



C.R.P.No.37 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.37 of 2019

and

CMP Nos.388 & 389 of 2019

1. Sarangapani (Died)
2. Anitha
3. Kumaravel
4. S.Pankajam
(P- 4 is brought on record as LRs
of the deceased P-1 viz., Sarangapani
vide Court order dtd 22.02.2022 made in
CMP No.1284/2022 in CRP No.37/2019)

... Petitioners

Vs

1. Dhanraj
2. Paranthaman
3. Murugan
4. Elumalai
5. Pasupathy
6. Palani
7. Selvaraj

8. Block Development Officer,
Vikravandi Taluk,
Villupuram District.



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9. The Tahsildar,
Vikravani Village and Taluk.

10. The District Collector,
Villupuram District.

11. The Sub Registrar,
Anathapuram Sub Registrar Office.

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India, to strike off the suit in O.S.No.171 of 2018 on the file of the Principal District Munsif Court, Villupuram.

For Petitioners	:	Mr.R.Subramanian for Mr.C.Jagadish
For R1 to R7	:	Mr.C.Prabakaran
For R8	:	Dr.S.Suriya, Government Advocate
For R9 to R11	:	Mr.M.R.Gokul Krishnan Additional Government Pleader

ORDER

This Civil Revision Petition has been filed to strike off the suit in O.S.No.171 of 2018 on the file of the Principal District Munsif Court, Villupuram.

2. The petitioners are the defendants in the suit filed by the respondents 1 to 7 herein for declaration and mandatory injunction.



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3. The case of the respondents 1 to 7 is that the suit property originally classified as Government Tharisu Poramboke. wherein there is an outlet for Nandhivadi Lake through which the excess flood water flushes out and runs through the channel which situates and lies in the suit property and the same is ultimately reaching at Thenber Lake. On east side of bund of the channel, the suit pathway/road lies from time immemorial which can be known by the old 'A' Register copy. The villagers of Nandhivadi and others are using the suit property as road so as to have ingress and egress to their respective lands. The said road has been under easmentary use of the villagers for more than 100 years. While being so, the petitioners herein purchased the property and obtained patta in their favour. Thereafter, they prevented the general public to use the road. In the revenue records, it is classified as Government Poramboke cart Track. Hence, the suit.

4. The learned counsel appearing for the petitioners would submit that the respondents 1 to 7 did not have any legal right in respect of the subject properties to file a suit. The suit property is a private patta land belonging to the petitioners. No cause of action arose to file the suit and no



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cause of action for any of the relief sought for by the respondents 1 to 7 herein is available. Though they averred in the plaint that they are using the pathway for the past 100 years, they failed to produce any piece of evidence to substantiate the same. The petitioners have got all documentary evidence to show their title and continuous possession of the suit property for the past 45 years. The present suit is nothing but a clear abuse of process of law. In fact, the revenue officials categorically stated that there was no cart track in the suit property and they certified that the suit property is a patta land belonging to the petitioners. The first petitioner's father purchased the suit property by a registered sale deed in the year 1974 from one Alexander Armel. Ever since the date of purchase, his father had been in possession and enjoyment of the said property and all the revenue records were mutated in his name. After his demise, the petitioners are in possession and enjoyment of the same. Now, the respondents 1 to 7 are attempting to take forcible possession of the suit property by laying road. The entire averments made in the plaint do not disclose any cause of action to file the suit. In order to maintain the suit, there must be jurisdiction, legal right, cause of action and no harrasment to the defendants. In the present suit,



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there is nothing to maintain the suit by the respondents 1 to 7 herein.

Section 34 of the Specific Relief Act is very clear that the declared relief, the plaintiff must have a legal right over the property. After 45 years, it cannot be stated that the sale deed executed in favour of the first petitioner's father is a fraudulent one. The suit is also hit by the provision under Section 3 of the Limitation Act.

