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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 19..02..2020

Orders Pronounced on: 12..05..2020

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.2863 of 2019
and

C.M.P.Nos.18697 and 20265 of 2019

1.Mr.T.Sethupathi Nadar

2.Mr.S.Kalidas

3.Mr.S.Murugavel

... Petitioners/Defendants

-Versus-

Mrs.Alamelu

... Respondent /Plaintiff

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 05.10.2016 made by the learned V Additional District Judge, Coimbatore, in I.A.No.119 of 2016 in O.S.No.618 of 2015.

For Petitioners

: Mr.T.P.Manoharan,
Senior Counsel for
Mr.S.Sithirai Anandam

For Respondent

: Mr.Surendranath for
Mr.R.Nandhakumar

ORDER

This civil revision petition has been filed under Article 227 of The Constitution of India, challenging the order dated 05.10.2016 passed by the learned V Additional District Judge, Coimbatore, refusing to reject the plaint in O.S.No.618 of 2015 and thereby dismissing the application of the petitioner in I.A.No.119 of 2016 filed under Order VII, Rule 11 of CPC.

2.0 The respondent is the sole plaintiff and the petitioners are defendants in the suit. The suit has been filed for a preliminary decree for partition of the suit properties into four equal shares and allotment of one such share to the



plaintiff by metes and bounds and with reference to good and bad soil and for permanent injunction restraining the defendants from alienating or from creating any encumbrance in the suit schedule property.

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2.1. For the sake of convenience the parties in this revision will hereinafter be referred to as per their array in the plaint.

2.2. According to the plaintiff, she is the daughter of the 1st defendant and the sister of the defendants 2 and 3. The suit schedule properties originally belonged to one Thavasimuthu Nadar. The said Thavasimuthu Nadar had four sons and the 1st defendant is one of the sons. In the year 1954, late Thavasimuthu Nadar and his four sons had entered into a partition of their ancestral properties and the plaintiff's father, the 1st defendant was allotted 14 Acres of land. The 1st defendant, thereafter, had by way of exchange of family properties, obtained a further extent of about 40.125 cents. Thus, the said Thavasimuthu Nadar originally owned 14 Acres and 40.125 cents. These properties are described as 1st item in the plaint schedule. Thus, the plaintiff and the defendants entitled to the 1st item of the suit properties. They have been in common and joint possession and enjoyment of the same. Each of them are entitled to equal share. The 1st defendant has been enjoying the suit property along with his sons and daughter treating the suit 1st item of the properties as joint family property and therefore, the plaintiff and the defendants are in common enjoyment. The 1st defendant has been treating the suit property as the ancestral joint family properties along with the plaintiff and his sons, the defendants 2 and 3 herein, even though the 1st defendant is shown as life estate holder in the family partition held in the year 1954.

2.3. The defendants, after the amendment to The Hindu Succession Act, recognized the plaintiff as a coparcener and promised to give her due share. But, suddenly, with a view to deprive the plaintiff's equal right in the family properties, the defendants have been postponing the partition. Since the defendants did not come forward for amicable partition, the plaintiff through her counsel issued a legal notice calling upon the defendants to partition the properties and allot her due share. Instead of partitioning the properties, the defendants had sent a reply stating that the 1st defendant is only a life estate holder in the suit property as per the partition that took place in the year 1954 and therefore, the sons alone are the absolute owners and the 1st defendant has no absolute right over the suit properties. The defendants in the reply had further stated that the plaintiff is not a coparcener. According to the plaintiff, the 1st defendant father only had improved the



suit properties from out of the ancestral income and sons have also recognized the father's deed and treated him as Kartha. The 1st defendant had also joined the defendants 2 and 3 in various sale transactions. Even though the father was shown as a life estate holder in the partition held in 1954, the properties were actually ancestral joint family properties and therefore, sons cannot claim absolute right over the same.

