



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.R.P. (PD) (MD) .No.451 of 2018

and

C.M.P. (MD) No.1982 of 2018

Mohammed Beevi

... Revision Petitioner/1st Defendant

Vs.

1.The Aranthangi Co-operative

Town Bank Ltd., for customers
represented by Krishnamoorthy

...1st Respondent/Plaintiff

2.The General Manager,

Aranthangi Co-operative Town Bank,
Door No.127, Pudukottai Road,
Aranthangi Town and Taluk,
Pudukkottai District.

...2nd Respondent /2nd Defendant

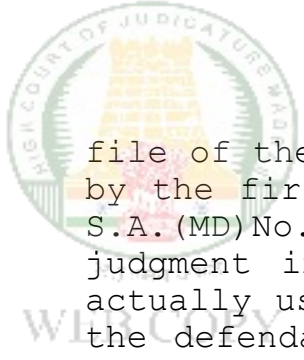
PRAYER : Petition filed under Article 227 of Constitution of India,
to strike off the plaint in O.S.No.49 of 2017 pending on the file of
District Munsif Court, Aranthangi.

For petitioners	: Mr.M.Suresh
For R1	: No appearance
For R2	: Mr.I.Velpradeep

ORDER

The first defendant in O.S.No.49 of 2017 on the file of the District Munsif Court, Aranthangi, is the revision petitioner herein. This Civil Revision Petition has been filed for striking the said suit from the file of the Court. Normally, this Court would relegate the parties to avail the remedy under Order 7 Rule 11 of CPC. But in this case, it is obvious that the parties are indulging in relitigation.

2.The second respondent herein namely Aranthangi Co-operative Town Bank filed O.S.No.18 of 1999 on the file of the District Munsif Court, Aranthangi seeking declaration that the bank has a common right of path way over the suit property for free ingress and egress and for consequential injunction, restraining the defendants therein from in any manner interfering with the said right path way. The revision petitioner Mohammed Beevi was shown as the first defendant in the said suit. The suit was initially decreed. But the decree passed by the trial Court was reversed in A.S.No.12 of 2013 on the



file of the Principal District Judge, Pudukottai. The decree passed by the first appellate Court in A.S.No.12 of 2013 was confirmed in S.A.(MD)No.94 of 2015 on 25.11.2016. It was observed in the said judgment in S.A.(MD)No.94 of 2015 that the plaintiff bank is not actually using the pathway and the physical possession is only with the defendants and that in such circumstances, the lower appellate Court was justified in not entertaining the plea of the plaintiff. The said judgment made in the S.A., was not questioned further. It had attained finality.

3. When the matters should have ended there, the first respondent herein claiming to be the customers of the bank filed O.S.No.49 of 2017 before the District Munsif Court, Aranthangi, seeking the very same relief. In fact, the cause of action for both the suits is one and the same. In the earlier suit, the bank was the plaintiff. In the second suit, the customers are the plaintiffs. It is nothing but a gross abuse of legal process. The first respondent is clearly indulging in an act of re-litigation.

4. Probably, that is why, even though the first respondent has been served notice, he has not chosen to enter appearance either in person or through counsel.

5. The supervisory jurisdiction conferred on this Court under Article 227 of the Constitution of India, is to be invoked to deal with such cases. Since, this Court has found that O.S.No.49 of 2017 is only a re-litigation, this Court has no hesitation to allow this Civil Revision Petition. O.S.No.49 of 2017 is struck off from the file of the learned District Munsif, Aranthangi.

6. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The District Munsif,
Aranthangi.

• 1 CC TO Mr.M.Suresh , ADVOCATE IN SR No. 84958.

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