5. In support of his contention, he relied upon the following Judgments :-

(1) The Judgment reported in **(1975) 2 SCC 530** in the case of ***M/s.Supreme General Films Exchange Ltd., Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and others.***

(2) The Judgment report in **(2019) 9 SCC 538** in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others.***

(3) The Judgment reported in **(2022) 1 CTC 505** in the case of ***Rt.Rev.Timothy Ravinder Dev Pradeep Vs. Rev.Charles Samraj and other.***



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(4) The Judgment reported in **(2020) 5 CTC 781**

in the case of ***Saraswathy Ammal Vs. Govindan***

(5) The Judgment reported in **(1998) 3 SCC 573** in

the case of ***K.K.Modi Vs. K.N.Modi and others.***

6. Per contra, the learned counsel appearing for the respondents 1 to 7 submitted that the entire suit property is a Government Poramboke. The petitioners fraudulently created the sale deed and prevented the general public to use the cart track in order to reach their respective property. This petition has been filed by abusing the remedy available in Order 7 Rule 11 of CPC. Therefore, the present Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No. 171 of 2018 is not maintainable. The 'A' Register in respect of the suit property is very clear that the suit property is Government Tharisu Poramboke and classified as cart track. The plaint cannot be struck off on its threshold, since all the averments are mixed question of facts and law, which has to be gone into in a fullfledged trial. If at all any valid defence are available to the petitioners, they can very well defend the suit before the Trial Court during the trial. Therefore, the plaint cannot be struck off and the petitioners failed to make any ground to struck off the plaint.



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7. In support of his contention, he relied upon the following Judgments :

(1) The Judgment reported in **(2007) 3 LW 515** in the case of ***Ganapathy Subramanian Vs. S. Ramalingam and 23 others.***

(2) The Judgment reported in **(2012) 2 MWN (Civil) 561** in the case of ***K.Ponnamal Vs.V.Thayanban***

(3) The Judgment reported in **2010 (2) MWN (Civil) 154** in the case of ***Vaniyar Nala Sangam, rep by its President Mariappa Chettiar and other Vs. Kumar and others.***

8. The learned counsel appearing for the 9th respondent filed a counter stating that the suit property is a private property belonging to the petitioners. It is not a Poramboke land and it is continues to be a private patta land. The petitioners are in possession and enjoyment of the suit property. At no point of time, the general public used the said land as a cart track. Further, the Government Officials have not issued any notice as contemplated under Section 80 of CPC. Therefore, they also supported the case of the petitioners.



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9. Heard, Mr.R.Subramanian, learned counsel appearing for the petitioners ; Mr.C.Prabakaran, learned counsel appearing for the respondents 1 to 7 ; Dr.S.Suriya, learned Government Advocate appearing for the 8th respondent and Mr.M.R.Gokul Krishnan, learned Additional Government Pleader appearing for the respondents 9 to 11 and perused the materials available on record.

10. The respondents 1 to 7 have filed a suit for declaration declaring their right of way in the suit property and also sought for mandatory injunction to restore the water channel bund situated in the suit property. The plaintiffs are general public. According to them, the suit property was used as a cart track for time immemorial. However, the petitioners, with the connivance of the revenue officials, purchased the suit property and also obtained patta. Even according to the respondents 1 to 7, the first petitioner's father purchased the suit property in the year 1974. Thereafter, all the revenue records were mutated in his name and he also obtained patta. After his demise, the petitioners are in possession and enjoyment of the suit property. However, they averred in the plaint that the



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entire suit property was classified as Government Poramboke Cart Track.

The cause of action arose to file the suit on 05.05.2018, when they were intended to lay the road in the suit property, the petitioners prevented them and as such, they lodged a complaint.

11. Admittedly, the first petitioner's father had purchased the property on 28.01.1974 from one Alexander Armel. The said Alexander Armel was assigned the suit property by proceedings in R.Dis.No.8057 of 1969 on the file of the Revenue Divisional Officer, Villupuram. The respondents 1 to 7 had knowledge about the purchase of the property by the father of the first petitioner. Therefore, from the year 1974 onwards the petitioners and their predecessors are in possession and enjoyment of the suit property. In fact, they obtained EB Connection in Service No.16 and also revenue records were mutated in their name.

12. While being so, the respondents attempted to trespass into the suit property and as such, the petitioners lodged a complaint and the same was registered an FIR in Crime No.290 of 2018 on the file of the Kanjanur



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Police Station, Villupuram and investigation is pending. Therefore, there is absolutely no cause of action to file the present suit.

