

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

C.R.P.Nos.1501 & 1502 of 2016
and
C.M.P.Nos.82207 & 8228 of 2016

A.Askar Ali .. Petitioner in both revisions

Vs.

K.S.Bhadurul Jaman .. Respondent in
CRP.PD.No.1501/2016

K.S.Ziaudeen .. Respondent in
CRP.PD.No.1502/2016

Civil Revision Petitions filed under Article 227 of the Constitution of India praying to struck off the plaint in respect of O.S.Nos.320 & 322 of 2015 pending on the file of District Munsif Court, Udumalpet.

For Petitioner (both cases)	: Mr.R.Nalliyappan
For Respondent (both cases)	: Mr.AR.L.Sundaresan Senior Counsel for Mr.M.Sivavarthanan

COMMON ORDER

Respondents/tenants viz., K.S.Bhadurul Jaman and K.S.Ziaudeen had moved petitions in R.C.O.P.Nos.2 of 2009 and 1 of 2009 respectively, seeking a direction towards deposit of rent and the petitioner/landlord now aged 85 years, had moved two petitions in R.C.O.P.Nos.2 of 2012 and 1 of 2012 seeking eviction.

2. The matter was referred to Lok Adalat and a compromise was reached. The memorandum of compromise dated 10.07.2012 recorded by Lok Adalat, *inter alia* provided that the agreement of lease would be valid for a period of three years from 01.07.2012. The compromise also provided for increase of rent at 5% every year. Respondents/tenants were to vacate the premises and hand over vacant possession by 30.06.2015 and in turn, petitioner/landlord was to return the advance amount of Rs.6,00,000/- and Rs.7,00,000/- respectively. Respondents/tenants have filed O.S.Nos.320 & 322 of 2015 and both suits were presented on 29.06.2015 informing that on 12.12.2014 an oral lease had been agreed upon by the parties in the presence of witnesses where under tenancy was to continue for a period of four years from 01.07.2015 with annual increase in rent at 5%, the advance amount being unchanged.

3. Claiming regularity in payment of rent, peaceful possession and enjoyment of the suit property and alleging that petitioner/landlord, under the pretext of seeking additional advance tried to evict the tenants by engaging rowdy elements in the first week of June 2015, that respondents/tenants/plaintiffs had been able to protect their possession with the support of neighbours, that further attempts had been made on 24th & 25th June 2016 by the petitioner/landlord/defendant and informing apprehension of danger to their life and property, that the action of the defendant is high handed and illegal, of the defendant being highly influential and possessed of men and money power, pleading right to statutory notice under Tamil Nadu Buildings and Lease Control Act, the respondents sought relief of permanent injunction against wrongful dispossession.

4. Petitioner/landlord has moved the present two revisions seeking directions under Article 227 of Constitution of India towards striking off the plaint in O.S.Nos.320 & 322 of 2015 on the file of learned District Munsif, Udumalpet.

5. Heard learned counsel for petitioner and learned senior counsel for respondents.

6. Learned counsel for petitioner submitting that the

petitioner/landlord is aged about 85 years, contended that the suit in O.S.Nos.320 & 322 of 2015 on the file of District Munsif court, Udumalpet, are only attempts to avoid vacating premises in violation of the order passed by the Lok Adalat and the allegation of oral lease having been entered upon for a period of four years, was meant to achieve such purpose. Respondents/tenants should have vacated the premises as per the compromise arrived at before the Lok Adalat, on 30.06.2015.

7. Learned counsel relied on Judgment of this Court in ***RM.Subbiah v. S.Ramakrishnan and two others [2012(2) CLT 344]***, wherein it has been observed as follows:

“15. Normally a plaint cannot be rejected exercising power under Article 227 of the Constitution. However, if a party comes to the Court with unclean hands and reagitate the matter again and again, the Courts are not powerless to exercise its discretion in putting a full stop to the same. The suits that have been filed by the first respondent is a glaring example where the Courts have to exercise its power to stop the first respondent from proceeding with the matter endlessly. There is no rhyme or reason to allow the first respondent to proceed with the suit in spite of the fact that in various proceedings initiated at his instance he has lost in all the Forums.”

