



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

WEB COPY

C.R.P(MD) No.320 of 2020

and

C.M.P(MD)No.1816 of 2020

1.The State of Tamil Nadu,
Rep.by District Collector,
Collectorate Complex, Sivagangai District.

2.The District Revenue Officer,
O/o.District Revenue Office,
Devakottai.

3.Tahsildar,
Tahsildhar Office,
Karaikudi.

... Revision Petitioners/Defendants

Vs.

A.Kumar

... Respondent/Plaintiff

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India to call for the entire records relating to proceedings filed in O.S.No.12 of 2020 on the file of the District Munsif Court, Sivagangai and strike off the same.

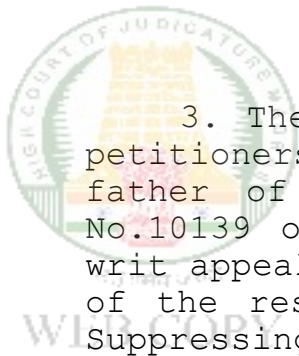
For Petitioners : Mr.M.Jeyakumar
Additional Government Pleader

For Respondent : Mr.J.Anandakumar

O R D E R

This Civil Revision Petition has been filed to call for the entire records relating to proceedings filed in O.S.No.12 of 2020 on the file of the District Munsif Court, Karaikudi, Sivagangai and strike off the same.

2.The respondent filed the suit in O.S.No.12 of 2020 on the file of the District Munsif Court, Karaikudi, Sivagangai, for declaration declaring the notice dated 20.01.2020 issued by the petitioner under Section 6 of the Tamil Nadu Land Encroachment Act, 1905 in relation to T.S.No.944/1 as null and void and also for permanent injunction restraining the defendants or their men from interfering with peaceful possession and enjoyment.



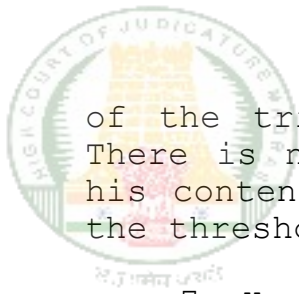
3. The learned Additional Government Pleader appearing for the petitioners would submit that prior to issuance of notice, the father of the respondent had filed a writ petition in W.P(MD) No.10139 of 2008 and the same was dismissed, as against which, a writ appeal in W.A.(MD)No.325 of 2009 was filed and since the father of the respondent died, the writ appeal was dismissed as abated. Suppressing the said fact, the respondent has filed the present suit and therefore, the suit is not maintainable. The trial Judge has failed to consider the legal and factual position and has taken the suit on file, which warrants interference by this Court. This Court has got power of superintendence under Article 227 of Constitution of India over the proceedings to see as to whether any error contained and for even striking off the plaint.

4. The learned counsel for the respondent/plaintiff would submit that the writ petition was filed against the suit property in T.S.No.44/2 and after dismissal of the same, writ appeal was filed. Taking advantage of the fact that the original owner died, the appeal was dismissed as abated. He would further submit that in view of the death of the appellant, no writ appeal would be abated and the suit is maintainable. Due course open to the petitioners is to file a petition under Order 7 Rule 11 C.P.C to reject the plaint and when the alternative remedy is available to the petitioners, they cannot invoke Article 227 of Constitution of India.

5. In support of his argument, the learned counsel appearing for the respondent/plaintiff has also placed reliance on the recent judgment of the Hon'ble Supreme Court of India in Civil Appeal No.7764 of 2019 (In **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others**). In that judgment, it has been held as follows:

"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 and others, 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 recognised principle which gained juridical recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy".

6. The learned counsel for the respondent/plaintiff would also place reliance on the judgments reported in **AIR 2008 Supreme Court 3175** (in **Karnala and others Vs. K.T.Eshwara Sa & Others**) and **(2007) 7 MLJ 13** (in **Ganapathy Subramanian Vs. S.Ramalingam and others**), wherein it has been held that the supervisory jurisdiction of this Court could be invoked only when the trial court has committed error. Mere filing of a suit by the respondent and taking the suit on file by the trial court cannot be regarded as an act on the part



of the trial court to transgress its jurisdiction or its bound. There is no impediment or embargo for the petitioner to put forth his contentions before the trial court to strike off the plaint at the threshold.

7. Heard both sides and perused the records.

8. Admittedly, the respondent filed the suit against the petitioners challenging the eviction notice dated 20.01.2020 issued by the petitioners under Section 6 of the Tamil Nadu Land Encroachment Act, 1905. In the said suit, the revision petitioners were served with notice on 05.02.2020 along with the copy of the plaint. After receiving the same, the petitioners, who are the District Collector, represented the State of Tamil Nadu, the District Revenue Officer, Devakottai and Tahsildahar, Karaikudi, have filed this Civil Revision Petition.

9. There is no quarrel about the settled proposition of law that if alternative remedy is available, without invoking the alternative remedy the parties need not straightaway come to the Court. But, at the same time, the Hon'ble Supreme Court of India time and again reiterated that the supervisory jurisdiction of this Court under Article 227 of Constitution of India could be invoked when the trial court committed error. This is the case of one such nature. In this case, notice was issued under 6 of the Tamil Nadu Land Encroachment Act, 1905. The respondent/plaintiff can challenge the notice either before the appellate authority or before the writ court.

10. This Court finds that the trial court ought not to have entertained the suit and the respondent can work out his remedy before appropriate forum. Accordingly, the suit in O.S.No.12 of 2020 on the file of the District Munsif Court, Karaikudi, Sivagangai is ordered to be struck off.

11. When the respondent/plaintiff workouts his remedy before appropriate forum, question of limitation would be arisen. In that event, the period from which this revision has been pending before this court shall be excluded.

12. In fine, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The District Munsif Court, Karaikudi.

2.The District Collector,
Collectorate Complex,
Sivagangai District.

3.The District Revenue Officer,
District Revenue Office,
Devakottai.

4.The Tahsildhar,
Tahsildhar Office, Karaikudi.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-12585[F] dated 19/03/2020)

+1 CC to M/s.Special Government Pleader (SR-12282[F] dated 18/03/2020)

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CM

SDS (02.06.2020) 4P-7C