

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3653 of 2019

and

C.M.P. No. 23991 of 2019

A. Shanmugam Petitioner

-Vs-

1. Palani Achari

2. P. Devi

3. Mani

4. Shanthi

5. Elango

6. Venila

7. Rajagopal

8. Santha

9. Sakthivel

10. Rajamani

11. Govindharaj

12. Deepa

1/8



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13. Velayutham

14. Vijaya

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India to strike off the plaint in the suit in O.S. No. 134 of 2019 on the file of the learned Additional District and Sessions Court, Dharmapuri.

For Petitioner : Mr. R. Sathia Chandran

For Respondents : Mr. P. Saravanakumar

ORDER

This Civil Revision Petition has been filed with a prayer to strike off the plaint in the suit in O.S. No. 134 of 2019 on the file of the Additional District and Sessions Court, Dharmapuri.

2. Before the Court below, the present revision petitioner is the 13th defendant. He wanted to strike off the plaint itself, as according to him, the very suit laid by the respondents / plaintiffs cannot be entertained and it should be rejected outrightly. Therefore, the 13th defendant has chosen to approach this Court by filing this

revision petition invoking superintendence power of this Court under Article 227 of the Constitution of India.

3. I have heard Mr. R. Sathia Chandran, learned counsel appearing for the revision petitioner who would submit that, after 15 years, the suit has been laid by the plaintiffs, therefore the very suit itself is either barred by law or barred under limitation or the parties who filed the suit had already been parties to the similar suit.

4. Whatever be the reasons available in the hands of the revision petitioner / 13th defendant, on those grounds, the revision petitioner / 13th defendant should have to file an appropriate application before the trial Court under Order VII Rule 11 of the Civil Procedure Code which remedy / provision explicitly provided and it is available to the revision petitioner.

5. In this context, without having exhausting the said statutory remedy provided under Civil Procedure Code itself, whether the party can approach this Court directly under Article 227 of the

Constitution of India had engaged the Hon'ble Supreme Court in the recent decision reported in **2019 (5) CTC 696** in the matter of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others V. Tuticorin Educational Society and others.***

6. In the said decision, their lordship held in paragraph Nos. 13 & 14 of the said judgment 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."

7. The said legal position has been reiterated and amplified by the Hon'ble Supreme Court as stated above, where, it has been made very clear that, the invocation of superintendence power of this Court under Article 227 of the Constitution of India without having exhausting the remedy provided under Civil Procedure Code especially

in the matter of civil disputes pending before the Civil Court is almost nil and the said ground of invocation cannot be appreciated and encouraged.

8. Following the said decision of the Hon'ble Supreme Court, applying the said principle, this Court had rejected number of similar Civil Revision Petitions filed before this Court seeking for the similar relief of striking off the plaint without having filed appropriate application / petition under Order VII Rule 11 of the Civil Procedure Code. This is one such case, therefore, this Court has no hesitation to press into service, the said ratio in the aforecited decision of the Hon'ble Supreme Court and therefore, this Court is of the considered view that, this Civil Revision Petition with the prayer sought for herein cannot be entertained, accordingly this Civil Revision Petition fails and hence it is dismissed. However, the dismissal of this revision petition shall not preclude the revision petitioner to agitate the issue raised herein i.e., to strike off the plaint for whatever reasons available to the revision petitioner, by filing an appropriate application / petition under Order VII Rule 11 of the Civil Procedure Code and once such application is

filed at the earliest by the revision petitioner, the same can be decided and disposed of on merits and in accordance with law at the earliest point of time by the Court below by deciding it as a preliminary issue without deferring the decision along with the main suit.

9. With these observations, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

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Index: Yes / No
Speaking order / Non speaking order
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To
The learned Additional District and Sessions Court,
Dharmapuri.

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