13. Insofar as the right over the property is concerned, admittedly the suit property belongs to the petitioners and they were issued patta. As per the revenue records, the suit property is a private land and it is not a Poramboke land. There was no approval to lay any road in the suit property, since it is a patta land. There is no project pending to lay road in the patta land belonging to the petitioners. There is no water channel and there is no cart track in the suit property. Therefore, there is no question of damaging bund of the water channel. In fact, pending this Civil Revision Petition, this Court appointed an Advocate Commissioner, by an order dated 07.12.2021, to inspect the suit property along with the revenue officials to find out whether a road was laid in the suit property under MGNREGS Scheme and that the bunds of water channels are intact. Mr.S.Vinod, Advocate Commissioner, was appointed. He inspected the suit property along with the revenue officials and he conducted enquiry in the presence of the parties concerned. During inspection, the parties produced the original



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revenue documents to show that the suit property belongs to them and it is a private patta land. The Advocate Commissioner filed a report stating that there is no cart track is found in the suit property and no general public used the suit land for their cart track. It is used only by the petitioners for their agricultural purpose to transport the crops. The bunds of the water channel is also intact.

14. That apart, to substantiate the averments made in the plaint, the respondents 1 to 7 failed to produce any documents along with the plaint. The first objection raised by the learned counsel for the respondents 1 to 7 is in respect of maintainability of Civil Revision Petition under Article 227 of Constitution of India to struck off the plaint. In this regard, he relied upon the Judgment reported in **(2022) 1 CTC 505** in the case of ***Rt.Rev.Timothy Ravinder Dev Pradeep Vs. Rev. Charles Samraj and other.*** This Court, after analysing the various Judgments of the Hon'ble Supreme Court of India, held that the availability of appeal remedy is not a blanket bar or total bar for invoking the constitutional remedy under Article 226 and 227 of Constitution of India.



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15. In this regard, he also relied upon the Judgment reported in **(2019) 9 SCC 538** in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others*** held that the availability of appeal remedy in terms of the provisions of CPC, may have to be construed as a near total bar. In the case of ***L.Chandrakumar Vs. Union of India*** reported in **(1994) 2 SCC 401**, the Hon'ble Supreme Court held that Article 226 and 227 form part of the basic structure of the Constitution and the power of High Court under them cannot be abrogated even by a Constitutional Amendment. This Court further held that the jurisdiction under Article 227 of the Constitution of India is far more wider than the jurisdiction under Article 226 of the Constitution of India and the power of superintendence for the High Court can be used even to correct the errors which are patent of manifest. It is clear that a discretion to exercise a constitutional power/power of superintendence deposited in it under Article 227 of the Constitution of India is with a Court.

16. In the case of ***Saraswathy Ammal Vs. Govindan*** reported in



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(2020) 5 CTC 781, this Court held that an application under Order 6 Rule 16 of Code of Civil Procedure, empowers the Court to strike out pleadings which are necessary scandalous, frivolous or vexatious or which amount an abuse of the process of the Court. A reading of the plaint in the case on hand would show that the entire plaint would come within the scope of the words 'abuse of the process of the Court'. Therefore, the plaint will have to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. Even otherwise, this Court, sitting under Article 227 of the Constitution of India, has the power to strike out the plaint if it finds that it is an abuse of the process of the Court.

17. In view of the above facts and circumstances, it is sufficient to demonstrate that the present suit is a clear abuse process of Court and amounts to challenging the title of the petitioners. Therefore, the Judgment cited by the respondents are not helpful to the case on hand. However, the learned Advocate Commissioner filed all the documents in order to prove the ownership of the suit schedule property in favour of the petitioners herein. The revenue records also revealed that there was no public cart track in the



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suit land and no public used any cart track in the suit property. Therefore, the suit is nothing but a clear abuse process of law and it is liable to be struck off. Accordingly, the suit in O.S.No.171 of 2018 on the file of the Principal District Munsif Court, Villupuram, is hereby struck off. A sum of Rs.20,000/- is fixed as additional remuneration for the Advocate Commissioner and it shall be paid by the petitioners within a period of two weeks from the date of receipt of a copy of this order.

18. In the result, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petitions are closed. No costs.

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

The Principal District Munsif,
Villupuram.

G.K.ILANTHIRAIYAN, J.

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