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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP.No.852 of 2021

and

CMP.No.7029 of 2021

- 1.Shanmugam
- 2.Selvaraj
- 3.Raja @ Vengatesan
- 4.Srinivasan
- 5.Chitra
- 6.Vasanthi

... Petitioners

Vs

1. Chief Secretary/Chairman,
Commercial Tax Department,
Commissioner/Commercial Tax,
Chepauk, Chennai.
2. Joint Commissioner,
Commercial Tax Department,
(Business Taxation), Trichy.
3. Assistant Commissioner,
Commercial Tax Department,
(Business Taxation), Ariyalur.
4. Commissioner/Central Government &
Freight & Service Tax Department,
Trichy.
5. State Commercial Tax Officer (Business Tax Officer),
Commercial Tax Department,
Perambalur.
6. Krishnamurthy

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.156 of 2020 filed by the 6th Respondent / Plaintiff on the file of the District Munsif Court, Perambalur.



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For Petitioners : Mr.B.Kumar, Senior Counsel
for M/s.Usharamman

For Respondents : Ms.Amirtha Dinakaran
(for R1, R2, R3 & R5)
Government Advocate
Mr.S.Gurumoorthy (for R4)
Mr.T.Sellapandian (for R6)

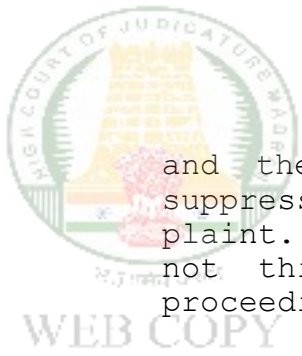
O R D E R

The first defendant in O.S.No.156 of 2020 has filed this revision petition seeking to strike off the plaint in the said suit primarily, on two grounds. One that the suit is barred by limitation and the other is that the plaintiff is guilty of suppression of material facts. The revision has been filed invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

2.Mr.B.Kumar, learned Senior Counsel appearing for the petitioners would point out that the plaintiff resigned from the partnership even in the year 1992 and he had lodged a criminal complaint stating that the document of release is forged. This Court had in CrI.O.P.No.10106 of 2019 etc. quashed the said complaint on the ground of enormous delay in challenging the said release deed. He would also point out that an attempted SLP against the said judgment was also dismissed by the Hon'ble Supreme Court. Therefore, according to Mr.B.Kumar, it is after the dismissal of the SLP, the first respondent has launched the present suit seeking injunction restraining the respondents from interfering with this enjoyment of the property as a partner.

3.The learned Senior Counsel would also point out that the Managing Partners of Kali Chettiyar and Sons the partnership firm had filed a suit in O.S.No.150 of 2016 against the first respondent herein and his wife Tamilselvi seeking an injunction restraining them from interfering with their conduct of the business. The first respondent herein had filed an application seeking rejection of the said plaint, which was dismissed by the trial Court. The revision against the said order in CRP(PD) No.1597 of 2018 was also dismissed by this Court on 08.07.2019. It is also pointed out that an attempted challenge to the said judgment of this Court before the Hon'ble Supreme Court has also been rejected. Therefore, according to the learned Senior Counsel, the plaint in O.S.No.156 of 2020 deserves to be rejected.

4. I do not think this is a fit case where the supervisory jurisdiction of this Court could be exercised to reject the plaint. The claim made is that the suit is barred by limitation



and the plaintiff is guilty of suppression of facts. Mere suppression of facts do not afford a ground for rejection of a plaint. The aspect of limitation has to be gone into. But, I do not think the same could be conveniently gone into in a proceeding under Article 227 of the Constitution of India.

5. The Hon'ble Supreme Court in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others vs. Tuticorin Educational Society reported in (2019) 9 SCC 538 had held that the High Court will refrain from exercising jurisdiction under Article 227 of the Constitution of India as a matter of 'prudence and discipline' when a remedy under the Code of Civil Procedure is available to the litigant. The petitioners can well invoke the jurisdiction of the trial Court under Order 7 Rule 11 of the Code of Civil Procedure and seek rejection of the plaint on the very same grounds, which are now sought to be urged before this Court.

6. I do not think I will be justified in exercising the jurisdiction under Article 227 of the Constitution of India in the light of the observations of the Hon'ble Supreme Court in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others cited supra and the availability of a remedy to the petitioners under Order 7 Rule 11 of the Code of Civil Procedure. Hence, while dismissing this revision, I reserve the liberty to the petitioners to seek rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure before the trial Court. This Civil Revision Petition is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

vs

To:

The District Munsif Court,
Perambalur.

+1cc to M/s.Usharamman, Advocate, S.R.No.3954
+1cc to the Government Pleader(Taxes), S.R.No.4462

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NSK 08/02/2022