

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

DATED: 25.05.2017

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CORAM :

THE HONOURABLE DR.JUSTICE M.V.MURALIDARAN**C.R.P. (MD) .No.1044 of 2017****and****C.M.P. (MD) No.4615 of 2017**

1.Malathi
2.Indhu
3.Kishore

...Petitioners/Defendants 5 to 7

Vs.

1.Thangamani
2.Sethu Mahalakshmi
3.Mariammal

... R1 to R3/Plaintiffs

4.P.Sethumathavan
5.P.Muthuramalingam
6.Karuppasamy
7.Perumal

...R4 to R7/Defendants 1 to 4

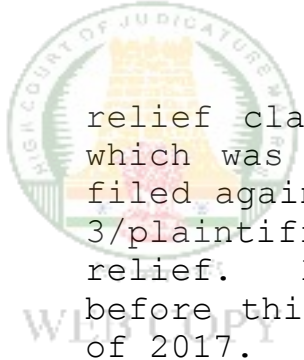
PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to strike off the plaint in O.S.No.116 of 2017 on the file of the Principal District Munsif Court, Srivilliputhur.

For Revision Petitioner : Mr.S.Ramakrishnan

ORDER

This civil revision is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.116 of 2017 on the file of the Principal District Munsif, Srivilliputhur.

2.The brief facts of the case are the respondents 1 to 3/plaintiffs have filed the suit for partition in O.S.No.116 of 2017 on the file of the Principal District Munsif, Srivilliputhur and they earlier filed the suit in O.S.No.166 of 2008 for the same



relief claiming partition, before the Sub Court, Srivilliputhur, which was dismissed for default, on 20.07.2015 and no appeal is filed against the same. Suppressing the same, the respondents 1 to 3/plaintiffs filed the suit O.S.No.116 of 2017 for the same relief. Hence, the defendants 5 to 7 as revision petitioners before this court seeking to strike off the plaint in O.S.No.116 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 respondents 1 to 3/plaintiffs is an abuse of process of the court and that the present suit O.S.No.116 of 2017 filed by them is clearly barred by res-judicata and hence, under Article 227, the court has got every power to strike off the case in O.S.No.116 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.Adverting 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 Petition is closed.

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Sd/-

Assistant Registrar(P & A)

Sub Assistant Registrar

To

The Principal District Munsif,
Srivilliputhur.

C.R.P. (MD) .No.1044 of 2017
and
C.M.P. (MD) No.4615 of 2017
25.05.2017

er/skn

SDS/SKN:RSK/SAR 2/07.09.2017/3P/2C