



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	22.09.2021
DELIVERED ON	07/10/21

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.500 of 2021

and

C.M.P (MD) No.2684 of 2021

Palmyrah Workers Development Society,
Rep. Through its Secretary,
Dr.S.Sathiamoorthy

...Petitioner/1st Defendant

Vs.

1.A.Thiruganasambanthan
2.S.Arun Amirtham
3.J.Jeyaraj
4.D.Vijil
5.Richard Arumainayagam
6.Kalaiselvan
7.The Commissioner of Police,
Madurai City,
Alagarkovil Road,
Madurai - 625002.

...1st Respondent/Plaintiff

8.The Assistant Commissioner of Police,
(Law & Order), Thilagarthidal,
Tamilsangam Road,
Madurai City.
9.The District Collector,
Collectorate Office,
Madurai.

...R-2 to 9/D-2 to 9

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.89 of 2021 on the file of the Principal District Munsif Court, Madurai.

For Petitioner : Mr.C.Vakeeswaran

For R-1 : Mr.Godwin

For R-7 to R-9 : Mr.A.Baskaran
Government Advocate



O R D E R

This Civil Revision Petition has been filed to strike off the plaint in O.S.No.89 of 2021 on the file of the Principal District Munsif Court, Madurai.

2. The 1st respondent/plaintiff has filed a suit in O.S.No.89 of 2021 on the file of the Principal District Munsif Court, Madurai, seeking permanent injunction.

3. In the meantime, the revision petitioner/1st defendant has filed this Civil Revision Petition to strike off the plaint in O.S.No.89 of 2020.

4. The learned counsel appearing for the revision petitioner submitted that since the 1st respondent/plaintiff is not a member of the revision petitioner's Society he has no *locus standi* to file the suit for permanent injunction restraining the revision petitioner herein and other respondents not to alienate the plaint schedule properties. He further submitted that the revision petitioner has filed the suit without having any cause of action. Hence, the Civil Revision Petition is liable to be allowed.

5. Heard Mr.C.Vakeeswaran, learned counsel appearing for the petitioner and Mr.Godwin, learned counsel appearing for the 1st respondent and Mr.A.Baskaran, learned Government Advocate appearing for the respondents 7 to 9.

6. The 1st respondent/plaintiff has objected this Civil Revision Petition that the petitioner cannot invoke Article 227 of Constitution of India when there is a provision for rejection of plaint under Order 7 Rule 11 of Civil Procedure Code.

7. Under Article 227 of Constitution of India, the Hon'ble High Court has wide power to deal matters. Under Article 227 of Constitution of India, is extracted under:

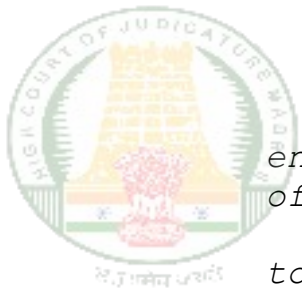
"227. Power of Superintendence over all Courts by the High Court :-

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provisions, the High Court may:

(a) call for returns from such Courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and



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(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein;

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4). Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any Court or tribunal constituted by or under any law relating to the Armed Forces. "

8. The Hon'ble High Court has supervisory power over the Subordinate Courts. If a Court erred in passing any order, the Hon'ble High Court has power under Article 227 of Constitution of India to interfere with the order passed by the Court below.

9. The relevant paragraph of the Judgment reported in **2003 0 Supreme (SC) 731** is extracted hereunder:

"37.....

(4). Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the 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."

10. There is no doubt that there is a provision under Order 7 Rule 11 of Civil Procedure Code, to reject the plaint. But, when any one of the ground stated in the provision attracts then the party can file a petition under Order 7 Rule 11 of Civil Procedure Code, before the Court below.

11. But, in this case the learned Principal District Munsif, Madurai, erred in numbering the suit.



12.The learned counsel for the revision petitioner has relied on a Judgment reported in **2020 0 Supreme (Mad)** in the case of **Saraswathy Ammal & Others Vs. Govindan & Another**, is held as follows:

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"24.From the above observations, it is clear that even without an application under Order 7 Rule 11 of the Code of Civil Procedure or under Order 6 Rule 16, the Court is empowered to strike out the pleadings or even throw out the plaint, if it is found that the plaint is an abuse of the process of the Court or is a re-litigation."

13.The 1st respondent/plaintiff was working as Office Assistant cum Driver in the petitioner's Society and he was superannuation on 31.12.2014. Subsequently, he was reappointed on consolidated pay. He seeks permanent injunction not to alienate the properties of the Society.

