



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2019

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.626 of 2019
and
CMP(MD)No.3210 of 2019

Harish Sadasivan Pillai @ Harish Pillai ... Petitioner

vs.

1)George Fernando

2)Bhuvanendran Thampi ... Respondents

Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.122 of 2018 on the file of the District Munsif cum Judicial Magistrate, Eraniel, Kanyakumari District.

For Petitioner : Mr.Ka.Raamakrishnan

For R1 : Mr.N.S.Ramakrishna Dass

For R2 : Mr.R.Mohanasundaram

ORDER

This civil revision petition has been filed by the petitioner/1st defendant seeking to strike off the plaint in O.S.No.122 of 2018.

2. The first respondent/plaintiff has filed the suit in O.S.No.122 of 2018 for declaration and injunction stating that the suit property originally belonged to one Saradhadevi who executed an unregistered usufructuary mortgage in respect of the suit property in favour of one Chellayyan Nadar and she did not redeem the mortgage in time and it was time barred as such, Chellayyan Nadar became the absolute owner of the suit property as per the time barred mortgage. While so, Chellayyan Nadar executed a will on 25.02.2010 in favour of the 1st respondent/plaintiff bequeathing the suit property to the plaintiff and after the death of Chellayyan Nadar, the 1st respondent became the absolute owner of the suit property and has been in exclusive possession and enjoyment of the same, but the petitioner and the 2nd respondent who are the



defendants, are attempting to trespass into the suit property. But, according to the revision petitioner/1st defendant, there is no cause of action in the plaint and therefore, he has filed this Civil Revision Petition seeking to strike off the plaint.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. It is well settled that the disputed questions of facts cannot be gone into by this Court under Article 227 of the Constitution of India. The petitioner has also filed this civil revision without availing efficacious alternative remedy provided under Order 7 Rule 11 CPC. Therefore, this Court is inclined to dismiss this Civil Revision Petition and accordingly, it is dismissed with liberty to the petitioner to approach the trial Court under Order 7 Rule 11 C.P.C. and if the learned Judge finds that there is merit in the petitioner's contention, the learned Judge shall deal with the same independently and in accordance with law. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-)

To

The District Munsif cum Judicial Magistrate,
Eraniel,
Kanyakumari District.

+1 CC to M/s.N.S.RAMAKRISHNA DASS, Advocate
(SR-68711[F] dated 14/06/2019)

+1 CC to M/s.KA.RAAMAKRISHNAN, Advocate
(SR-69083[F] dated 17/06/2019)

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ES/21.06.2019/2P/4C