3.0. Pending suit, the defendants filed an application under Order VII, Rule 11 of CPC which is under revision seeking to reject the plaint. The above application was filed on the ground that the 1st item of the suit schedule properties originally belonged to one Thavasimuthu Nadar. He had four sons including the 1st defendant. The said Thavasimuthu Nadar had partitioned the properties as per the registered partition deed dated 15.02.1954 and in the partition, the properties described under D-schedule were allotted to the 1st defendant. As per the above registered partition deed, the 1st defendant is only a life estate holder and his male issues, the defendants 2 and 3 are the vested reminders and the 1st defendant is not having any absolute right over the properties allotted to him in the partition. It is also specifically mentioned in the partition deed that after the demise of the 1st defendant, the properties would devolve upon the defendants 2 and 3 being the male descendants. In such circumstances, the plaintiff has no right whatsoever in the suit properties.

3.1. In so far as the 2nd item of the suit property is concerned, it was purchased by the defendants 2 and 3 by virtue of sale deed dated 09.11.2012. As far as 3rd item of the suit property is concerned, , it was purchased by the 2nd defendant independently along with his wife under sale deed dated 18.06.2014. It is further contended by the defendants that the 2nd defendant had paid a sum of rupees one crore to the plaintiff on 20.11.2013. But, the plaintiff after having received such a huge money, came forward with the suit claiming imaginary right and the plaintiff was never in joint possession of the suit properties. The defendants 1 and 3 have entered into a power of attorney to develop the suit properties. The suit properties have been divided into house sites and number of house sites have already been sold to various third parties and those purchases have not been impleaded as party defendants in the suit. The plaint does not disclose a clear right to sue for partition and the suit is nothing but a frivolous and vexatious one. The plaint is, therefore, liable to be rejected for want of cause of action.

4. The court below on considering the averments made in the plaint dismissed the application, by order dated 15.10.2016, holding that for considering the application for rejection of



plaint under Order VII, Rule 11 of CPC, the averments made in the plaint alone should to be looked into to find out whether the plaint did disclose any cause of action and no amount of pleadings and the evidence relied on by the defendants could be looked into and the court cannot go into the question whether the averments made in the plaint are true or not. As the plaintiff filed the suit for partition claiming that the suit properties are ancestral properties of the plaintiff and the defendants, the issue with regard to nature of the properties could not be decided at this stage and the same could only be decided during trial. Challenging the order of the court below dismissing the application for rejection of plaint, the defendants have approached this court on 27.08.2019 with the instant revision petition invoking Article 227 of the Constitution of India after lapse of nearly three years.

5. I have heard the learned senior counsel appearing for the petitioners and the learned counsel appearing for the respondent and also perused the records carefully.

6. Mr.Surendranath, the learned counsel for the respondent would raise a preliminary objection regarding the maintainability of the revision petition under Article 227 of the Constitution of India. According to the learned counsel as against the order dismissing the application filed under Order VII, Rule 11 of CPC only revision lies under Section 115 of CPC and the petitioner cannot maintain revision under Article 227 of the Constitution of India, that too, after lapse of nearly three years. The revision has been filed invoking Article 227 of The Constitution of India only in order to get over the limitation period.

7. Mr.Surendranath, the learned counsel for the respondent placing reliance upon the judgement of the Hon'ble Supreme Court in the case of Surya Dev Rai v. Ram Chander Rai, 2003 (6) SCC 675 would submit that the power of superintendence conferred by Article 227 of The Constitution of India is to be exercised sparingly and only in appropriate cases in order to keep the subordinate court within the bounds of their authority and not for correcting mere errors. Further, according to the learned counsel for the respondent, since the order under revision is the final order passed on the interlocutory application, only a revision under Section 115 of CPC is maintainable and a limitation of 90 days period has been prescribed under Article 116 of The Limitation Act. Even though the order under revision was passed on 05.10.2016, the petitioner deliberately kept quite for a quite long period and had chosen to file the revision only in August 2019 invoking Article 227 of the Constitution of India only in order to get over the period of limitation.