14.The 1st respondent/plaintiff seeks his remedy by way of filing a suit in O.S.No.89 of 2021. The paragraph Nos.5 to 8 are extracted hereunder:

.....
"5.The plaintiff states that the 2nd defendant is the President of the above society and he involved in so many criminal activities and FIR was registered against him at S.S.Colony Police Station, Madurai and he was absconding. The 1st defendant Society and its properties are misused by the 2nd defendant and their were so many complaint against him inrespect of mismanagement and complaints were lodged against him before District Collector, Kanniyakumari and Ministry of Home affairs inrespect of (FCRA) Foreign Contribution Regulation Act, Non submission of report before the Registrar, Nagercoil, and also private complaint against him on the file of Judicial Magistrate No.I, Kulithurai in the year 2018. There are so many e-mail correspondence between plaintiff and the 1st defendant which is evident that the non functioning of the 1st defendant which is evident that the non functioning of the 1st defendant society. So, there are so many complaint against him and also non settlement of payment of salaries to the employees including the plaintiff.

6.The plaintiff states that the 3rd and 4th defendants are also working at above society and



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they are no way connected to the Madurai Office at any point of time and also no nexus with the schedule mentioned properties hereunder described, the plaintiff states that the 5th and 6th defendants are the strangers and they were no way connected to the society. The above said society has been functioning nearly past 43 years from out of contributions effected by its members and all the properties had been purchased out of foreign grant and the income from the societies on various occasions.

7.The plaintiff states that the above said society is under the preview of the Minsitry of Home affairs, Delhi, as it is registered under FCRA(Foreign Contribution Regulation Act). The above said society failed to submit the auditing reports as on when and subsequently there was malpractices committed nu the 2nd & 3rd defendants and there is publication effected on 16.06.2018 through society against the 2nd defendant with regard to fraudulent attempt to alienate the properties which was described in the publication by their Advocate F.Benjamin Faranklin and also so many complaints were lodged against the 2nd defendant and he is living at Switzerland and also absconding for past 5 years. The 2nd defendant colluded with 3rd and 4th defendants to create fabricated documents and trying to encumber the schedule properties to some 3rd parties with intention to swindle the huge amounts from the 1st defendant society. So, the society has initiated criminal proceedings against fraudulent act committed by the 2nd defendant and there was criminal complaint lodged against him and some other parties on 07.09.2018 which is pending.

8.The plaintiff states that due to their mismanagement, there was maintaining improper accounts, no proper auditing and irregular in payment of statutory dies, i.e., arrears of salary to the employees including the plaintiff and some other staffs to the tune of Rs.6,55,000/- Corporation tax due to the tune of Rs.1,50,000/- and also sundry expenses incurred to the plaintiff to the sum of Rs.1,50,000/-also be paid. In the circumstances the plaintiff mailed to the 2nd defendant inrespect of above said demand on various occasions. Inspite of the above said



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demands nothing was materialized to him. Moreover, the 1st defendant society has become defunct there is no regular meeting, no AGM, no executive committee meeting, and there is no resolution in respect of survival of society, even then the 2nd defendant to 6th defendant colluded with each other and fabricated documents with a view to swindle the properties."

15.As per the averments, he seeks relief only for the arrears of his salary. But, he has not filed the suit for recovery of arrears of salary. Without main prayer he cannot ask for consequential prayer.

16.The 1st respondent/plaintiff is an employee of the Society. He has no right to challenge the power of Society without seeking main relief. The plaintiff has also not pleaded in the plaint that the quantum of arrears of salary and also period of non-payment of salary.

17.The relevant portion of the Judgment reported in **2016 (0) SUPREME (MAD.) 657**, is extracted hereunder:

.....

"10.A reading of the plaint will show that the plaint is full of mistakes right from the beginning till the end and the pleadings cannot be easily comprehended. A reading of the averments found in the plaint does not disclose in what capacity the plaintiff is in possession and in what capacity he seeks the relief of injunction against the petitioners, while admitting the first petitioner to be the real owner of the suit property. "

18.Therefore, without any right, the 1st respondent/plaintiff has filed the suit in O.S.No.89 of 2021 before the Court below. The learned Principal District Munsif, Madurai, has also erred in numbering the suit when there is no main relief.

19.Therefore, the Hon'ble High Court can invoke Article 227 of Constitution of India , to set aside the error of the learned Principal District Munsif, Madurai, in a supervisory capacity.

20.At the same time, the 1st respondent/plaintiff has right to recover his salary, if it is due and within limitation.



21.Finally, this Civil Revision Petition is allowed. The plaint in O.S.No.89 of 2021, on the file of the learned Principal District Munsif, Madurai, is struck off. The 1st respondent/plaintiff can file proper litigation before the appropriate Forum. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Principal District Munsif ,
Madurai.

+1 CC to M/s.SPL.GP (SR-31552[F] dated 07/10/2021)

+1 CC to M/s.C.VAKEESWARAN, Advocate (SR-31464[F] dated
07/10/2021)

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