to 4 therein, on receipt of summons in the original suit, have come forward to invoke the power of superintendence of the High Court over the courts subordinate to it under Article 227 of the Constitution of India and they have filed the present civil revision petition with the prayer to strike off and expel the suit and quash the same. The said prayer has been made on the basis of their contention that the suit came to be filed based on false claim of lease as an abuse of process of court. It is their further contention that the suit property is in the possession of the defendants 1 to 4 (revision petitioners) and that a false claim has been made by the plaintiff (first respondent) to be in possession of the suit property under a lease arrangement with the 5th defendant (second respondent).

6. The main grounds on which the defendants 1 to 4 (revision

petitioners) have prayed for striking off the plaint are: (1) that the title of the defendants 1 to 4 (revision petitioners herein) came to be upheld in an earlier suit, namely O.S.No.6992/2001 on the file of the VII Assistant Judge, City Civil Court, Chennai; (2) that the title claimed by the partners of the second defendant was negatived; and (3) that the present suit is vexatious and an abuse of process of court.

7. On the other hand, the plaintiff (first respondent), who is also supported by the fifth defendant (2nd respondent) contend that in the previous suit adverted to by the defendants 1 to 4/revision petitioners, their title was not upheld as contended by them; that the said previous suit was filed by the partners of the 5th defendant for a bare injunction in a court having no territorial jurisdiction over the area in which the suit property situated; that hence the said court, in which the former suit was filed, could not have decided the question of title; that the said former suit came to be dismissed on the sole ground that the plaintiffs therein had not sought for a declaration of their title though the same had been disputed by the defendants therein; that hence the present suit filed by the lessee for protecting his possession from being disturbed, except by adopting due process of law, cannot be said to be an abuse of process of court and that the present revision petition alone can be construed to be an abuse of process of court, as it has been filed with a view to deny the benefit of an appeal to the plaintiff

in case of rejection of plaint under Order VII Rule 11 CPC.

8. The arguments advanced by Mr.D.Sadhasivan, learned counsel for the defendants 1 to 4 (revision petitioners herein), by Mr.K.M.Vijayan, learned senior counsel appearing for Mr.S.P.Harikrishnan, learned counsel for the plaintiff (first respondent herein) and by Ms.R.T.Shyamala, learned counsel for the 5th defendant (second respondent herein) were heard. The grounds of revision and copies of the other documents produced in the form of typed sets of papers were also perused.

9. It is the contention of Mr.D.Sadhasivan, learned counsel for the defendants 1 to 4 (revision petitioners herein) that the very filing of the suit O.S.No.461/2015 on the file of the District Munsif Court, Alandur is vexatious and an abuse of process of court, since a competent court has already upheld in an earlier proceeding that the partners of the 5th defendant (partners of the second respondent in the CRP) did have no title to the suit property and they did not have possession of the same; that suppressing the same and colluding together, the plaintiff and the 5th defendant (respondents in the CRP) have brought a partnership deed into existence on 30.03.2015 and a lease deed in favour of the plaintiff on the same day, with malafide intention of enabling the filing of the above suit vexatiously to prevent the

development of the suit property and that hence, it is a fit case in which the High Court has to use its power of superintendence over the courts subordinate to it, to strike off the plaint in the original suit filed by the first respondent in the civil revision petition.

10. In this regard, the learned counsel for the petitioners relied on the judgment of the learned VII Assistant Judge, City Civil Court, Chennai dated 27.01.2006 pronounced in O.S.No.6992/2001, which had been filed by (1) S.R.Selvaraj, (2) S.Suresh Kumar, (3) S.Ravirathnam, (4) S.Rajarathinam and (5) Mrs.Kudiarasu Devi against Mrs.Krishna Rathi Ammal, Santhanalakshmi Ammal and five others. The said suit was filed for a bare injunction not to disturb their alleged possession of the suit property bearing door No.134, Neelangarai, the then Saidapet Taluk, bearing S.No.84/1A measuring about 1.50 Acres together with motor shed, watchman shed, etc. In the judgment pronounced in the said suit, it was observed that Paimash No.165, which was claimed to have been purchased by the plaintiffs therein in accordance with their compromise memo filed in S.A.No.870/1993 could be correlated to S.No.84/1A; that it was classified as a poramboke and that since their title was disputed, they could not maintain the suit for bare injunction without seeking a declaration of title.

