

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD) No.3161 of 2019 and
C.M.P.No.20618 of 2019

Kanniyammal

... Petitioner

Vs.

A.Krishnan

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside the Judgment and Decree passed in O.S.No.192 of 2008 dated 22.04.2009 on the file of the Principal District Judge at Tiruvallur.

For Petitioner : Mr.R.Jayaprakash

ORDER

The prayer sought for in this revision petition is to set aside the Judgment and Decree made in O.S.No.192 of 2008 dated 22.04.2009 on the file of the Principal District Judge at Tiruvallur.

2.Heard Mr.R.Jayaprakash, learned counsel appearing for the revision petitioner.

3.That a suit had been filed before the trial Court i.e., Principal

District Court, Tiruvallur in O.S.No.192 of 2008 by the respondent against the petitioner for judgment and decree for specific performance.

4.In the said suit, the revision petitioner, who was the defendant in the suit, was set exparte and accordingly, an exparte decree was passed as early as on 22.04.2009 which reads thus:

"Suit for specific performance of contract of sale directing the defendant to execute and register sale deed in favour of the plaintiff as per the sale agreement dated 13.9.2006 executed by defendant in favour of plaintiff of Rs.6,88,450/- in respect of suit property after receiving balance of sale consideration of Rs.4,88,450/-.

Defendant called absent. Set exparte P.W.1 present proof Affidavit filed. Ex.A1 to Ex.A4 marked. Records perused. Claim proved. The suit decreed as prayed for with costs. The defendant is directed to execute and register the sale deed in favour of the plaintiff within 3 months from the date of decree and receive the balance sale consideration deposited in this court failing which the plaintiff is entitled for sale deed in execution court."

5.The said judgment and decree has now been sought to be set

aside by the revision petitioner in this revision, which has been filed in 2019 invoking the superintendence power of this Court under Article 227 of the Constitution of India.

6.I am afraid that, if this kind of revisions under the superintendence powers of this Court under Article 227 is entertained, that will impact the very civil jurisprudence itself. The reason being that, there is an exhaustive procedure Code viz., Civil Procedure Code, 1908 has been in practice for more than a century in this Country where exhaustive provisions are available for a litigant public to approach the Court of law i.e., Civil Courts to establish the civil right of the party.

7.Here in the case in hand, right or wrong, a Civil Court decree has been passed as early as on 22.04.2009, as against which, either the revision petitioner could have filed appeal under the provision available under Civil Procedure Code before the First Appellate Court or the revision petitioner had reasons to convince the Court below i.e., the trial Court to set aside the exparte decree, steps could have been taken in that line.

8.After having been in long slumber for 11 years, all of a sudden,

the present revision petition has been filed under Article 227 of the Constitution, which is nothing but a superintendence power of this Court, under which, this Court has superintending power over the Subordinate Courts and Tribunals, which are functioning within the jurisdiction limit of this Court.

9.The said power has not been vested with the High Courts in the Constitution for these kind of purposes as the one presently projected. Moreover, when there has been an alternative efficacious remedy in civil matters, especially under the Code of Civil Procedure, that should alone have to be invoked or exercised, without which, the parties cannot themselves to approach the High Court directly by invoking Article 227 of the Constitution.

10.The aforesaid legal position has been reiterated and amplified in a recent decision 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**, where their Lordships have held, in paragraphs 13 and 14, as follows:

"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."

11.In view of the settled legal position, this revision is not at all entertainable, at the threshold, therefore, it is liable to be dismissed, since it is nothing but a gross misuse of process of law.

12.In that view of the matter, this Civil Revision Petition is dismissed. Even though a heavy cost can be imposed on the revision petitioner, this Court is refrained from doing so for giving a quietus to the issue. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Index : Yes / No
Speaking Order : Yes / No
Sgl

07.11.2019

To

The Principal District Court,
Tiruvallur.

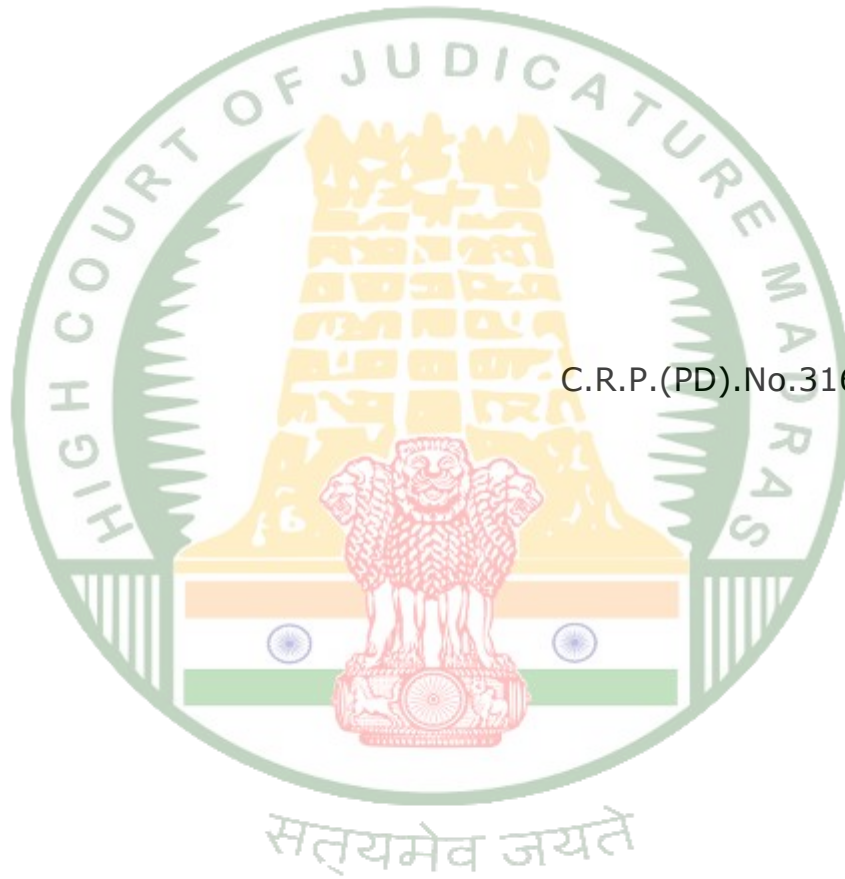


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R.SURESH KUMAR, J.

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