



C.R.P(PD).No.944 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.944 of 2022

and

C.M.P.No.4817 of 2022

1.S.Sivakumar
2.S.Prabakaran
3.S.Kalavathy

... Petitioners

..Vs..

1.Santhosh Kumar
2.V.S.Suresh Kumar
3.S.Ramesh
4.The Sub Registrar,
Purasaiwakkam Sub Registrar Office,
Purasaiwakkam, Chennai 600 007.

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records in O.S.No.6390 of 2021 pending on the file of the learned VI Assistant Judge, City Civil Court, Chennai and strike off the same.



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For Petitioner : Mr.A.Aravindan

For Respondents : No appearance for R1 to R3
Mr.E.Vijayanand
Additional Government Pleader for R4

ORDER

This Civil Revision Petition has been preferred to call for the records and strike off the plaint in O.S.No.6390 of 2021 pending on the file of the learned VI Assistant Judge, City Civil Court, Chennai.

2.The revision petitioners are the defendants in the suit.

3.The learned counsel for the petitioners submitted that the suit in O.S.No.6390 of 2021 is mere abuse of process of Court and the suit ought not to have been taken on file. The contention of the learned counsel for the petitioners is that the very same respondent/plaintiffs have already filed a suit in O.S.No.7299 of 2014 against the revision petitioners for the very same relief in respect of the same suit property. Having known that such a suit has already been filed and pending on the file of the XVII Assistant Judge, City Civil Court, Chennai, the



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respondents/plaintiffs had once again filed the replica of the same plaint in the another suit in O.S.No.6390 of 2021 also. On comparison of the two plaints relating to the two suits, it is seen that the parties are the same and the relief sought is also almost same in respect of the same property.

4.The learned counsel for the petitioners attracted the attention of this Court to the judgment of this Court reported in **2013-5-L.W.350 [N.A.Chinnasamy and another Vs. S.Vellingirinathan]**, wherein it is held that, though when the plaints are not maintainable, the parties can seek the relief under Order VII Rule 11 of CPC and this Court also passed appropriate orders to strike off the plaint under Article 227 of Constitution of India. The relevant paragraphs of the Judgment is extracted hereunder:-

“27.As held by the Hon'ble Apex Court, its aim being to secure quiet with the community, to suppress fraud and perjury to quicken diligence and to prevent oppression. Hence while invoking Order 7 Rule 11 of the



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Code of Civil Procedure, the Court has to go through and consider the whole pleading of the plaintiff, for which the averments of the written statement shall be gone into. It has been made clear that the plaint could be rejected, as per the averments of the pleading of the plaintiff that (1) where there is no cause of action to seek the relief sought for in the suit (2) the suit is bared by any statute and (3) if the suit being filed is found as an abuse of process of law. If any one of the aforesaid grounds is established, the Court can invoke Order 7 Rule 11 CPC to reject the plaint. When a revision petition is filed invoking Article 227 of the Constitution, the requirement to struck off the plaint is more than what is required to reject the plaint under Order 7 Rule 11 CPC. If filing of the suit itself is a clear abuse of process, based on the plaint averments and the admitted facts of the plaintiff, this Court can pass appropriate orders to struck off the plaint under Article 227 of the



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Constitution. However, merely, based on the inordinate delay or the grounds raised under the Limitation Act, plaint cannot be rejected. If the plaintiff, having sufficient knowledge about the occurrence, after a lapse of time, without any bonafide intention, approaches the Court, after the period of limitation, the same shall be presumed as an abuse of process of Court. If the suit filed is an abuse of process of law and court, this Court can pass appropriate orders, invoking Article 227 of the Constitution of India to struck off the plaint, in order to prevent abuse of process of court and to meet the ends of justice.

28.In R.M.Subbiah Vs. S.Ramakrishnan & others, reported in 2012-1-LW 437, this court (K.Venkataraman,J), has held that normally plaint cannot be rejected while exercising power under Article 227 of the Constitution,



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however, if a party comes to the Court with unclean hands and re-agitates the matters, Courts are not powerless to exercise its discretion in putting a full stop to the same and accordingly, the suit was ordered to be struck off under Article 227 of the Constitution of India.”

5.At the time when the plaintiffs presented the plaint before the Court, the Court may not be aware of the another suit pending in some other Court in the same fashion with the array of same parties in respect of the same suit property. Had the respondents/plaintiffs filed a copy of the plaint along with plaint documents and claimed that the new plaint is also maintainable and the Court had taken the new plaint after perusing the copy of the old plaint also, it is understandable that there is some apparent error and the Court has exercised its jurisdiction wrongly.

6.Admittedly, in the suit documents, the respondents/plaintiffs have not filed copy of the earlier plaint. No doubt, if the respondents/plaintiffs



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have filed the same suit once again, it is abuse of process of law.

However, the revision petitioners/defendants are not without any remedy and it is always open to them to raise the maintainability of the suit as preliminary issue or to file a petition under Order VII Rule 11 of CPC to reject the plaint. In the instant case, it is submitted by the revision petitioners/defendants that the earlier suit is still pending. Even in that case, it is possible to produce the certified copy of the earlier plaint for consideration of the learned trial Judge and expose that the respondents/plaintiffs have abused the Court. The trial Court has to go with the averments to see whether a prima-facie case is made out. So, it is advisable that the revision petitioners can seek the remedy before the Civil Court itself by way of filing appropriate applications.

7. With the above observations, the Civil Revision Petition is disposed of. In the event of filing any petition to decide the maintainability of the suit or to reject the plaint under Order VII Rule 11 of CPC, the learned trial Judge shall bestow its best attention to dispose



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the same as early as possible, preferably within a period of one month from the date of filing of the petition. No costs. Consequently, connected Miscellaneous Petition is closed.

12.07.2022

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Index:Yes No

Speaking Order:Yes/No

To

- 1.The Additional Family Judge,
Coimbatore.
- 2.The Section Officer,
VR Section, Madras High Court,
Chennai.



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R.N.MANJULA,J.

Vkr

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