



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.361 of 2018
and
CMP (MD) No.1622 of 2018

1.A.Peter Vincent
2.M.Justin Rani

... Petitioners/Defendants

Vs.

M.Mary Darathy

... Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the suit in O.S.No.44 of 2017 on the file of the learned Principal District Munsif-cum-Judicial Magistrate, Eraniel, Kanyakumari District.

For Petitioner : Mrs.L.Victoria Gowri

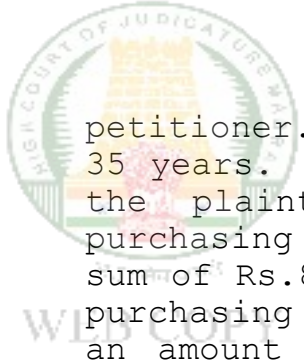
ORDER

This Civil Revision Petition has been filed to strike off the plaint in O.S.No.44 of 2017 on the file of the learned Principal District Munsif -cum- Judicial Magistrate, Eraniel, Kanyakumari District.

2. The revision petitioners are the defendants in O.S.No.44 of 2017, which has been filed for permanent injunction restraining the defendants, their men, agents and servants from causing any disturbances to the plaintiff's possession and enjoyment over the plaint schedule property without due process of law. The present revision petition has been filed to strike off the plaint in the suit.

3. The sum and substance of the arguments put forth by the learned Counsel appearing for the petitioners are as follows:

3.1. The learned Counsel for the revision petitioners would submit that the plaintiff has rightly averred in the plaint that her husband executed a sale deed in favour of the 1st petitioner in respect of the plaint schedule property. The 1st petitioner is the bonafide purchaser of the plaint schedule property from the respondent's husband. The plaintiff is the sister of the second



petitioner. The 1st petitioner is working abroad for more than 35 years. The plaintiff and her husband approached him to purchase the plaint schedule property from one Rev.Fr.G.Soosai. For purchasing the same, on 02.04.2004, the 1st petitioner transferred a sum of Rs.8,00,000/- in the account of plaintiff's husband. After purchasing the said land on 01.06.2004 again the 1st petitioner gave an amount to the plaintiff's husband for digging a well and for constructing compound wall. Later the 1st petitioner came to know that the plaintiff's husband had purchased the plaint schedule property in his name, out of 1st petitioner's money. The first petitioner came to India by October 2004 and immediately the plaintiff's husband executed a sale deed in favour of his wife / second petitioner on 03.11.2004. At the instigation of the plaintiff, again the 1st petitioner transferred a huge amount of Rs.64,12,157/- to the plaintiff's husband's account between the period from 23.11.2004 to 03.07.2013 towards establishing an ice plant in the plaint schedule property. Subsequently the first petitioner leased out the said ice plant to one Titus and Ramajeyam. In the mean while, the plaintiff has filed this vexatious suit for permanent injunction. The plaintiff has no right over the plaint schedule property and the Court below has numbered the same without seeking maintainability of the same, when the plaintiff has no title.

3.2. The learned Counsel for the petitioners would further submit that the suit is barred by Order II Rule 2 of the Code of Civil Procedure and the suit is filed for permanent injunction is not maintainable without seeking declaration of title and therefore, the suit is liable to be struck off as not maintainable.

4. Heard the learned Counsel appearing for the petitioners and perused the documents placed on record.

5. The issue as to whether the above petition for strike off plaint can be filed without approaching the Court below under Order 7 Rule 11 of Code of Civil Procedure, has already been settled in the Judgment reported in **2007-3-L.W.515, in the case of Ganapathy Subramanian vs. S.Ramalingam and 23 others**, wherein, it is held that the supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. In paragraph No.16 of the judgment, it is held as follows:

"The supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. Mere filing of the suit by the respondents and taking the suit on the file by the Trial Court cannot be regarded as an act on the part of the Trial Court to transgress its jurisdiction or its bound. Of course, the party who files the suit might have filed the suit suppressing material facts or made up the suit to his convenience for seeking the relief which is not otherwise entitled to, but that fact has to be considered by the Trial Court during the relevant



point of time. There is no impediment or embargo for the petitioner to put forth his contentions before the Trial Court to strike off the plaint at the threshold. As this Court is relegating the petitioner to go before the Trial Court for the relief, the Court has restrained itself from going into the facts of the case, as any observation made by this Court would have a bearing on the suit, which is pending before the Trial Court. Of course, the petitioner is also having an effective remedy in the Code of Civil Procedure itself to have the suit struck off and he could very well avail that remedy. On the above said reasoning, I am not inclined to grant the relief as prayed for in the revision."

6. The judgment reported in **2011 (2) LW - 45 - in the case of Krishnamoorthy Vs. Balakrishnan and another**, in paragraph No.12, it is held as follows :

" The Court has to see whether the filing of the suit in O.S. No. 248 of 2009 by the 1st respondent is abuse of process of Court. It is stated by the petitioner that the suit is not maintainable since the property in dispute was purchased by the 1st respondent from the 2nd respondent during the pendency of the execution petition but it is contended by the 1st respondent that he had no knowledge about the suit and the execution proceedings filed by this petitioner. It is well settled that contentious issues or 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 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."

7. The grounds raised by the petitioner are question of disputed facts and therefore, relying on the judgment cited above, this Court is not inclined to admit the above Civil Revision Petition when an effective alternative remedy under Order 7 Rule 10 of Code of Civil Procedure is available.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)



The Principal District Munsif cum
Judicial Magistrate,
Eraniel.

+ 1 CC TO Mrs.L.VICTORIA GOWRI, ADVOCATE IN SR No. 50817

RM

TE/JC/SAR-4 : 03/04/2018 : 4P/3C

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