

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.885 of 2018

and

C.M.P.No.4949 of 2018

R.P.Dharmalingam

...

Petitioner

Vs

1.A/M.Thiruveethy Amman Thirukoil

Reptd.by its Fit Person,

Arumbakkam, Chennai – 600 106

Administrative Office at

A/M.Kurungaleeswarar and

Vaikunda Perumal Thirukoil Office

premises, Koyambedu, Chennai – 600 107.

2.The Commissioner,

Chennai Corporation,

Periyamet, Chennai – 600 003.

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Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the suit in O.S.No.962 of 2018 on the file of the VII Asst. Judge, City Civil Court, Chennai – 600 104.

For Petitioner : Mr.M.Vivekanandan

For Respondent : Mr.R.Mahalingam

No.1

For Respondent : Ms.Karthika Ashok

No.2

ORDER

The civil revision petition is filed to strike off the suit in O.S.No.962 of 2018 on the file of the VIII Asst. Judge, City Civil Court, Chennai – 600 104.

2. The petitioner is the first defendant in the suit filed by the first respondent for permanent injunction in respect of the suit property and also for mandatory injunction to demolish the new additional constructions put up in the suit property by the first defendant.

3. The learned counsel for the petitioner would submit that the first respondent filed the suit for permanent injunction and mandatory injunction in respect of the suit property comprised in Block No.1. T.S.No.2-S.No.252/1, B1, B2 – Door Numbers 99, 100 and 101, situated at Padavettamman Koil Street, Arumbakkam, Chennai 600 106 measuring a total extent of 14,400 Sq.ft. The petitioner purchased the suit property under the Registered sale deed dated 14.11.2007 from his vendors viz., D.Nagappan, A.Krishnan, E.Radhakrishnan and S.M.Suresh Maran in

respect of the very same property. The first respondent herein already filed suits in the year 1994 for recovery of possession and all the suits were dismissed by the judgment and decree dated 03.10.2007. Aggrieved by one of the judgment and decree passed in O.S.No.929 of 1994, the first respondent preferred an appeal suit in A.S.No.195 of 2009 and the same was also dismissed by the judgment and decree dated 22.02.2013 for the very same property. Again, the first respondent herein filed the present impugned suit that too for permanent injunction and mandatory injunction in respect of the very same property against the purchasers. Suppressing all the suits filed as against the vendors of the petitioner herein in respect of very same property, the abovesaid suits and the present suit were filed by the very same first respondent herein.

4.The learned counsel for the petitioner further submits that in the present civil revision petition, the first respondent filed his counter stating that the property comprised in T.S.No.252/1A is admeasuring only two cents and that too registered as “Government” in the Revenue Record. Further he stated that the suit land measuring an extent of 5 ½ grounds comprised in

T.S.No.252/1A is owned by the Temple. Therefore, in it's counter, it had taken a contradictory version and they categorically admitted that the property comprised in T.S.No.252/1A is admeasuring two cents that too registered as Government in the Revenue Record in Taluk Office, Egmore. In fact, in the earlier suits, the trial Court categorically concluded that the vendors of the petitioner herein possessed the property comprised in Survey No.252/1B2B1 and also they are not in the possession and enjoyment of the property comprised in 252/1A and further, concluded the property comprised in survey No.252/1A classified as Poonamallee High Road. Therefore, the suits filed by the first respondent herein are dismissed by the trial court and the same was also confirmed by the first appellate Court. After a period of 24 years, again the very same plaintiff/first respondent herein filed the present impugned suit as against the purchasers of the suit property. It is nothing but re-litigation and it would amount to abuse of process of law and such a suit is not sustainable as against the petitioner herein.

5.Per contra, the learned counsel for the second respondent herein would submit that the petition itself is not maintainable under Article 227 of the Constitution of India, since there is a remedy available under Order 7 Rule 11 of CPC for rejection of plaint. Without availing the remedy under Order 7 Rule 11 of CPC, the petitioner cannot invoke directly the provision under Article 227 of the Constitution of India and prayed for dismissal of the civil revision petition.

6.Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

7.The petitioner is the first defendant and the first respondent is the plaintiff. The plaintiff/first respondent filed a suit for permanent injunction and mandatory injunction in respect of the suit property. The schedule of the suit property is as follows:

Schedule of Property

***Chennai district – Anna Nagar Taluk –
Arumbakkan Village – Block No.1- T.S.No.2-***

S.No.252/1, B1, B2 – Door Numbers 99, 100 and 101, Padavettamman Koil Street – Arumbakkam – Chennai – 600 106. The total extent of the property under the illegal occupation of the 1st defendant is about 14,400 sq.ft.- Now he is taking illegal construction works over the property without any authority.