11. Per contra, it is the contention of Mr.K.M.Vijayan, learned

senior counsel appearing for Mr.S.P.Harikrishnan, learned counsel for the plaintiff, who is also supported by Ms.R.T.Shyamala, learned counsel for the 5th defendant (2nd respondent in the CRP) that the former suit O.S.No.6992/2001 was a suit for bare injunction in which the question of title did not arise and that the former suit was dismissed on the ground of failure to seek declaration of title and also on the basis of the finding that Paimash No.165 correlated to S.No.84/1A has been found to be classified as poramboke. They have also brought it to the notice of this court that yet another suit had been filed long back in 1976, namely O.S.No.904/1976 on the file of the District Munsif Court, Poonamallee, in respect of 1.50 Acres comprised in S.No.84/1A, which was part of the larger extent of Acres 1.90 comprised in S.No.80/1 (before its sub division). They have also brought it to the notice of this court that the reliefs of declaration of title and permanent injunction were granted in the said suit in favour of Santhanalakshmi Ammal; that the same came to be reversed and set aside by the appellate court in the appeal preferred by Krishna Rathi Ammal; that the second appeal filed by Santhana Lakshmi Ammal, namely S.A.No.870/1994, was withdrawn by her on 04.03.1998 based on a compromise under the terms of which Santhana Lakshmi Ammal admitted the title and possession of Krishna Rathi Ammal (the sole defendant therein) in consideration of a sum of Rs.2,00,000/- agreed to be paid by her to Santhana Lakshmi Ammal and that thereafter Krishna Rathi ammal executed a sale deed in respect

of the said property comprised in S.No.84/1A having an extent of Acres 1.50 cents in favour of S.R.Selvaraj and others for a sale consideration of Rs.20,00,000/- and Santhana Lakshmi Ammal also joined in the execution of the said sale deed as a confirming party.

12. Mr.K.M.Vijayan, learned senior counsel for the first respondent and Ms.R.T.Shyamala, learned counsel for the second respondent brought it to the notice of this court that the suit property was originally purchased by Krishna Rathi Ammal from one Srinivasa Naicker under a sale deed dated 18.08.1975; that one Santhana Lakshmi ammal filed a suit O.S.No.904/1976 on the file of the District Munsif Court, Poonamallee for declaration of her alleged title and possession in respect of the suit property; that though the suit was allowed by the trial court by a judgment and decree dated 30.07.1992, on an appeal it was reversed by the lower appellate court resulting in the dismissal of the said suit and that the second appeal filed by Santhana Lakshmi Ammal in S.A.No.870/1994 ended in a compromise. It is their further contention that after the said confirmation of title and possession of Krishna Rathi ammal, she executed a sale deed in favour of S.R.Selvaraj and others on 15.09.2000 in which the said Santhana Lakshmi Ammal also signed as a confirming party; that only thereafter Ashokan and others filed O.S.No.481/2001 in the court of District Munsif, Alandur against Santhana Lakshmi Ammal and Krishna Rathi

ammal for permanent injunction alone in respect of the suit property and that the said suit was also dismissed as withdrawn on 14.12.2007.

13. The crux of the contention raised on behalf of the plaintiff and the 5th defendant is that the suit in O.S.No.904/1976 filed on the file of District Munsif Court, Poonamallee by Santhana Lakshmi Ammal against Krishna Rathi ammal came to be decreed by the trial court; that on appeal the same was reversed by the first appellate court and that the further appeal filed by Santhana Lakshmi Ammal came to be dismissed as withdrawn in terms of the compromise memo between them. It is their further contention that after the withdrawal of the said second appeal S.A.No.870/1994, Krishna Rathi Ammal's title and possession stood confirmed; that the said Krishna Rathi Ammal sold it to S.R.Selvaraj and others under a sale deed dated 15.09.2000 in which Santhana Lakshmi Ammal signed as a confirming party; that S.R.Selavaraj and other co-purchasers formed a partnership firm in the name of "M/s.Poorna Firm" and the said firm leased out the property to the plaintiff (first respondent in the CRP); that the plaintiff/first respondent in the CRP got possession and levelled the properties spending a huge amount to the extent of Rs.10,00,000/- and that only thereafter, the revision petitioners tried to trespass and evict the plaintiff/first respondent forcibly, thereby forced the plaintiff/first respondent in the CRP to file the present suit O.S.No.461/2015 on the

file of the District Munsif Court, Alandur for permanent injunction not to disturb the plaintiff's possession and evict the plaintiff from the suit property without adopting due process of law. It is the further contention raised on behalf of the plaintiff and the 5th defendant that the defendants 1 to 4, who are the petitioners in the civil revision petition, have adopted a shortcut method by approaching this court with the present civil revision petition for striking off the plaint without first approaching the trial court under Order VII Rule 11 for rejection of the plaint. It is the further contention raised on behalf of the plaintiff and the 5th defendant that even the defendants 1 to 4 have not made out a case for rejection of the plaint.

