

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

C.R.P.No.3354 of 2019

1. T.Parvatham
2. T.Selvaraj
3. T.Senthilkumar ... Petitioners/Defendants 1 to 3

-Vs-

1.C.Somasundaram
2.Pappathy
3.R.Maheshwari
4.U.K.Killivalavan ... Respondents/Plaintiffs/
4th Defendant

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to strike off the plaint in O.S.No.11 of 2019 on the file of the learned Sub Court, Perundurai.

For Petitioner : Mr.N.Manoharan

O R D E R

This revision has been filed with a prayer to strike off the suit in O.S.No.11 of 2019 on the file of the learned Sub Court, Perundurai.

2. Whatever be the reason, in order to strike off the plaint, an exhaustive provision is available ie., Order VII Rule 11 of C.P.C., where what are all the grounds enumerated thereof, can be invoked to seek for rejection of plaint and once such attempt is made by the litigant before the Court below invoking the provisions of the C.P.C., as set out above and if they fail in their attempt, then it is open to the litigant to approach the High Court under Article 227 of the Constitution of India. It has to be reminded that this Court has superintending powers over the functioning of the subordinate judiciary as to whether they exercised the powers vested with them properly or they have not exercised the powers vested with them or if they have exceeded their powers, which has been vested with them.

3. Here, in the case on hand, admittedly the revision petitioners have straight away approached this Court invoking Article 227 of the Constitution of India ie., the

superintending power of this Court and seeks for strike off of the plaint.

4. For whatever reasons, this Court does not want to go on the merits of the issue, as that has to be gone into by the trial Court. But, the issue before this Court is the forum under which the issue can be first agitated.

5. In this context, the latest judgment of the Supreme Court reported in 2019 (5) C.T.C.696 (Virudhunagar Hindu Nadargal Dharma Paribala Sabai and Others -Vs- Tuticorin Educational Society and Others" can very well be pressed into service. In the said judgment, their Lordships have held as follows.

" 12. Secondly, the High Court ought to have seen that when a remedy of appeal under section 104 (1)(i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors.1, this Court held that "though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy".

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 Rai², 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."

6. When the Supreme Court has gone to the extent of saying that even in a case where appeal remedy has not been exhausted, which is provided under the C.P.C., exercisable by the first appellate Civil Court, even in such case, the invocation of Article 227 of the Constitution of India was not permitted, whereas in the case in hand, even though such an explicit and exhaustive provision is available under C.P.C., especially Order VII Rule 11, the same has not been invoked by the revision petitioners, for the reasons best known, and they have come straight away to this Court by invoking Article 227 of the Constitution of India. Therefore, this Court has no hesitation to hold that if the principle laid down by the Supreme Court cited supra is applied to the facts and circumstances of this case, certainly the invocation of Article 227 of the Constitution is a complete dark, without exercising the original remedy available under the C.P.C.

7. In that view of the matter, this Court is not inclined to entertain this Civil Revision Petition and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True copy//

Sub Assistant Registrar

KST

To

The Subordinate Judge, Perundurai.

+1cc to Mr.N.Manoharan, Advocate SR.No.87032

GMV (29/01/2020)

C.R.P. No.3354 of 2019

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