



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2016

CORAM

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.362 of 2016 (PD)

and

C.M.P. (MD) .No.1554 of 2016

1.Dr.G.Venkatesan

2.Dr.V.S.Venkatesan

... Petitioners/Petitioners/Defendants

Vs.

Mr.Shack Abdulla

... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.623 of 2012 in O.S.No.30 of 2012 dated 10.10.2015 on the file of the Subordinate Judge, Palani.

For Petitioners

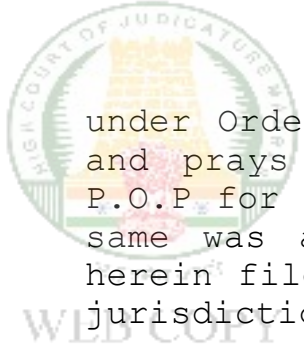
:Mr.B.Cheran

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order passed in I.A.No.623 of 2012 in O.S.No.30 of 2012 dated 10.10.2015 on the file of the Subordinate Judge, Palani.

2.The petitioners are the defendants and the respondent is the plaintiff in the suit. The respondent filed a suit in O.S.No.30 of 2012 before the Subordinate Court, Palani for claiming damage on the ground that the petitioners were negligent when they operated the respondent while he was taking treatment. The petitioners filed I.A.No.623 of 2012 under Order 7 Rule 10 of C.P.C for returning the plaint for want of territorial jurisdiction. The petitioners treated the respondent at Trichy and subsequently, he took treatment in PSG Hospital at Coimbatore. No cause of action arose within the territorial jurisdiction of Palani.

3.The respondent filed counter affidavit and stated that he is residing within the jurisdiction of Subordinate Court, Palani and he filed P.O.P.No.1 of 2011 for filing suit as an indigent person. The petitioners entered appearance through advocate. They did not take any objection with regard to the territorial jurisdiction. The petitioners took number of adjournments for filing written statement and thereafter the petitioners filed I.A.No.623 of 2012



under Order 7 Rule 10 of C.P.C., only to drag on the proceedings and prays for dismissal of I.A. The respondent/plaintiff filed P.O.P for permission to file a suit as an indigent person and the same was allowed. During pendency of the suit, the petitioners herein filed I.A for returning the plaint for want of territorial jurisdiction.

4.The learned Judge, after considering all the materials, has held that an issue can be framed and decided with regard to the territorial jurisdiction. The petitioners did not raise objection with regard to the territorial jurisdiction, when P.O.P for permission to file a suit as an indigent person was heard and decided and dismissed the I.A. Against the said dismissal order, the present Civil Revision Petition is filed.

5.The learned counsel for the petitioners contended that as per Order 7 Rule 10 C.P.C., the Court has power to return the plaint to be presented in the proper Court. The respondent took treatment at Trichy and Coimbatore and resident of respondent will not confer jurisdiction to the Subordinate Court, Palani when a Court lacks jurisdiction. The same cannot be conferred on the said Court. The petitioners did not object the jurisdiction of Sub Court, Palani, when they contested the P.O.P. As per the provision under Section 19 of C.P.C., the learned Judge ought to have allowed the application.

6.The learned counsel for the petitioners placed reliance on the decision of this Court in **SUGUNA POULTRY FARM LIMITED, JAYA ENCLAVE, 5TH FLOOR, 1057, AVANASHI ROAD, COIMBATORE-641 018 AND OTHERS v. ARUL MARIAMMAN TEXTILES LIMITED NO.23, KAMARAJ ROAD, MAHALINGAPURAM, POLLACHI, REP BY ITS MANAGING DIRECTO, R.V.S.MARIMUTHU AND OTHERS** reported in **2004(4) CTC 197**, wherein the paragraph Nos.15,16 and 17, it is held as follows:

"15.Under the above facts and circumstances of the case, I am of the view, the learned Subordinate Judge without jurisdiction had taken the case on file, issued notice in the injunction application to the uninterested persons and on their failure to contest the case, naturally I.A was allowed, which should be construed as "an abuse of process of Court". Since, in my view, the Trial Court had entertained the suit without jurisdiction and allowed the injunction application also, the illegality committed by the Court, that too without jurisdiction, has to be set aside, by the power conferred upon this Court, under Article 227 of the Constitution of India, failing which there would be miscarriage of justice, paving way, allowing the parties to chose the Court of their choice, against all established norms and procedures, creating chaos.

16.The contention of the learned counsel of the



respondents, placing reliance in A.Venkatasubbiah Naidu v.S.Challapan that the parties should be considered to approach the Trial Court, to avail the available remedies, in my considered opinion, is not well founded in this case. The Apex Court in the above ruling has observed at page 364 as follows:

"Now what remains is the question whether the High Court should have entertained the petition under Article 227 of the Constitution when the party had two other alternative remedies. Though no hurdle can be put against the exercise of the Constitutional powers of the High Court it is a well recognised principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex parte order should have been directed to resort to one of the other remedies. Be that as it may, now it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition."

17. Here also, the Apex Court had observed, there is no hurdle for this Court, to exercise the constitutional power, which is well recognised principle, which gained judicial recognition. The ratio laid down by the Apex Court, that the parties should be directed to avail the remedy available, before the Trial Court, should be followed, if the suit instituted by the parties are well framed or instituted or laid before the competent Court, having jurisdiction to decide the case. If a Court had no jurisdiction, to entertain a suit in that case, if a direction is given to the parties to approach the Court concerned, for appropriate remedies, then it would amount to vesting the jurisdiction upon a Court, which has no jurisdiction under law. For the reasons aforementioned, on the basis of the pleadings, there could be no second opinion, that the Pollachi Sub Court has no jurisdiction to entertain the suit. The position being so, placing reliance upon the above decisions, it is not desirable, to direct the revision petitioners, to approach the same Court, for the remedies. Whenever, wherever the lower Courts have committed jurisdictional error, knowingly or unknowingly, which was brought to the notice of this Court, then under the power of superintendence over all the Courts, as adumbrated under Article 227 of the Constitution of India, the High Court should exercise its power and rectify the mistake, if not, the existence of Article 227 of the Constitution of India, may not have relevance at all. In this view of the matter, I am unable to accept the contention of the learned counsel for the first respondent, that the revision petitioners should be



directed to approach the Court concerned, for appropriate relief and the relief claimed by the revision petitioners should not be granted directly by this Court under Article 227 of the Constitution of India."

7. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent.

8. From the records, it is seen that the respondent filed P.O.P.No.1 of 2011 for permission to file a suit as an indigent person. The petitioners appeared through an Advocate and contested the matter. At that time, they did not object the jurisdiction of the Subordinate Court, Palani. After, the suit was numbered, the petitioner took number of adjournments for filing written statement. Instead of filing of written statement, they filed I.A for return of plaint. On the ground of jurisdiction stating that no cause of action arose within the territorial jurisdiction of the Subordinate Court, Palani.

9. The learned Judge, considering all these facts, held that the issue with regard to the territorial jurisdiction can be framed as issue and decided at the time of trial. Therefore, there is no illegality and irregularity in the said order warranting interference by this Court.

10. The judgment relied on by the learned counsel for the petitioners is not applicable to the facts of the present case.

11. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

/TRUE COPY/

Sub Assistant Registrar

To
The Subordinate Court, Palani.
+1cc to Mr.C.Karthik, Advocate in SR.No. 8532
ns

JAM/13.04.16/NGM-SS/4P-3C

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