14. This court paid its anxious consideration to the above said submissions made on both sides.

15. To understand the case in proper perspective, the sequence of events leading to the filing of the suit concerned in the present civil revision petition is provided, in brief, here under:

15.1. An extent of Acres 1.50 cents comprised in S.No.84/1A of Neelankarai village is the subject matter of the dispute. The said property was purchased by one Krishna Rathi Ammal under a sale deed dated 08.08.1975 from one Srinivasa Naicker registered as document No.6035/1975 on the file of the Joint Sub Registrar-II, Saidapet. After

such purchase made by Krishna Rathi Ammal, one Santhana Lakshmi Ammal D/o P.J.Narayanasamy Reddy, filed a suit in O.S.No.904/1976 on the file of the District Munsif Court, Poonamallee through her power agent P.J.Narayanasamy Reddy against the said Krishna Rathi Ammal for declaration of her alleged title in respect of the said property and for an injunction not to disturb her possession and enjoyment in respect of the same. In the said suit, an extent of Acres 1.90 out of the total extent of Acres 20.85 comprised in S.No.84/1 of Neelankarai Village was shown as the 'A' schedule property and an extent of Acres 1.50 comprised in S.No.84/1A claimed to be part of 'A' schedule property was shown as 'B' schedule property. The said suit was decreed by the trial court in favour of Santhana Lakshmi Ammal by judgment and decree dated 30.07.1992. However, on appeal the lower appellate court reversed the judgment of the trial court, set aside the decree of the trial court made in O.S.No.904/1976 and dismissed the said suit.

15.2. Aggrieved by and challenging the decree of the first appellate court, Santhana Lakshmi Ammal filed a second appeal in S.A.No.870/1994 on the file of this court. During the pendency of the second appeal, Santhana Lakshmi Ammal and Krishna Rathi Ammal effected a compromise and based on the compromise, the said second appeal S.A.No.870/1994 came to be withdrawn. The judgment and decree in S.A.No.870/1994 came to be passed by this court on 04.03.1998. Thus, the title of Krishna Rathi Ammal in respect of the

property measuring 1.50 Acres comprised in S.No.84/1A in Neelankarai Village came to be acknowledged and confirmed by Santhana Lakshmi Ammal. Thereafter, Krishna Rathi Ammal, sold the said property to S.R.Selvaraj and others, who are partners of the fifth defendant firm, under a sale deed dated 15.09.2000 registered as document No.292/2000 on the file of SRO, Neelankarai. Santhana Lakshmi Ammal also joined in the execution of the said sale deed as a confirming party.

15.3. Thereafter, S.Ashokan, Jayalakshmi Ganesan, S.Veera Raghavan, S.Natarajan and S.Ganapathy filed a suit in O.S.No.481/2001 on the file of the District Munsif Court, Alandur against the said Santhana Lakshmi Ammal and Krishna Rathi Ammal for a bare injunction not to disturb their alleged peaceful possession and enjoyment of the very same property, namely an extent of 1.50 Acres comprised in S.No.84/1A of Neelankarai village. The plaintiffs 2 and 5 therein are the defendants 2 and 3 in the present suit/petitioners 2 and 3 in the revision. The said suit filed by them came to be dismissed as withdrawn by a judgment and decree dated 14.12.2007. It is obvious from a copy of the judgment and decree passed in O.S.No.481/2001 on the file of the District Munsif Court, Alandur that the suit was simply withdrawn and a prayer for refund of half of the court fee was negatived since it was not withdrawn as settled out of court.

15.4. Meanwhile the purchasers under the sale deed dated 15.09.2000, namely A.R.Selvaraj and four others, filed a suit in

O.S.No.6992/2001 on the file of the City Civil Court, Chennai and the same was dealt with by the learned VII Assistant Judge, City Civil Court, Chennai. The said suit was filed arraying Krishna Rathi Ammal and Santhana Lakshmi Ammal as defendants 1 and 2 and the legal heirs of G.S.Subramania Iyer as defendants 3 to 7. It was filed for a bare injunction not to interfere with the alleged possession and enjoyment of the plaintiffs therein in respect of the very same suit property. The said suit, after trial, came to be dismissed by the learned VII Assistant Judge, City Civil Court, Chennai on 27.01.2006. The appeal preferred there from in A.S.No.707/2006 was also dismissed by the learned V Additional Judge, City Civil Court, Chennai by a judgment and decree dated 06.03.2007.

