

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.2262 of 2016  
and  
C.M.P.Nos.12496, 12753 and 11726 of 2016

S.Ugavani  
D/o.K.Subramaniam

... Petitioner

vs

S.Karthikeyan  
S/o.Late Sundaram

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned Principal District Munsif, Coimbatore, passed in I.A.No.1192 of 2016 in O.S.No.963 of 2016 on 06.07.2016.

For Petitioner : Mr.P.Wilson, senior counsel  
for Mr.A.Thiyagarajan

For Respondent : Mr.R.Gandhi, senior counsel  
for Mr.N.Ponraj

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**ORDER**

This revision arises against the order of learned Principal District Munsif, Coimbatore, passed in I.A.No.1192 of 2016 in O.S.No.963 of 2016 on 06.07.2016.

2. Respondent/plaintiff has filed O.S.No.963 of 2016 on the file of learned Principal District Munsif, Coimbatore, seeking a declaration that the settlement deed dated 14.08.2015 registered as Document No.6394 of 2015 on the file of Sub Registrar Office, Gandhipuram, was null and void and other consequential reliefs. Respondent/plaintiff filed I.A.No.1192 of 2016 seeking temporary injunction. Court below, under the impugned order, granted *ex parte* ad interim injunction. Aggrieved, petitioner/defendant has filed this revision.

3. Heard Mr.P.Wilson, learned senior counsel for petitioner and Mr.R.Gandhi, learned senior counsel for respondent.

4. Learned senior counsel for petitioner submitted that the Court below fell into grave error in passing an order in favour of respondent/plaintiff and in granting an order of *ex parte* ad interim injunction as also passing a direction

against alienation and encumbering the petition mention property till 01.08.2016. Even in the absence of a prayer, it had also gone on to pass a direction 'not cause any disturbance in the petition mentioned property'. According to learned senior counsel the detailed order came to be passed on a date subsequent to the avowed date i.e., 06.07.2016 since the certified copy of 'A' diary informs merely 'Heard the petitioner, interim injunction granted c/o [call on] 01.08.2016.' This position is reflected also in the original docket of the interlocutory application. It is the contention of learned senior counsel that 'A' diary would reveal the entire order as dictated by Court and hence, where there is a variance between the certified copy of the order issued and certified copy of 'A' diary extract, the necessary inference would be that the order came to be made on a subsequent date. This Court is unable to accept such contention.

5. It is the further submission of learned senior counsel that the respondent/husband has moved O.S.No.963 of 2016 on the file of learned Principal District Munsif, Coimbatore, seeking a declaration that the settlement deed dated 14.08.2014 (executed by respondent) and registered as Document No.6394 of 2015 on the file of Sub Registrar Office, Gandhipuram,

was null and void. Pursuant to agreement between the parties, H.M.O.P.No.982 of 2015 on the file of Additional Principal Judge, Family Court, Coimbatore, has been moved, wherein the petitioner had sought a decree of divorce and the same was allowed on 07.09.2015. The Deed of Settlement in favour of the wife came to be executed by respondent/erstwhile husband in respect of the suit property. Such Deed of Settlement also reflected the position that possession of property had been handed over to petitioner and further that the respondent would in no event revoke the settlement effected. Learned senior counsel contended that while so, respondent has moved a false action complaining of wrong done by petitioner and of her having used police personnel to obtain the Deed of Settlement and that he had not handed over possession of property. Learned senior counsel contended that though prayer 'A' in the suit sought a declaration that the Deed of Settlement executed by respondent in favour of petitioner was null and void, in substance, the prayer was one for cancellation of a document. If so, under section 40 of the Court Fee and Suit Valuation Act, the Court fee payable would be on a sum of Rs.3 crores which is the value of the property informed in the Deed of Settlement. By deft drafting, a prayer for declaration of Deed of Settlement being void has been made and the Court fee has been paid in sums of Rs.75.50 as if the prayer

is made under Sections 25(d) and 27(c) of the Tamil Nadu Court Fees and Suit Valuation Act. Learned senior counsel referred to decision of the Apex Court in ***Satheedevi v. Prasanna and another [2010 (5) SCC 622]***. Paragraph No.19 of such judgment reads thus:

