

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED 25.05.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**C.R.P(PD) (MD)No.1042 of 2017****and****C.M.P (MD) . No.4612 and 4613 of 2017**

WEB COPY

G.Ramasubbaiah

... Petitioner/Defendant

vs.

L.Babukumar

... Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying this Court to strike off the plaint in O.S.No.18 of 2017 on the file of the learned Subordinate Judge, Kovilpatti.

For Revision Petitioner : Mr.K.Rajeshwaran

ORDER

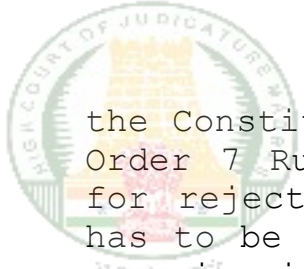
This civil revision is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.18 of 2017 on the file of the Sub Judge, Kovilpatti.

2.The brief facts of the case are that the plaintiff and the defendant entered into a sale agreement, on 05.10.2016 and as per the agreement, the revision petitioner/defendant had agreed to sale the suit property to the respondent/plaintiff, but the respondent/plaintiff issued a legal notice, dated 14.03.2017 with false allegations, for which the revision petitioner sent a reply on 03.04.2017. In the meantime, the suit in O.S.No.18 of 2017 has been filed along with I.A.No.125 of 2017 for attachment of the suit property. The trial court passed an order in I.A.No.125 of 2017 in O.S.No.18 of 2017 attaching the suit scheduled property. Hence, the revision petitioner has preferred this civil revision to strike off the plaint in O.S.No.18 of 2017.

3.The learned counsel for the revision petitioner would submit that the very facts existing in this case would clearly show that the attempt on the part of the respondent/plaintiff is an abuse of process of the court and hence, under Article 227, the court has got every power to strike of the case in O.S.No.18 of 2017.

4.Heard the learned counsel appearing for the revision petitioner and perused the materials available on record.

5. It is well settled that contentious issues of facts cannot be discussed and dealt in the petition filed under Article 227 of



the Constitution. When alternative remedy of filing petition under Order 7 Rule 11 of CPC is available to the revision petitioner, for rejection of plaint before the trial court, when the matter has to be dealt with reference to facts, this court can refuse to exercise jurisdiction under Article 227.

6. Advertising to the facts of the present case, this court is of the considered view that the revision petitioner has got an alternative remedy of filing an application under Order 7 Rule 11 of CPC for strike off the plaint before the court below. But without exhausting alternative remedy of filing application under Order 7, Rule 11 CPC, to strike off the plaint before the trial court, the revision petitioner cannot seek the relief under Article 227 of Constitution before this court. It is reiterated that the fact of maintainability of the suit cannot be decided by this court in this revision which involves dealing with the merits and demerits of the case by the trial court. Hence, in my opinion, this revision is not maintainable.

7. Since, remedy under Order 7 Rule 11 CPC is available, the revision petitioner has to approach the very same court and file an application under Order 7 Rule 11 CPC for getting appropriate relief there itself. Hence, this court is not inclined to entertain this revision.

8. In the result, this civil revision is dismissed giving liberty to the revision petitioner to file fresh application under Order 7 Rule 11 CPC before the trial court and on such application is being filed, the trial court is directed to pass orders on the application purely on merits and in accordance with law, after affording opportunity to both sides, within a period of three months from the date of filing of such application. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(P & A)

/True Copy/

Sub Assistant Registrar

To,

The Subordinate Judge,
Kovilpatti.

+1cc to M/S. K.RAJESHWARAN, Advocate, SR.No.57595.

C.R.P (PD) (MD) No.1042 of 2017
25.05.2017