8. Further, relying upon the judgements of the Hon'ble Supreme Court in case of Shiv Shakti Coop Housing Society v. Swaraj Developers, (2003) 6 SCC 659 and Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society, (2019) 9 SCC 538, the learned counsel for the respondent would submit that when there is an alternative remedy provided under the Code of Civil Procedure, such a recourse cannot be by-passed.

9. Per contra, Mr.T.P.Manoharan, the learned senior counsel for the petitioner would contend that Section 115 of CPC only empowers the High Court to supervise the subordinate courts and it does not confer any right on the person aggrieved over order of the subordinate court to approach the High Court. The constitutional remedy under Article 227 of The Constitution of India is always available to the petitioner to approach the High Court challenging the order passed by the subordinate court. The availability of the remedy of revision under Section 115 of CPC would not be a bar to the petitioner to approach the High Court under Article 227 of The Constitution of India.

10. The learned senior counsel would make an attempt to distinguish the judgement of the Hon'ble Supreme Court in Virudhunagar Hindu Nadargal dharma Paribalana Sabai v. Tuticorin Educational Society, (2019) 9 SCC 538 on the ground that the issue involved in the above cited case relates to appellate remedy available under the Code of Civil Procedure wherein the Hon'ble Supreme Court has held that the remedy by way of an appeal is substantial right and it cannot be by-passed by invoking the constitutional remedy available under Article 227 of the Constitution of India. In support of his contention, the learned senior counsel would rely upon the judgement of the Hon'ble Supreme court in the case of Shiv Shakti Coop Housing Society v. Swaraj Developers, (2003) 6 SCC 659.

11. So far as the merits of the case, the learned senior counsel would submit that a meaningful reading of the plaint does not disclose a cause of action to file the suit. Even as per the averments in the plaint, the plaintiff herself admitted that the suit schedule properties were allotted to 1st defendant in the family partition dated 15.02.1954 wherein the 1st defendant was only given a life estate. After the life time of the 1st defendant, the property would devolve upon the defendants 2 and 3. In the said circumstances, the plaintiff being the daughter, she cannot claim that the suit properties are joint family properties and claim any share in the same. Absolutely, there is no material to show that the suit properties are being treated as joint family properties and some of them were exchanged by the 1st defendant and some others were acquired by him. That apart item 2 and 3 of the suit



properties are absolute properties of the defendants 2 and 3 and the sale deed also stood in their respective name. Therefore, the petitioner cannot claim any absolute right over the properties of the defendants 2 and 3, therefore, there is no cause of action for the suit and the plaintiff had raised an illusory cause of action claiming that the parties have treated the properties as joint family properties and filed suit for partition. In such circumstances, the plaintiff does not have any right over the suit schedule properties and therefore, the plaint deserves to be rejected at its threshold. But, the court below, without considering the same has mechanically dismissed the application of the petitioner for rejection of the plaint.

12. Per contra, the learned counsel appearing for the respondent/plaintiff would contend that for considering the application under Order VII, Rule 11 of CPC, the averments made in the plaint alone have to be considered and whether the averments are true or not cannot be looked into at this stage. It is the specific case of the plaintiff that even though the 1st item of the suit schedule properties were allotted to the 1st defendant under a family partition in the year 1954 and after the partition, the properties were exchanged by the 1st defendant and some of the properties were also acquired and the defendants have treated the properties as joint family properties even though the 1st defendant has been shown as life estate holder in the family partition held in the year 1954. The defendants 2 and 3 have also recognized the father (1st defendant) as the Kartha and he was also made as a party in various transactions. Whether the suit properties were treated as joint family properties or not, is an issue which could be decided only during trial and at this stage the averments made in the plaint are to be treated as true and based on the contentions of the defendants the plaint cannot be rejected at its threshold. The court below has rightly considered the same and dismissed the application and there is no illegality in the same.

13. I have considered the rival submissions carefully.

14. Since the preliminary objection has been raised regarding the maintainability of the revision, this court is inclined to decide the issue of maintainability at first before going into the merits of the case.

