

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P.(PD).No. 2386 of 2019

and

C.M.P.No. 15559 of 2019

1. P.Gopalakrishnan

2. P.Muthukrishnan

3. P.Anbalagan

... Petitioners

-Vs-

S.G.Thangavel

S/o. Gopal,

Proprietor Om Muruga Traders,

D.No. 199, Suramangalam Main Road,

Pallapatti, Salem – 636 009.

... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India praying to Struck of the Plaint filed in O.S.No. 336 of 2019 on the file of the First Additional District Munsif, Salem, Salem District.

For Petitioners

: Mr.C.Prakasam

For Respondent

: Mr.M.Devaraj

ORDER

This Civil Revision Petition has been filed to strike off the Plaint filed in O.S.No. 336 of 2019 on the file of the First Additional District Munsif, Salem.

2. Admittedly, the Revision Petitioners who are the defendants in the suit before the Trial Court have not chosen to file any application to strike off the plaint under Order VII Rule 11 of CPC. When there is an exclusive provision available to invoke before the trial Court, the parties cannot directly approach this Court to invoke the superintending power of this Court under Article 227 of the Constitution of India.

3. The above proposition has been very recently reiterated by the Hon'ble Apex Court in the reported case in **2019 (5) C.T.C.696 (Virudhunagar Hindu Nadargal Dharma Paribala Sabai and Others -Vs- Tuticorin Educational Society and Others**" and the relevant paragraphs therein are extracted here under;

“ 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 quasijudicial 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. This is why, a 3 member Bench of this court, while overruling the decision in *Surya Dev Rai vs. Ram Chander Rai*², pointed out in *Radhey Shyam Vs. Chhabi Nath* 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.”

4. In view of the law laid down by the recent decision of the Hon'ble Supreme Court as cited above, this Revision is not entertainable, hence the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.11.2019

Index: Yes / No

Speaking order / Non speaking order
kmm

To

The First Additional District Munsif, Salem,
Salem District.

R. SURESH KUMAR, J.

kmm



C.R.P. (PD) No. 2386 of 2019

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