



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2017

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD) No.2293 of 2017

and

CMP(MD) No.11115 of 2017

The District Manager,
TASMAC,
Plot No.C 104
SIPCOT Complex,
Madathoor,
Thoothukudi.

... Petitioner

vs.

1) S.Kumaravel
2) P.Muthukumar
Rep. by the Town Panchayat Public Tiruchendur.
3) The District Collector,
Thoothukudi.
4) The Revenue Divisional Officer,
Tiruchendur.
5) The Senior Regional Manager,
TASMAC,
Madurai Region,
Madurai.
6) The Managing Director,
TASMAC,
CMDA Towers,
Egmore,
Chennai.
7) The Tahsildar,
Tiruchendur,
Thoothukudi District.
(RR3 to 7 only Formal party notice not necessary)

... Respondents

Petition filed under Article 227 of the Constitution of India, seeking to reject the suit filed in O.S.No.182/2017 on the file of the learned District Munsif, Thiruchendur, filed by the respondents 1 and 2/plaintiffs 1 and 2 herein.

For Petitioner : Mr.B.Jameel Arasu



ORDER

This revision petition has been filed to reject the plaint even without filing an application under Order 7 Rule 11 CPC.

2. The only question before this Court is whether in the facts and circumstances of the case, this Court can exercise the supervisory power under Article 227 of the Constitution to strike off the plaint.

3. It is well settled that the power conferred by the Constitution on the High Courts in each State under Article 227 of the Constitution is not only confined to judicial superintendence but also administrative superintendence over subordinate Courts and Tribunals. This is because each High Court is the highest Court in the State. The judicial power of superintendence enable the High Courts to ensure that sub-ordinate Courts and Tribunals function within the boundary of law. This power has to be exercised if it is found that there is serious breach of law which resulting injustice to the parties.

4. In the case of *Achutananda Baidya v. Prafulla Kumar Gayen* reported in (1997) 5 SCC 76 while dealing with the power of superintendence of the High Court under Article 227 of the Constitution of India, the Hon'ble Supreme Court has observed as follows:-

'The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the courts and tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are



perverse.''

5. In the case of *Surya Dev Rai Vs. Ram Chander Bai* reported in (2003) 6 SCC 675 the Apex Court held as follows:-

''24. The difference between Articles 226 and 227 of the Constitution was well brought out in *Umaji Keshao Meshram v. Radhikabai*, 1986 Supp. SCC 401. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the pendency of the



proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

WEB COPY

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction # by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.''

6. In the case of *State v. Navjot Sandhu* reported in (2003) 6 SCC 641, the Apex Court observed thus:-

'Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the



law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order. However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised as the cloak of an appeal in disguise.''

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision. The extraordinary power under Article 227 can only be used by the High Courts to ensure that the subordinate courts function within the limits of their authority. The High Court cannot interfere with the judicial functions of a Subordinate Judge and therefore, even while invoking the provisions of Article 227 of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and therefore, it is no less important that their independence should be protected effectively to the satisfaction of the litigants. The independence of the judiciary has been considered as a part of the basic structure of the Constitution and such independence is postulated not only from the executive, but



also from all other sources of pressure.

8. In *S.P. Gupta v. Union of India*, reported in 1981 Supp SCC 87 speaking on the independence of the judiciary, a Bench of seven Judges of the Hon'ble Supreme Court observed as under:-

WEB COPY

'The concept of independence of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. But it is necessary to remind ourselves that the concept of independence of the judiciary is not limited only to independence from executive pressure or influence but it is a much wider concept which takes within its sweep independence from many other pressures and prejudices. It has many dimensions, namely, fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the judges belong.'

9. This Court in *K.Ponnammal vs. V.Thayanban (CRP(PD)No.4593 of 2011 dated 26.03.2012*. after dealing with the aforesaid cases has come to the following conclusions:-

'(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. Applying the conclusions arrived at herein above, in *K.Ponnammal's case*, this Court found that the revision petition cannot be entertained and the relief sought for cannot be granted by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

11. The above case is squarely applicable to the present case. In view of the facts and circumstances of the case and the decision in *K.Ponnammal's case*, this Court is of the view that the revision petitioner herein has filed this revision petition without filing an application under Order 7 Rule 11 CPC, for rejection of plaint. When effective alternative remedy was available to the revision petitioner, he cannot invoke the jurisdiction of this Court under



Article 227 of the Constitution for his remedy.

Hence, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

WEB COPY

/True copy/

Sd/-

Assistant Registrar(CS-II)

Sub Assistant Registrar

To

The District Munsif,
Thiruchendur.

+1cc to Mr.B.JAMEEL ARASU,Advocate,SR. 92024

CRP(PD) (MD)No.2293 of 2017
08.12.2017

BALA

KK/SKN RSK/SAR 2/08.01.2018/ 7P- 3C/