15.5. Meanwhile on 17.12.2001, the Revenue Divisional Officer, Chengalpattu passed an order for the removal of the names of the sons and daughter of G.S.Subramania Iyer and for issuance of patta in the name of Santhana Lakshmi Ammal in Patta No.159. The same was challenged in the writ petition W.P.No.26002/2001 and an order of interim stay was granted in W.P.M.P.No.38474/2001. Thereafter, the Revenue Divisional Officer, Chengalpattu, by order dated 17.07.2007 removed the changes made in the Village Register and directed that a final order would be passed in respect of S.No.84/1A after the disposal of the writ petition by the High Court.

15.6. In 1982 Santhana Lakshmi Ammal claiming that Acres

1.90 comprised in Paimash No.165, Neelankarai Village relating to S.No.84/1 had been jointly registered in her name and in the name of Subramania Iyer; that without her knowledge, an extent of 1.50 Acres was sub-divided, assigned S.No.84/1A and patta came to be issued in favour one Srinivasa Naicker and that the said patta and the transfer effected in the name of Srinivasa Naicker should be cancelled and the Tahsildar should be directed to restore the original position in the Village Register. Based on her petition, the District Revenue Officer, Chengalpattu at Kancheepuram passed an order on 29.06.1982 cancelling the transfer effected in the name of Srinivasa Naicker and directing the Tahsildar, Saidapet to restore *status quo ante* in the Village Register for S.No.84/1A.

15.7. Meanwhile Srinivasa Naicker had sold the said property under the sale deed dated 08.08.1975 in favour of Krishna Rathi ammal. Pursuant to the said sale, Santhana Lakshmi ammal filed the suit in O.S.No.904/1976 for a declaration of her title to the suit property and an injunction restraining Krishna Rathi Ammal from disturbing her alleged peaceful possession and enjoyment of the suit property. As pointed out supra, the said suit was decreed by the trial court on 30.07.1992. Thereafter on appeal, the decree was reversed and in the second appeal a compromise was effected and the second appeal was dismissed as withdrawn, thereby confirming the title and possession of Krishna Rathi Ammal. For such acceptance and acknowledgement of the

title of Krishna Rathi Ammal, Santhana Lakshmi Ammal was paid a sum of Rs.2,00,000/-. Only thereafter, S.R.Selvaraj and others, the partners of the 5th defendant, purchased the property from Krishna Rathi Ammal under the sale deed dated 15.09.2000 in which Santhana Lakshmi Ammal also signed as a confirming party.

15.8. After such purchase made by S.R.Selvaraj and others, who are the partners of the second defendant firm, two of the petitioners herein filed O.S.No.481/2001 on the file of the District Munsif Court, Alandur for a bare injunction and the same was dismissed as withdrawn on 14.12.2007. It seems, S.R.Selvaraj and others (partners of the second defendant firm) unnecessarily filed O.S.No.6992/2001 on the file of the VII Assistant Judge, City Civil Court, Chennai for a bare injunction and suffered a decree of dismissal of the same, which was confirmed by the High Court in S.A.No.1458/2007 and that the SLPs filed before the Supreme Court came to be dismissed. It is under the said circumstances, the 5th defendant partnership firm was constituted and a lease deed was executed in favour of the plaintiff. The partnership deed is dated 10.03.2015 and it has been registered as document No.45/2015. The firm has also been registered and a copy of the firm Registration Certificate dated 23.03.2015 has also been produced. Only thereafter a lease was created in favour of the plaintiff under a registered lease deed dated 30.03.2015 registered as Document No.2551/2015.

15.9. The claim of the plaintiff is that the plaintiff got

possession of the suit property as lessee of the same for his business in blue metal, cement, sand etc. relating to construction business and that after he levelled the land by spending a sum of Rs.10,00,000/- to make it suitable for its business, the defendants tried to trespass into the property and evict the plaintiff forcibly without following due process of law and htat hence the plaintiff was constrained to file the suit for injunction.