The four boundaries of the property are as follows:

***North by : Poonamallee High Road,
South by : Land in Survey No.3
East by : Padavettamman Koil Street
and on the
West by : Koyambedu Grama Ellai.”***

8.On a perusal of the records, it is revealed that the suit property was purchased by the petitioner under the registered sale deed dated 14.11.2007 from his vendors viz., D.Nagappan, A.Krishnan, E.Radhakrishnan and S.M.Suresh Maran under the registered document No.3966/2007. The first respondent already filed the suits as against the same persons as mentioned before in O.S.Nos.799 of 1994, 928 of 1994 and

929 of 1994 on the file of the V Assistant Judge, City Civil Court, Chennai. In the said suits, the vendors of the suit property are the defendants D2, D4, D5 and the son of the deceased 3rd defendant shown as 12th defendant, who is the 4th vendor. The said suits were filed by the first respondent for recovery of possession. On the strength of the lease deed executed by the first respondent in favour of the said persons in respect of the property comprised in 252/1A admeasuring 4,800 sq.ft each of the suits, the Courts below concluded that the property comprised in survey No.252/1A is classified as Poonamallee High Road and the first respondent failed to prove their title in respect of the suit property. Further, it concluded that the vendors of the petitioner herein are in the possession and enjoyment of the property comprised in survey No.252/1, B1, B2 viz., the present property. Pending the suit after a period of 24 years, the present impugned suit has been laid for the property comprised in 252/1/, B1, B2 measuring an extent of 14,400 sq.ft. As against the judgment and decree passed in the above suits, they also preferred the appeal suits in A.S.Nos.191/2009, 195/2009, both the appeal suits were dismissed by the judgment and decree dated 22.02.2013. Therefore, the present suit is nothing but re-litigation and it

would amount to abuse of process of law. It cannot be permitted to continue and it shall be nipped in the bud.

9.In so far as the maintainability of civil revision petition under Article 227 of the Constitution of India is concerned, when there is abuse of process of law, this Court can exercise the power entrusted under Article 227 of the Constitution of India.

10.In this regard, the learned counsel for the petitioner has relied upon the judgment of this Court reported in **2013-1 L.W.491 (N.Babu Vs.S.Shanmugam & others)**, in which, para- 25 is extracted hereunder:

“25.Further, though an alternative remedy is available to the revision petitioner for striking off the suit under Order XXI Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of court and when the facts are not controverted and admitted by the plaintiff/first respondent, the court can exercise the extraordinary jurisdiction

of the court under Article 227 of the Constitution of India and strike off the plaint and as a matter of fact, this Court and Honourable Supreme Court held that the right conferred under Article 227 must be exercised very sparingly and it is also settled law that when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of Article 227 of the Constitution of India.”

and another judgment of this Court reported in 2010 (4) CTC 690 (Southern and Rajamani Transport Private Limited, rep.by its Director V.R.Venkataswamy, No.270, Goods Shed Road, Madurai – 625 001 and 33 others Vs. R.Srinivasan and others), in which, paragraphs 27, 28 & 29 are extracted hereunder:

“27.In Madras Gymkhana Club, represented by its Hon'y Secretary, The Island Grounds, Anna Salai, Chennai – 600002 and others v.K.C.sukumar, 2010 (1) CTC 199, “ this Court has taken a similar view as taken by the Honourable Apex Court for invoking Article 227 of the Constitution of India”

28.The learned Senior Counsel appearing for the Revision Petitioners / Defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 has also accentuated the Court to look into the following decisions:

(i).In A.Sreedevi v.Vicharapu Ramakrishna Gowd, 2005 (5) CTC 748, this Court has held that “Article 227 of the Constitution of India can be invoked to prevent abuse of process of law and such a plea can be raised in Revision Petition without approaching Trial Court.”

(ii).In Tamil Nadu Handloom Weavers Cooperative Society, rep.by its Managing Director V.S.R.Ejaz, rep.by its Power Agent, Muralidhar T.Balani, 2009 (5) CTC 710: 2009 (5) LW 79, this Court has held that “the suit itself is abuse of process of law and filed with the sole intention of defeating the order passed by the Supreme Court and the Trial Court having apprised of such facts, failed to act at once, this Court is entitled to exercise the supervisory jurisdiction under Article 227 of the Constitution of India to axe the Suit in the initial stage itself.

