



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 25.03.2021

DELIEVRED ON : 22 .06.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.20 of 2021

and

C.M.P. (MD) .No.245 of 2021

Nithyakumar

(for himself and on behalf of other
legal representatives of Nachimuthu)

.. Petitioner /
1st defendant

Vs.

1.The State of Tamil Nadu,
represented by its District Collector,
Thanthonimalai,
Karur - 639007.

... 1st respondent /
Plaintiff

2.Sankaran

3.Thangaraj

... Respondents 2 & 3/
Defendants 2 & 3

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to call for the records relating to the suit in O.S.No.366 of 2020 on the file of the Additional District Munsif Court, Karur and strike off the same.

For petitioner : Mr.K.Suresh

For 1st respondent : Mr.K.Chellapandian,
Additional Advocate General,
assisted by Mr.J.Gunaselan Muthaiah,
Additional Government Pleader

ORDER

This civil revision petition has been filed by the revision petitioner / 1st defendant, seeking to strike off the plaint O.S.No.366 of 2020 on the file of the Additional District Munsif Court, Karur.

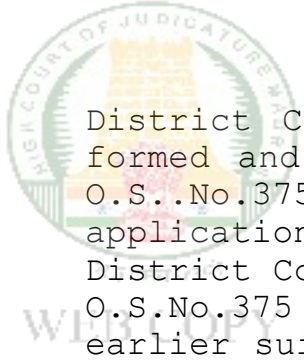
2. The learned counsel for the petitioner/1st defendant submitted that the land in S.F.No.331/4 situated at Inam Karur Devasthanam Village to an extent of 0.41 acre is the suit property. He can trace the title from the year 1898. The father of the petitioner along with the respondents 2 and 3 had jointly filed a suit in O.S.No.375 of 1991 for declaration of title and permanent injunction in respect of the above said property against the first respondent herein. Though the first respondent entered appearance in that suit, they did not file written statement. On 06.02.1992, the Court below decreed the suit in O.S.No.375 of 1991 in ex parte. On 22.11.2018, the petitioner filed an application for patta on the basis of the said decree. As there was no response to the same, the



petitioner filed W.P.(MD).No.786 of 2019. This Court, by order dated 04.06.2019 directed the District Revenue Officer, Karur to consider and pass orders within a period of eight weeks. On 26.09.2019, the District Revenue Officer rejected the said application stating that the subject land is a vari promboke and water body. Aggrieved by the same, the petitioner has filed W.P.(MD).No.26372 of 2019 and this Court by order dated 12.12.2019 granted an interim order of stay. Even after the grant of interim order, the first respondent made an attempt to lay drainage channel on the disputed property and hence, the petitioner filed W.P.(MD).No.14328 of 2020 and this Court by order dated 14.10.2020 granted an interim order of injunction. While so, after about 28 years of the decree in O.S.No.375 of 1991, the first respondent filed the suit in O.S.No.366 of 2020 praying to declare the decree in O.S.No.375 of 1991 as legally invalid and to grant permanent injunction, without filing a petition to set aside the *ex parte* decree under Order 9 Rule 13 C.P.C., which is a clear abuse of process of law. As the decree in O.S.No.375 of 1991 is binding upon the first respondent, the suit in O.S.No.366 of 2020 is not at all maintainable and the same is barred by limitation. The Court below, without considering the above aspects, have erroneously taken the suit in O.S.No.366 of 2020 on file. Hence, the petitioner has come up with this revision petition.

3. The learned counsel for the petitioner would further submit that if a party to the suit is permitted to file another suit to set aside the decision in the earlier suit, there cannot be an end to any litigation and the provisions of appeal as well as provisions relating to setting aside the *ex parte* decree have become redundant. As the first respondent has filed the suit in O.S.No.366 of 2020 with unclean hands and it is clear abuse of process of law, this Court has got jurisdiction under Article 227 of the Constitution of India to straight away strike off the plaint. Thus, he prayed to allow this revision petition.