15.10. O.S.No.6992/2001 was filed by S.R.Selvaraj and four others against Krishna Rathi Ammal, Santhana Lakshmi Ammal, S.Ashokan, S.Veeraraghavan, S.Natarajan, Jayalakshmi Ganesan and S.Ganapathy (2nd and 3rd defendants in the present suit/2nd and 3rd petition in the revision), for permanent injunction. The same was dismissed by the trial court holding that the suit was not filed for declaration of title when the title of the plaintiffs was in dispute. The appeal preferred in A.S.No.707/2006 was also dismissed on 06.03.2007. The second appeal filed in S.A.No.1458/2007 was also dismissed on 01.10.2012. SLP Nos.33689 -33690/2012 were also dismissed on 23.11.2012. Of course it is true that the said suit O.S.No.6992/2001 filed by Selvaraj and others was dismissed for their failure to seek declaration of title and the same was confirmed by the High Court in the second appeal and that the special leave petition filed in the Supreme Court was also dismissed.

15.11. It is also true that the first respondent has got a lease

deed from S.R.Selvaraj and others, the plaintiffs in the previous suit O.S.No.6992/2001. The dismissal of the said suit cannot be construed to be a recognition or declaration of title or possession of the defendants 1 to 4/revision petitioners. It is pertinent to note that the previous suit was dismissed holding that Paimash No.165 was correlated to S.No.84/1A and the same was classified as a poramboke; that the title was also disputed by the defendants therein and that hence, the suit for injunction without a prayer for declaration of title was not maintainable.

15.12. In this regard, it is pertinent to note that initially a suit in O.S.No.904/1976 on the file of District Munsif Court, Poonamallee came to be filed by Santhanalakshmi Ammal against Krishna Rathi Ammal for declaration of her title and for injunction in respect of the suit property; that the same was decreed by the trial court to be reversed in the appeal by the first appellate court and that the second appeal came to be withdrawn as per a compromise. What was recognised and acknowledged by Santhana Lakshmi Ammal in the said second appeal, in return for the payment of a sum of Rs.2,00,000/-, was the title and possession of Krishna Rathi Ammal. Krishna Rathi Ammal claimed to have purchased the property in 1975 itself under a sale deed dated 08.08.1975 from one Srinivasa Naicker. Subsequent to the disposal of the second appeal, under a sale deed dated 15.09.2000 Krishna Rathi Ammal sold the suit property to S.R.Selvaraj and others, the partners of the 5th defendant firm. Santhana Lakshmi Ammal also signed the sale

deed as a confirming party. Thereafter S.Ashokan, Jayalakshmi Ganesan (2nd defendant), S.Veeraraghavan, S.Natarajan and S.Ganapathy (3rd defendant), as sons and daughter of G.S.Subramania Iyer, filed O.S.No.481/2001 on the file of the District Munsif Court, Alandur against Santhana Lakshmi ammal and Krishna Rathi Ammal for a bare injunction not to disturb their alleged possession of the suit property. The said suit also came to be dismissed as withdrawn.

16. The above said narration of facts will show that the defendants 1 to 4/revision petitioners on the one hand and the plaintiff and the 5th defendant/respondents 1 and 2 in the revision and on the other hand, are placed on the same footing since the title of neither of them has been declared by a competent court. In fact the position of the plaintiff and the 5th defendant/respondents 1 and 2 is better than that of the defendants 1 to 4/revision petitioners insofar as the title of Krishna Rathi Ammal, the vendor of the partners of the 5th defendant firm/partners of the second respondent firm, stood recognised and acknowledged in S.A.No.870/1994. On the other hand, the position of the defendants 1 to 4/revision petitioners in the revision, is different insofar as their suit in O.S.No.481/2001 on the file of the District Munsif Court, Alandur was withdrawn and neither their title nor their possession stood judicially recognised.

17. It is also pertinent to note that the City Civil Court was not

the court having territorial jurisdiction over the suit property. However S.R.Selvaraj and others chose to file O.S.No.6992/1001 on the file of the City Civil Court for injunction. Since the injunction prayed for restraining the defendants therein could be enforced by the personal obedience of the defendants therein, since some of them were residing within the jurisdiction of the City Civil court, it was held that the said court had jurisdiction to try the suit, even though the property was within the territorial jurisdiction of District Munsif Court, Alandur. It seems the defendants therein conceded and submitted to the jurisdiction of the City Civil Court. Since the relief sought for was considered personal against the defendants therein, the suit was tried by the said court, namely the Court of the VII Assistant Judge, City Civil Court, Chennai. However in case the question of title was raised in the said suit, City Civil Court, Chennai could not have exercised jurisdiction. The same is the reason why the said court non-suited the plaintiffs therein on the sole ground that no declaration of title had been sought for.