15. Section 115 of CPC provides for a revision before the High Court as against the order passed by a subordinate court which reads as follows:-

"115. Revision - (1) The High Court may call for the record of any case which has



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been decided by Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears -

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order decided an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to the Court subordinate thereto.

(3) A revision shall not operate as stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the High Court.

Explanation. - In this section the expression, "any case which has been decided" includes an order made, or any order deciding an issue, in the course of a suit or other proceedings.

16. After the amendment to Section 115 of CPC by CPC (Amendment) Act 46 of 1999 coming into effect from 01.07.2002, revision under Section 115 CPC is prohibited against any interlocutory order.

17. The Hon'ble Supreme Court in Surya Dev Rai V. Ram Chander Rai (2003) 6SCC 675 has held that the amendment to the CPC does not affect the jurisdiction of the High Court under Article 226 and Article 227 of the Constitution of India. It has been further held by the Hon'ble Supreme Court that the power under Article 227 of the Constitution of India should be exercised sparingly and only in appropriate cases where the court found a gross failure of justice or grave injustice has occurred. The High Court while exercising its supervisory



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jurisdiction should not covert into a court of appeal and indulge in re appreciation or evolution of the evidence and correct the errors by drawing inference. The relevant portion of the judgement reads as follows:-

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

... ..
... ..

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

... ..
... ..

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any



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of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

... ..
... ..
"

18. Recently, the Hon'ble Supreme Court in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society*, (2019) 9 SCC 538 after considering *Surya Dev Rai case*, (cited supra), has held that when there is an alternative remedy provided for under the CPC, the High Court should not entertain the revision under Article 227 of the Constitution of India. The relevant portion of the judgement reads as follows:-

12. 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



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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 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 v. Ram Chander Rai [Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675], pointed out in Radhey Shyam v. Chhabi Nath [Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] that "orders of civil court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil courts".

13. 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.

19. Even though the learned senior counsel made an attempt to convince this court that the above judgement is applicable only to the cases where the remedy by way of appeal is provided under CPC and the same is not applicable to the other cases, where the remedy by way of revision is available. But, from a careful reading of the judgement of the Hon'ble Supreme Court it could be seen that the Hon'ble Supreme Court has clearly held that whenever a remedy is available under CPC, the Constitutional remedy under Article 227 should not be normally resorted to and the High Court should not entertain the revision under Article 227 of the Constitution of India.

20. Keeping the above principles in mind, if we consider the instant case, the order impugned in the revision was passed on 05.10.2016 and the instant revision has been filed only on 27.08.2019 after the lapse of more than 2 years and 10 months. Even assuming that the petitioner has right to file a revision under Article 227 of the Constitution of India, he cannot maintain such a revision after such a long delay. Therefore, keeping the principles laid down by the Hon'ble Supreme Court and in the facts and circumstances of the case this court is of



the view that the revision is not maintainable under Article 227 of the Constitution of India and therefore, the revision is liable to be dismissed.

21. Let me now consider the case on merits. Order VII, Rule 11 of CPC reads as follows:-

11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

22. In the instant case, the plaintiff filed the suit for partition on the ground that the 1st item of the suit property was allotted to the 1st defendant in a family partition in the year 1954. Even though it is admitted that in the above said partition only a life estate was given to the 1st defendant, it is the contention of the plaintiff that the parties have treated the suit properties as joint family properties and they are enjoying the same in common. Some of the properties were allotted in the partition were exchanged by the 1st defendant. The parties have treated the properties as ancestral joint family properties



and therefore, after the amendment to The Hindu Succession Act, the plaintiff is also entitled for a share in the same. The parties have recognized the 1st defendant as Kartha of the joint family and he joined the sale with defendants 2 and 3 and therefore, the defendants cannot contend that the suit properties are the absolute properties of the defendants 2 and 3.

23. As already stated the averments in the plaint alone have to be looked into for the purpose of adjudicating the application under Order VII, Rule 11 of CPC and the merits and demerits of the matter cannot be gone into at this stage. Further, at the stage, the averments made in the plaint are to be treated as true. In the instant case, whether the suit schedule properties are the absolute properties of the 1st defendant and whether the plaintiff has a right of share over the same are all matter for trial and at this stage, based on the contentions of the defendant, it cannot be held that the suit schedule properties are the absolute properties of the defendant and thereby reject the plaint.

