

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.2038 of 2019

and

C.M.P.No.13193 of 2019

- 1.Padmini Rajan
- 2.Uma Rajan
- 3.Rashmi Rajan Kapoor
- 4.Seshu Rajan

... Petitioners

Vs.

- 1.Vathsala Jagannathan
- 2.M/s.Govel Trust,
A Public Charitable Trust,
Rep. by its Trustee G.Srinivasan,
Having its registered office at:
132, Anna Nagar, Madurai - 625 020.

- 3.The Sub Registrar,
Gandhipuram Sub Registrar Office,
Gandhipuram, Coimbatore.

... Respondents

[RR 2 and 3 are formal parties and no reliefs
are sought against them]

Prayer: Petition filed under Article 227 of the Constitution of India
praying to strike off the plaint in O.S.No.695 of 2016 on the file of the
learned First Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.S.V.Pravin Rathinam

For 1st Respondent : N.Manoharan

ORDER

This revision petition has been filed by the defendants in the suit to strike off or reject the plaint filed in O.S.No.695 of 2016 on the file of the First Additional Subordinate Judge, Coimbatore.

2.Heard the learned counsel for the petitioners and Mr.N.Manoharan, learned counsel for the 1st respondent.

3.The learned counsel for the 1st respondent, by relying upon the recent order of the Hon'ble Apex Court reported in **2019 (5) CTC 696** in the matter of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others V. Tuticorin Educational Society and others**, has submitted that, when a remedy is available for the parties, in any civil matters concerning with the civil dispute pending before the Civil Courts under the provisions of the Civil Procedure Code, without exhausting such remedies, party shall not be relegated to invoke the superintendence power of this Court under Article 227 of the Constitution.

4.I have gone through the said judgment cited by the learned counsel appearing for the 1st respondent and I fully agree with the said submission made by the learned counsel appearing for the 1st respondent, in view of the law laid down by the Hon'ble Apex Court in the aforesaid decision, especially, in paragraphs 13 and 14, which reads thus:

"13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil Procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High Court. That is why, a 3 member bench of this court, while overruling the decision in Surya Dev Rai v. Ram Chander Raj [(2003) 6 SCC 675], pointed out in

Radhey Shyam v. Chabbi Nath [(2015) 5 SCC 423] that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial / civil courts.

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

5.The Hon'ble Apex Court has made it clear that, in civil matter, such kind of invocation of the superintendence power of this Court under Article 227, without exhausting the appeal remedy or the other remedy under the Civil Procedure Code before the concerned Court, is almost near a total bar.

6.In that view of the matter, this Court is not inclined to entertain this revision, since it has been filed, admittedly, without having exhausted the remedy available under Order VII Rule 11 C.P.C.

for the very same relief of rejecting the plaint filed by the 1st respondent/plaintiff.