4. The learned Additional Advocate General appearing for the first respondent submitted that the suit property originally an inam land and after introduction of the Inam Abolition Act, all rights of Inamdhar or the holder of the estate got extinguished and the property vests with the Government in free of encumbrances. In the revenue records, the suit property is described as vari promboke land / water body. Disputing the said fact, the father of the petitioner and the respondents 2 and 3 herein have filed the suit in O.S.No.375 of 1991. In view of non filing of written statement, the Court below decreed the said suit in *ex parte*, without even extracting the pleadings, framing issues and discussing the merits of the case. It is only a cryptic judgment. Therefore, the rights of the parties cannot be said to have been decided finally after hearing. The *ex parte* decree would not operate as *res judicata*, inasmuch as the suit was not heard and finally decided as contemplated in Section 11 of C.P.C. At the time when the *ex parte* decree said to have been passed, the administration was with the



District Collector, Trichy. In the year 1995, Karur District was formed and the first respondent was unaware of the proceedings in O.S.No.375 of 1991. Only when the petitioner herein gave an application for patta in the year 2019, the first respondent / District Collector, Karur, came to know about the *ex parte* decree in O.S.No.375 of 1991. As the suit property is a water body and the earlier suit was not decided on merits, they could not grant patta. Therefore, they filed the suit in O.S.No.366 of 2020.

5. The learned Additional Advocate General would further submit that as there is an effective alternative remedy of filing an application under Order 7 Rule 11 of C.P.C. and as the petitioner has come up with this revision petition straight away without exhausting such remedy, this revision petition is not at all maintainable. Thus, he prayed to dismiss this revision petition.

6. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the first respondent. In view of the issue involved in this revision and in view of the submission of the petitioner that the respondents 2 and 3 are also sailing with the petitioner, this Court is of the view that notice to the respondents 2 and 3 need not be sent and accordingly, notice to the respondents 2 and 3 is dispensed with.

7. Admittedly, in this case, the petitioner has not produced the judgment passed in the suit in O.S.No.375 of 1991 before this Court. As rightly stated by the learned Additional Advocate General, the petitioner has straight away come up with this revision petition without availing the effective alternative remedy provided to him under Order VII Rule 11 of C.P.C. I am of the view that it would be appropriate to direct the petitioner to avail himself of statutory remedy before he resorts to a constitutional remedy.

8. In the decision in Ganapathy Subramanian Vs. S.Ramalingam and 23 others, reported in 2007 (3) L.W. 515, a learned Single Judge of this Court, after referring to various decisions, has held in paragraph No.16 as follows:

"16.The supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. Mere filing of a suit by the respondents and taking the suit on the 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. Of course, the party who files the suit might have filed the suit suppressing the material facts or made up the suit to his convenience for seeking the relief which is not otherwise entitled to. But that fact has to be considered by the trial Court during the relevant point of time. 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. As this



Court is relegating the petitioner to go before the trial Court for the relief, the Court has restrained itself from going into the facts of the case, as any observation made by this Court would have a bearing on the suit, which is pending before the trial Court. Of course, the petitioner is also having an effective remedy in the Code of Civil Procedure itself to have the suit struck off and he could very well avail that remedy. On the above said reasoning, I am not inclined to grant the relief as prayed for in the revision."

9. In a recent decision in **Virudhunagar Hindu Nadargal Dharma Paribala Sabai and others Vs. Tuticorin Educational Society and others**, reported in **2019 (5) CTC 696**, the Hon'ble Supreme Court has held as follows:

"13. 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 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 the 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 Vs. Ram Chander Rai, pointed out in Radhey Shyam Vs. Chhabi Nath that "orders of Civil Court stand on different footing from the orders of authorities or Tribunals or Courts other than judicial / civil Courts."

14. 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."



(emphasis supplied)

10. In view of the above and also considering the fact that the petitioner has straight away come up with this revision petition without exhausting the alternative remedy provided under the Code of Civil Court, this Court is inclined to dismiss this revision petition.

11. In the result, this Civil Revision Petition is dismissed. It is open to the petitioner to avail the statutory remedy provided under the Code of Civil Procedure to strike off the plaint. In the event, the petitioner filed a petition to strike off the plaint in O.S.No.366 of 2020 under Order VII Rule 11 of C.P.C, the Court below shall dispose of the same within a period of three months from the date of filing of such petition. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala

To

The Additional District Munsif , Karur.

+1 CC to M/s.SPL GP (SR-19952[F] dated 22/06/2021)

+1 CC to M/s.K.SURESH, Advocate (SR-20104[F] dated 24/06/2021)

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KK(02.07.2021) 5P 4C