24. Mr.T.P.Manoharan, the learned senior counsel appearing for the petitioner further submitted that the suit has been filed making false claim as if the plaintiff has got right over the suit schedule properties, especially, when the suit properties are the absolute properties of the defendants. He further submitted that after having received a huge amount from the defendants with a fraudulent intention the present suit has been filed in total abuse of process of court. Hence, on the ground of abuse of process of court also the plaint is liable to be rejected.

25. The learned counsel in support of his contention relied upon the judgement reported in Maria Margarida Sequeira Fernandes v. Erasmo Jack De Sequeira, (2012) 5 SCC 370 and S.P.chengalvaraya Naidu (Dead) by LRs v. Jagannath (Dead) by LRs, 1994 (1) SCC 1. However, as already held whether the claim of the petitioner is true or false is a matter to be decided during trial. At this stage, based on the contentions of the defendants, this court cannot come to a conclusion that the claim made by the plaintiff is false and she does not have any right over the suit properties. That apart, whether the defendant had paid huge amount to the plaintiff towards her share and whether the suit has been filed fraudulently by the plaintiff after having received huge amount from the defendants in lieu of her claim of the suit properties are all matters to be decided during trial. Such contentions cannot be gone into at this stage.

26. In this connection, relying upon the judgement of the Hon'ble Supreme Court reported in Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174, the learned senior counsel submitted that on a meaningful reading of the entire



plaint, if it is found that the suit is manifestly vexatious and meritless and if by clever drafting the plaintiff has created an illusory cause of action, then the plaint can be rejected. A Division Bench of this Court in Cambridge Solutions Ltd v. Global Software Limited, 2017(1) CTC 497 has held that undoubtedly it is true that on a meaningful reading of the plaint, if it shows no cause of action for filing the suit and an illusory cause of action has been created for the purpose of filing of the suit, the plaint must be rejected. But, in the instant case, the suit has been filed on the ground that in the earlier partition that took place in the year 1954, the 1st defendant was given a life estate and subsequently, the defendants have treated the properties as joint family properties and they have been in joint possession and enjoyment of the same and the 1st defendant was treated the Kartha of the joint family and he was also a party to the various sale transactions of the partitioned properties. At this stage, this court has to presume that the averments are true. However, it has to be established only during trial. The averments made in the plaint clearly make out a cause of action for filing the suit for partition and therefore, at this stage, the plaint cannot be rejected as vexatious or on the ground that the cause of action is an illusory one and created for the purpose of filing of the suit. The court below has rightly considered the materials and dismissed the application and this court does not find any illegality or irregularity in the order impugned in the revision petition warranting interference at the hands of this court. No merits in the revision petition and the same deserves only to be dismissed.

In the result, this civil revision petition is dismissed. No costs. Consequently, connected CMPs are closed.

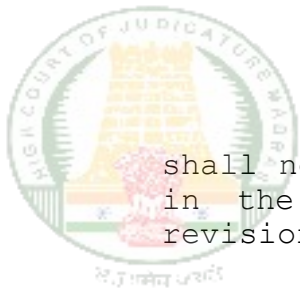
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In pursuance to the order of this Court dated 12/05/2020 and made herein and in the presence of the above said advocates, this Court made the following order;

After the order was pronounced, Mr.T.P.Manoharan, the learned counsel for the petitioner submitted that the findings made by the court below in the order impugned in the revision touching upon the main issue in the suit would definitely influence the mind of the learned Judge at the time of disposal of the suit.

This court finds some force in the submissions made by the learned senior counsel for the petitioner. Considering above submissions, it is expedient to caution that the trial court



shall not influence by any of the observations made in the order in the revision petition or in the order impugned in the revision petition.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The V Additional District Judge,
Coimbatore, Coimbatore District.

C.R.P.No.2863 of 2019

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