29.From the cumulative reading of the decisions referred to supra, it is easily discernible that Article 227 of the Constitution of India can be invoked by every High Court under the guise of superintendence, on the following grounds:

- (a) to prevent abuse of process of law***
- (b) to prevent miscarriage of justice***
- (c) to prevent grave injustice***
- (d) to establish both administrative as well as judicial power of High Court.***

11.This Court held that Article 227 of the Constitution of India can be invoked to prevent abuse of process of law and such a plea can be raised in the revision petition without approaching the Trial Court. It can be invoked on the grounds to prevent abuse of process of law and to prevent miscarriage of justice. It is nothing but re-litigation in respect of the very same issues and property and it would amount to abuse of process of law and the suit is liable to be struck off by resorting to the provisions under Article 227 of the Constitution of India.

In the result, the civil revision petition is allowed and the plaint in O.S.No.962 of 2018 on the file of the VIII Asst.Judge, City Civil Court, Chennai is struck off. No costs. Consequently, connected miscellaneous petition is closed.

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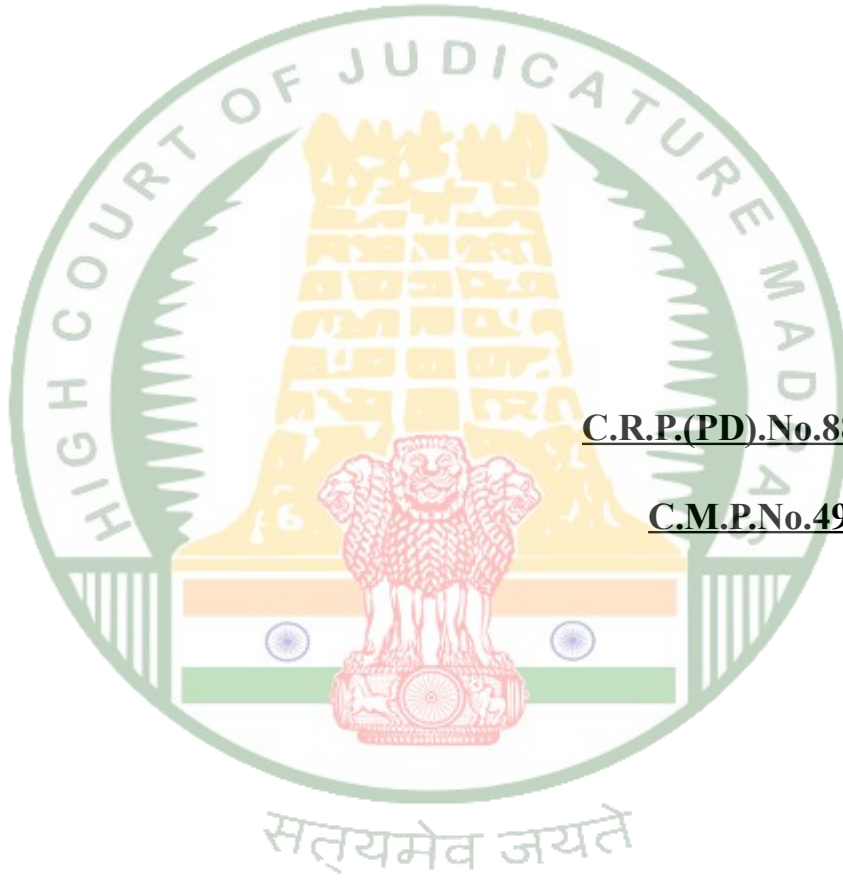
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Internet: Yes/No
Speaking Order: Yes/No
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To

- 1.A/M.Thiruveethy Amman Thirukoil
Reptd.by its Fit Person,
Arumbakkam, Chennai – 600 106
Adminisrative Office at
A/M.Kurungaleeswarar and
Vaikunda Perumal Thirukoil Office
premises, Koyambedu, Chennai – 600 107.
- 2.The Commissioner,
Chennai Corporation,
Periyamet, Chennai – 600 003.
3. The VIII Asst. Judge, City Civil Court, Chennai – 600 104.

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G.K.ILANTHIRAIYAN.J,
sms



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