

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2020

PRONOUNCED ON : 11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.4786 of 2017

(Through Video Conferencing)

1. C.Mani
2. M.Dinesh Babu
3. R.Ravi
4. R.Venugopal

Petitioners

Vs

C.M.Venkatesalu

Respondent

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to strike off the plaint in OS.No.126 of 2017, on the file of the Principal District Judge, Tiruvallur, with exemplary costs.

For Petitioner : Mr.V.Suryanarayana Reddy

For Respondent : Mr.A.R.Suresh

ORDER

1. This Civil Revision Petition has been filed, to strike off the plaint in OS.No.126 of 2017, on the file of the Principal District Judge, Tiruvallur.
2. The Defendants in OS.No.126 of 2017 are the Petitioners and the Respondent is the Plaintiff. The said suit was filed for declaration of title over the suit property and for consequential relief of injunction, restraining the Defendants from interfering with the Plaintiff's possession and enjoyment of the suit property. This Civil Revision Petition has been filed by the

Defendants to strike off the plaint.

3. The learned counsel for the Petitioners has submitted that since the present suit has been filed, suppressing the earlier suits in OS.Nos.630 of 1983 and 629 of 1983, to which the 1st Petitioner and the father of the Respondent were parties and material facts and since the suit property is a part and parcel of the properties covered under the earlier decrees made in the earlier suits and since the issue involved in OS.No.126 of 2017 was already decided in OS.No.630 of 1983, which was confirmed in AS.No.65 of 1997, it would amount to abuse of process of Court and the present suit is hit by the principles of resjudicata and consequently, the present plaint is to be rejected. The learned counsel has relied on 2010 4 CTC 690 (Southern and Rajamani Transport Private Limited Vs. R.Srinivasan and others), 2017 6 CTC 723 (S.Thiagarajan Vs. Supreme Pipe Syndicate), 1994 1 SCC 1 (S.P.Changalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs) and 2020 5 CTC 781 (Saraswathy Ammal and others Vs. Govindan and others).
4. The learned counsel for the Respondent has submitted that the Petitioners have filed IA.No.7 of 2020, after filing of this Civil Revision Petition for the very same relief and that as per the Article 227 of the Constitution of India, the plaint cannot be struck off by this Court, when there is an alternative remedy under Order 7 Rule 11 of CPC is available and hence, the learned counsel has sought for the dismissal of this civil revision petition.
5. This court heard the learned counsel on either side and considered their

submissions and also carefully perused the materials placed on record.

6. This Civil Revision Petition has been filed under Article 227 of the Constitution of India to strike off the plaint in the year 2017. The Petitioners have also filed an application in IA.No.7 of 2020 before the court below for the very same relief and it is pending.
7. When there is an alternative remedy available to the petitioner to approach the concerned court under Order 7 Rule 11 of CPC, seeking to reject the plaint, the Civil Revision Petition filed under Article 227 of the Constitution of India to struck off the plaint cannot be maintained parallelly.
8. Only when there are extraordinary circumstances, jurisdiction of this Court under Article 227 of the Constitution of India can be invoked to strike off the plaint. In this case, there is no such extraordinary circumstance pointed out by the learned counsel for the Petitioners. Hence, when there being no extraordinary circumstances and where there is an application under Order 7 Rule 11 of CPC pending before the court below for the very same relief, this Civil Revision Petition, seeking to strike off the plaint, invoking Article 227 of the Constitution of India, is not maintainable.
9. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed. If at all the Petitioners has any grievance, it is always open to them to work out their remedy, in the manner known to law.

11.02.2021

CRP(PD)No.4786 of 2017

A.A.NAKKIRAN, J.

Srcm

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Principal District Judge, Tiruvallur



Pre-Delivery Order in
CRP(PD)No.4786 of 2017

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