18. A reading of the said judgment of the trial court, the judgment of the appellate court and the judgment of the High Court in the second appeal, will show that neither clear cut finding regarding title and possession claimed by the plaintiffs therein in O.S.No.6992/2001, nor a definite finding regarding the title and possession claimed by the defendants therein came to be rendered and that on the other hand, the

failure to seek declaration of title, when the defendants therein made rival claims of title in them and thereby they had cast a cloud over the title of the plaintiffs therein were highlighted as the grounds to non-suit the plaintiffs therein to the relief of injunction prayed for. It is also obvious that the finding that Paimash No.165 correlated to S.No.84/1A, which was classified as poramboke also weighed with the court in arriving at the conclusion that the claim for injunction based on title should be negated.

19. On the other hand, the present suit O.S.No.461/2015 on the file of District Munsif Court, Alandur has been filed in the proper court having territorial jurisdiction, not based on title but based on the alleged possession obtained under the registered lease deed dated 30.03.2015. The prayer in the suit is also restricted to a prohibitory injunction not to evict or dispossess the plaintiff without adopting due process of law. Such prayer has been made based on the fact that neither the defendants 1 to 4/revision petitioners nor the partners of the second defendant firm/partners of the second respondent firm had got declaration of their title and that the person in possession of the suit property can protect it as against the whole world except the true owner. The foregoing discussions and observations were made only in order to show that it is not a simple case of abuse of process of court, as projected by the defendants 1 to 4/revision petitioners, so as to enable

this court to exercise its power of superintendence under Article 227 of the Constitution of India to strike off the plaint.

20. It should also be noted that the plaintiff, claiming to be in possession as a lessee, cannot be expected to file the suit for declaration of title of his landlord. When a person is in possession of the property as a lessee, he can protect such possession even against the lessor or against any other person claiming to be the owner of the property not to disturb his possession without adopting due process of law. The due process of law contemplated is adjudication of his right as lessee which may even incidentally involve the consideration of the rival claims regarding title. It has got to be decided based on evidence to be adduced in the suit. On the other hand, making an attempt to cut short the proceedings by approaching the High Court under Article 227 of the Constitution of India for striking off the plaint has to be discouraged.

21. The power of superintendence of the High court under Article 227 of the Constitution of India is akin to the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. It is a settled principle of law that in cases wherein there is an alternative remedy, which is effective and efficacious, the High Court shall not exercise its power either under Article 226 of the Constitution of India or under Article 227 of the Constitution of India. In the case on

hand, when a pertinent question was asked to Mr.D.Sadhasivan, learned counsel for the defendants 1 to 4/revision petitioners, he contended that the defendants 1 to 4/revision petitioners could very well file a petition under Order VII Rule 11 CPC for the rejection of the plaint and that still they chose to file the present revision as they were advised that the filing of the suit itself was an abuse of process of court.

22. The High Court, while dealing with a plea of abuse of process of court as a ground for striking off the plaint, should exercise caution and restraint, since use of such a power under Article 227 of the Constitution of India will have the drastic effect of denying the chance of the plaintiffs to resist a petition for similar relief in the trial court and of filing an appeal in case the plaint is rejected. It has been an established principle that the power under Article 227 of the Constitution of India to strike off the plaint shall be exercised with great caution and circumspection, that too in the rarest of rare cases, in order to avoid miscarriage of justice. If the said principle is applied to the case on hand, this court has to arrive at a conclusion that the filing of the civil revision petition itself can be viewed as an attempt at abuse of process of court and that it is not a fit case in which this court can exercise its power of superintendence under Article 227 of the Constitution of India to strike off the plaint, which is intended to confine the trial court within the bounds of its jurisdiction and to ensure that the trial court does not

exceed its jurisdiction or fails to exercise a jurisdiction conferred on it.

23. For all the reasons stated above, this court comes to the conclusion that there is no merit in the revision and the same deserves to be dismissed.

In the result, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions are also dismissed.

11.05.2016

Index : Yes
Internet : Yes
asr

To

The District Munsif, Alandur

P.R.SHIVAKUMAR, J.
asr/-

C.R.P (PD) No.2267 of 2015
and
M.P.Nos.1 and 2 of 2015

11-05-2016