8. Learned senior counsel for respondents contended that the present

revisions did not present fit cases for exercise of power under Article 227 of Constitution of India. Section 9 of the Civil Procedure Code required Courts to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. It was permissible in law to plead and prove an oral lease. It was respondents/tenants' case that subsequent to the Lok Adalat, an oral agreement of lease was entered on 12.12.2014 and the petitioner/landlord has not repaid the advance amount of Rs.6,00,000/- and Rs.7,00,000/- respectively to respondents/ tenants. When the petitioner/landlord by way of present revision petitions denies such factual position, it is for him to file written statements in the suits. When the plaint in O.S.Nos.320 & 322 of 2015 disclose a cause of action, issues have to be framed and tested through trial. Learned senior counsel relied upon Judgment of this Court in ***K.Ponnamal and others v. V.Thayanban and others [2012(1) MWN (Civil) 701]***, to inform the purpose and scope of exercise of power under Article 227 and that such Article could not be had resort to when an alternative and efficacious remedy of rejection of plaint in a fit case was provided under Or.7 R.11 CPC.

9. Learned senior counsel also relied upon judgment in ***Shalini Shyam Shetty and another vs. Rajendra Shankar Patiln (2011(1) CTC 854)*** to

the following effect:

“62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a Writ petition. The history of the conferment of Writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of Tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of Appeal over the orders of Court or Tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this court in Waryam Singh (supra) and

the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra) followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the Tribunals and Courts subordinate to it, within the bounds of their authority.'

(f) In order to ensure that law is followed by such Tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of Tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic Principles of Natural Justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the Tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L.Chandra

Kumar v. Union of India & others, 1997(3) SCC 261 and therefore, abridgment by a Constitutional amendment is also very doubtful.

(j) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L.Chandra Kumar v. Union of India & Others, 1997 (3) SCC 261 and therefore, abridgment by a Constitutional amendment is also very doubtful.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the Tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial

intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter productive and will divest this extraordinary power of its strength and vitality.”

10. Learned senior counsel relied upon judgment in ***P.V.Guru Raj Reddy Represented by GPA Laxmi narayan Reddy and another vs. P.Neeradha Reddy and Others ((2015) 8 SCC 331)*** and the following therein:

“5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for

rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.”

11. This Court has considered the rival submissions.

12. There can be no straight jacket formula on when powers under Article 227 of the Constitution of India are to be exercised. A decision on the question would have to be taken in each case considering the attendant facts and circumstances. In the instant case, the terms of settlement had been agreed upon before the Lok Adalat on 10.07.2012. The same required respondents/plaintiffs to vacate the premises on 30.06.2015. The suits in O.S.Nos.320 and 322 of 2015 had been presented on 29.06.2015 i.e., on the date just prior to that on which the plaintiffs were required to vacate the premises. An oral lease of the date 12.12.2014 is pleaded and attempts to forcibly evict the plaintiffs are said to have been made in the first week of June 2015 and 24th and 25th of June 2015. Respondents/plaintiffs do not inform of having preferred any criminal complaint regards such actions. Despite alleging such wrong, plaintiffs have not found it necessary even to

cause a notice to petitioner/defendant complaining there against. Many a judgment is merely guess work and many a decision is guided by probabilities. This Court would not hesitate to err in favour of petitioner/defendant who is informed to be aged 85.

The Civil Revision Petitions shall stand allowed. The suits in O.S.Nos.320 and 322 of 2015 on the file of District Munsif Court, Udumalpet, shall stand struck off the file. No costs. Connected miscellaneous petitions are closed.

27.07.2016

Index:yes/no
Internet:yes
kkd/gm

To
The District Munsif,
Udumalpet.

C.T.SELVAM, J

kkd/gm

C.R.P.Nos.1501 & 1502 of 2016

27.07.2016