



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.03.2018
Delivered on : 27.03.2018

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CORAM :
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM
C.R.P. (NPD) (MD)No.891 of 2011
and
M.P. (MD)No.1 of 2011

C.Jawahar Appasamy .. Petitioner / 2nd defendant

vs.

1.A.Vanchi Chidambara Bharathi .. 1st Respondent / Plaintiff

2.The Branch Manager,
Tamilnadu Industrial Investment Corporation,
1st floor, Sakhundhala Complex, Vannarapettai,
Trivandrum Road, Tirunelveli Town,
Tirunelveli District. .. 2nd Respondent / 1st defendant

PRAYER: Petition filed under article 227 of Constitution of India, to struck down the order of the District Munsif Court, Sankarankoil, dated 07.03.2011, ordered to take on file the subject matter was O.S.No.96 of 2011 on the file of the Principal District Munsif, Sankarankoil.

For Petitioner : Mr.S.Meenakshi Sundaram
For Respondent 1 : Mr.S.Kadarkarai
For Respondent 2 : Mr.S.Suresh for M/S.Aiyar & Dolia

ORDER

This Civil Revision Petition has been filed by the petitioner to struck down the order of the District Munsif court, Sankarankoil, dated 07.03.2011, ordering to take on file the subject matter in O.S.No.96 of 2011.

2.The brief facts of the plaintiff's case is that the 1st respondent/plaintiff has filed a suit in O.S.No.96 of 2011 for permanent injunction against the defendants and for declaration as the two sale deeds, dated 26.12.2008, executed by the 1st defendant in favour of the 2nd defendant are not binding the plaintiff. The 2nd defendant by way of the said two sale deeds has claimed title over the suit properties.

3.The learned counsel appearing for the petitioner submitted that the suit is barred by limitation and it can be instituted only in the name of the concern and not in the name of an individual. Hence, he prays to struck down the order of the District Munsif, Sankarankoil, dated 07.03.2011, ordering to take on file the subject



matter as O.S.No.96 of 2011.

4.The learned counsel appearing for the 1st respondent submitted that the 1st defendant without any notice to the plaintiff/1st respondent had sold the suit properties to the 2nd defendant through auction. Hence it is not binding the plaintiff. Hence the petition is to be dismissed.

5.Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned counsel for the second respondent and perused the records.

6.On perusal of records, it is observed that the petitioner herein is the auction purchaser. The factory land and the building in survey No.6/4 were auctioned for a sum of Rs.1,41,000/- in the auction sale held on 22.12.2003. All the revenue records stand in the name of the plaintiff and the possession could not have been taken by the revision petitioner herein.

7.The petitioner herein has filed the present Civil Revision Petition on the ground that the suit can be instituted only in the name of a concern and not in the name of individual. In respect of jurisdiction, the Civil Court has no right to entertain the suit. The plaintiff is not a borrower of the concern. Hence, the suit ought not to have been taken on file.

8.In the affidavit filed along with the temporary injunction petition, the petitioner has stated that the suit itself is not maintainable which questioned the authority of the second respondent invoking Section 29 of the State Financial Corporation Act 1951. The petitioner had stated that the first respondent has availed loan of Rs.4,25,000/- from the 2nd respondent and when the 1st respondent has not paid the amount, the 2nd respondent brought the property by public auction. After observing all the procedures, this petitioner, being the highest bidder, was given possession on 10.09.2004 and the said fact was also informed to the first respondent. After taking possession, the petitioner has also spent huge some in developing the property for agriculture. Hence, the lower court has erred in taking the suit on file. Hence, the petitioner has filed this petition to struck off the suit from the file of the lower court.

9.The petitioner has stated that the order of the lower court in entertaining the suit and registering it as O.S.No.96 of 2011 is against law and further the suit is barred by limitation. On perusal of records it is learnt that the plaintiff has filed the suit seeking relief that the defendants should not interfere with his peaceful possession and enjoyment of the suit property and also for declaring the two sale deeds executed on 26.12.2008 relating to the suit properties are not binding on the plaintiff. The petitioner in this civil revision petition has stated that the plaintiff in the suit is not the borrower and further the suit is barred by limitation as the same has taken place on 22.12.2003. Further, the possession of the property is also handed over to this



petitioner even as early as 2004 and made development in the property. Hence, the suit has to be struck down from the file of the Court.

10. On the side of the revision petitioner it is argued the under Section 29 of the State Financial Corporation Act, the corporation has power to conduct the auction. The scope of Judicial Review is confined in two circumstances (a) Where there is statutory violation on the part of state financial corporation or (b) Where state financial corporation acts unfairly and unreasonably. The courts are not to interfere with the auction under Section 29 of the Act, unless the aforesaid two situations exist. Here there is no such circumstance occurred in the proceedings initiated by the corporation.

11. On the side of the respondent, it is argued that this civil revision petition has been filed under Article 227 of constitution of India invoking the extraordinary power of the Judicial Superintendence. When alternative remedy available for striking of the plaint under Civil Procedure Code, the revision petition filed in the High Court is an abuse of process of law and the petitioner could very well avail that remedy. Mere filing of a suit by the respondent and taking the suit on file by the trial court cannot be recorded 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 the fact has to be considered by the trial court during the relevant point of time. In support of the argument on the side of the respondent, the learned counsel for the respondent reported the judgment in Ganapathy Subramanian Vs. S. Ramalingam & 23 others reported in 2007-3-L.W. 515, where in it has been held as follows:-

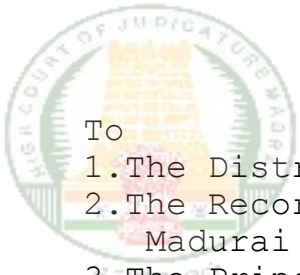
"C.P.C., Order 6, Rule 16/Striking out, Pleadings
- See Constitution of India, Article 227/Alternative remedy, when available for striking off the plaint under C.P.C., whether Article 227 can be invoked for that purpose."

10. Hence in view of the arguments advanced by both sides, the petitioner has every remedy before the trial Court, which is available under the Civil Procedure Code and invoking the provision under Article 227 of Constitution of India is unnecessary.

12. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar (W)

/True copy/



To

1. The District Munsif, Sankarankoil.
2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)
3. The Principal District Munsif Court, Sankarankoil.

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+1cc to Mr. S. KADARKARAI, Advocate, SR.No. 58780

+1cc to Mr. R. MANIMARAN, Advocate, SR.No. 58541

C.R.P. (NPD) (MD) No. 891 of 2011
and
M.P. (MD) No. 1 of 2011
27.03.018

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KK/SKN RSK/16.04.2018/SAR-4/4P-7C