*“19.The deeming clause contained in the substantive part of Section 40(1) makes it clear that in a suit filed for cancellation of a document which creates any right, title or interest in immovable property, the court fee is required to be computed on the value of the property for which the document was executed. To put it differently, the value of the property for which the document was executed and not its market value is relevant for the purpose of court fee. If the expression "value of the subject-matter of the suit" was not followed by the deeming clause, it could possibly be argued that the word "value" means the market value, but by employing the deeming clause, the legislature has made it clear that if the document is sought to be cancelled, the amount of court fee shall be computed on the value of the property for which the document was executed and not the market value of the property. The words "for which" appearing between the words "property" and "other documents" clearly indicate that the court fee is required to be paid on the value of the property mentioned in the document, which is the subject-matter of challenge.”*

6. Learned senior counsel also contended that in passing orders in the

interlocutory application, the Court below has gone beyond the prayer sought therein in directing (sic) that 'not cause any disturbances in the petition mentioned property'.

7. Learned senior counsel for respondent submitted that the respondent has pleaded in the plaint that he has not handed over possession. After much argument, a detailed order stands passed by the Court below and there was no room for exercise of jurisdiction under Article 227 of the Constitution of India. If the petitioner was aggrieved, his remedy would be to seek setting aside of the *ex parte* order by moving the trial Court or in the alternative, he could prefer an appeal. Learned senior counsel referred to judgment of this Court in ***K.Ponnamal and others v. V.Thayanban and others [2012 (2) MWN (Civil) 561]***.

8. This Court has considered the rival submissions.

9. The factual circumstance in the present case is akin to that informed in paragraph 7 of the judgment of this Court in ***K.Ponnamal and others v. V.Thayanban and others [2012 (2) MWN (Civil) 561]***, which reads as

follows:

*"7. The Defendants, who are the Petitioners herein instead of appearing in the Suit have filed this Petition under Article 227 of the Constitution of India seeking a prayer to strike off the Plaint on the ground inter alia that the Court below has failed to consider that the Suit was not properly valued for the purpose of Court-fee and jurisdiction and the Court below lacked pecuniary as well as territorial jurisdiction to try this Suit. Further, the Trial Court ought to have looked at the substance of the relief sought for in the Suit and should not have been carried away by the language of the Plaint or the relief claimed therein. The Trial Court failed to note that the Respondent was actually attempting to enforce of MoU involving crores of rupees and in respect of a land lying outside the territorial jurisdiction of the Court."*

This Court, on a detailed consideration of the law on the subject, in paragraph 18 of the judgment held as follows:

*"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."*

10. This Court is in respectful agreement with the view taken by this Court in the decision in ***K.Ponnamal and others v. V.Thayanban and others [2012 (2) MWN (Civil) 561]***. Even so, this Court notes that in passing the order in the interlocutory application, the Court below has travelled beyond the prayer sought. Learned counsel for petitioner submits that taking advantage thereof, the respondent/plaintiff has caused damage to the suit property. In the circumstances, this Court considers it appropriate to pass the following order:

- (1) the portion of the order dated 06.07.2016 passed in I.A.No.1192 of 2016 in O.S.No.963 of 2016 which requires the petitioner not to cause any disturbance in the petition mentioned property shall stand deleted.
- (2) It would be open to the petitioner to move a petition under Or.7 R.11 CPC, if such a course is considered appropriate.

(3) It would be open to the petitioner to file a counter in I.A.No.1192 of 2016 in O.S.No.963 of 2016 and seek setting aside of the *ex parte* ad interim injunction.

(4) The Court below shall dispose of I.A.No.1192 of 2016 in O.S.No.963 of 2016 within a period of two weeks of filing of counter by petitioner without fail. Pending the same, there will be an order of status quo.

The Civil Revision Petition, accordingly, is ordered. No costs. Connected miscellaneous petitions are closed.

05.08.2016

**Note to office:**

**Issue order copy by 09.08.2016**

Index:yes/no

Internet:yes

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To

The Principal District Munsif,  
Coimbatore.

**C.T.SELVAM, J**

gm

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