



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.168 of 2017 (PD)

and

C.M.P(MD)No.691 of 2017

WEB COPY

G.Senthamil Selvi

.. Petitioner/Defendant

Vs.

N.Soundararajan

.. Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike out the plaint in O.S.No.486 of 2016, on the file of the Sub Court, Palani.

For Petitioner : Mr.R.Suriyanarayanan

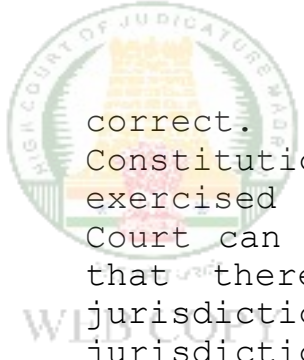
ORDER

The petitioner is the defendant in the suit. The respondent is the plaintiff. The respondent filed suit in O.S.No.486 of 2016 for declaration and injunction. The petitioner filed present Civil Revision Petition to strike out the plaint in O.S.No.486 of 2016, on the file of the Sub Court, Palani.

2.According to the petitioner, she filed suit in O.S.No.126 of 2016 before the District Munsif, Uthamapalayam for partition. While the said suit is pending, the respondent filed the present suit in O.S.No.486 of 2016 for declaration and injunction, suppressing the pendency of the earlier suit filed by the petitioner, is abuse of process of law. No separate cause of action has arisen for present suit. The very same subject matter in partition suit is the subject matter of the present suit also. The respondent filed Tr.C.M.P(MD).No.436 of 2016 before this Court to transfer the O.S.No.126 of 2016 from the file of the District Munsif Court, Uthamapalayam to the file of the District Munsif Court, Oddanchatram. This Court, by the order, dated 18.10.2016 dismissed the Tr.C.M.P(MD)No.436 of 2016. Suppressing the said fact, the present suit is filed, which is clear abuse of process of law.

3.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

4.A reading of the plaint in O.S.No.486 of 2016 shows that the respondent has filed the suit for declaration and injunction. According to the respondent, by selling jewels of his wife and income from his business he has purchased the suit property. From the schedule of the property in both the suits there are differences in properties claimed by both petitioner and respondent. Therefore, the contention of counsel for petitioner that subject matter in both the suits are one and the same, is not



correct. The power of this Court under Article 227 of the Constitution of India is an extraordinary power which has to be exercised judicially and sparingly. It is well settled that this Court can exercise its power under Article 227 only if it is proved that there is lack of jurisdiction, erroneous assumption of jurisdiction or excess of jurisdiction or refusal to exercise jurisdiction or if there is any grave dereliction of duty or flagrant violation of law an erroneous decision of law and violation of principles of natural justice. This power under Article 227 is extraordinary power and party cannot claim the same as a matter of right. In the present case, the petitioner has not made out any case for this Court for exercising extraordinary power to strike out the plaint in O.S.No.486 of 2016 as there is no reason to hold that the suit filed by the respondent is abuse of process of law.

5. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Writs)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Sub Judge,
Palani.
2. The District Munsif,
Uthamapalayam.
3. The District Munsif,
Oddanchtram.

C.R.P (MD) No.168 of 2017 (PD)
27.01.2017

AM

SVA/CM/MSA/07.02.2017/2P/4C