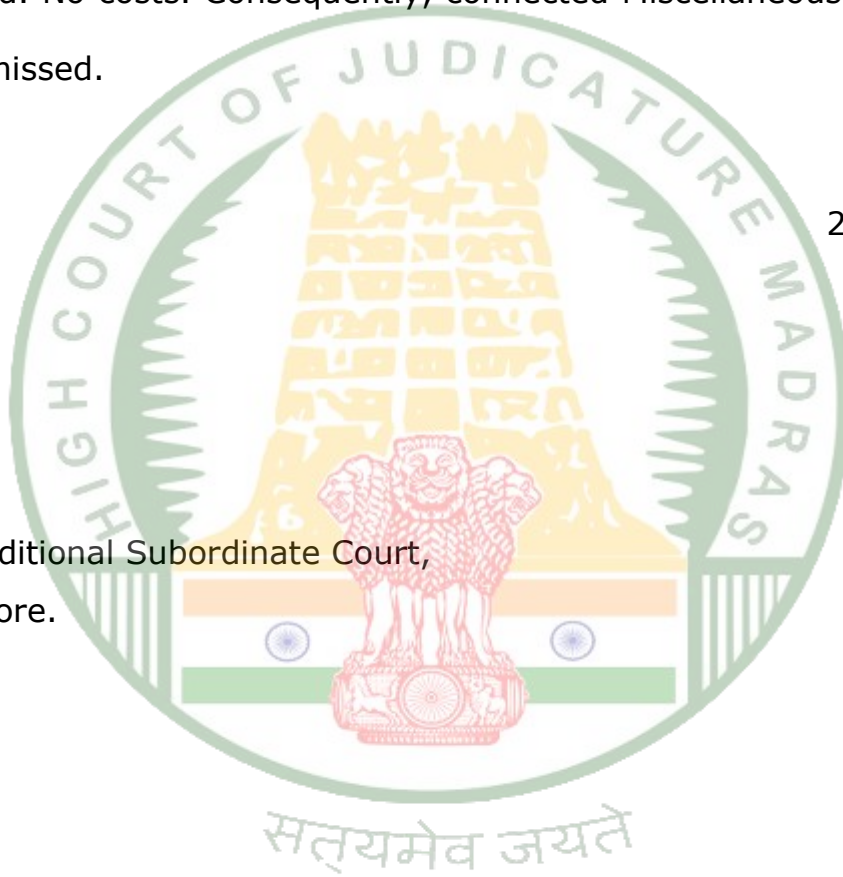
7. Accordingly, this Civil Revision Petition fails and hence, it is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

23.10.2019

Sgl

To

The I Additional Subordinate Court,
Coimbatore.

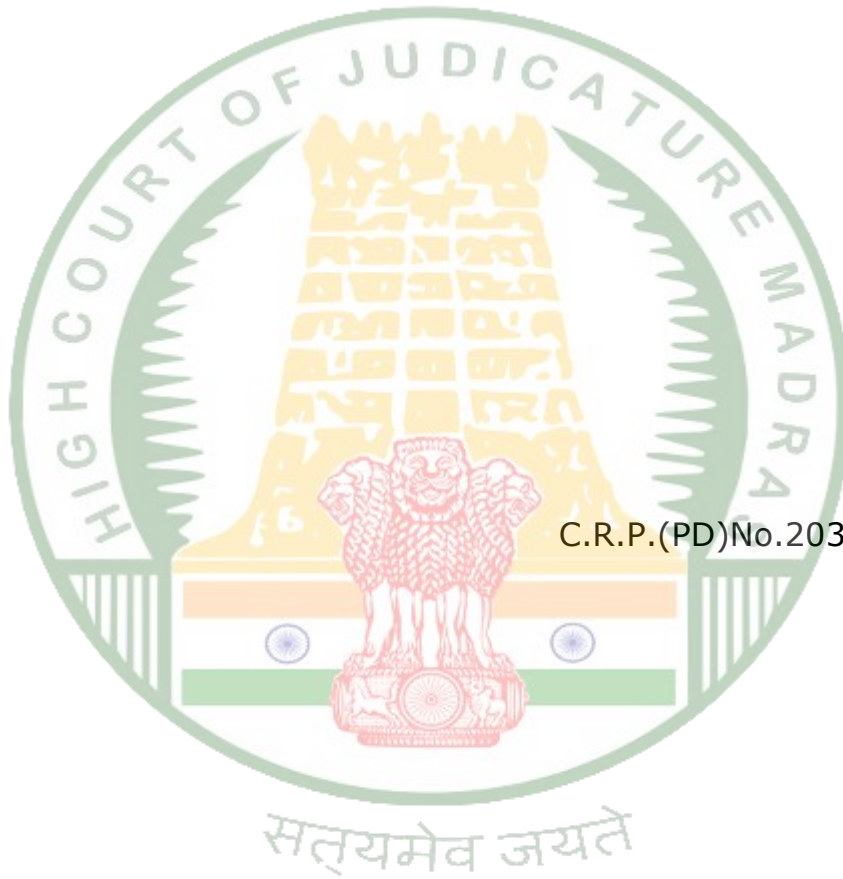


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R.SURESH KUMAR, J.

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