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C.R.P. (PD) .No.796 of 2016



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 10.01.2022

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD).No.796 of 2016

and

C.M.P.Nos.4424 to 4426 of 2016

M.Devaprakash

.. Petitioner

**Vs.**

1.P.P.Devaraj

2.The Coimbatore City Municipal Corporation,  
Coimbatore,  
Represented by its Commissioner.

3.The Executive Engineer,  
TANGEDCO,  
Tatabad,  
Coimbatore.

4.The Assistant Engineer,  
TANGEDCO,  
P.R.S. Ground,  
Coimbatore.

.. Respondents

**Prayer:** This Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the Plaint in O.S.No.361 of 2016 on the file of the Subordinate Court, Coimbatore.



For Petitioner : Mr.P.R.Ramakrishnan  
for M/s.Sarvabhauman Associates

For R1 : Ms.Girija Velmurugan  
for Mr.M.Velmurugan

For R2 : Mr.K.Magesh

For R4 : No appearance

### **ORDER**

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed to strike off the Plaint in O.S.No.361 of 2016 on the file of the Subordinate Court, Coimbatore.

2.The petitioner is 1<sup>st</sup> defendant in O.S.No.361 of 2016 on the file of the Sub Court, Coimbatore. The 1<sup>st</sup> respondent filed the said suit against the petitioner and respondents 2 to 4 for the relief of declaration to declare that petitioner encroached 30 feet Venugopal Layout Road 33 ¼ feet and 65 feet North South X 30 feet East West in the Schedule ‘B’ property, for a mandatory injunction directing the petitioner to remove the encroachment made in Schedule ‘B’ property, permanent injunction restraining the petitioner from in any manner alienating, encumbering or otherwise disposing



of Schedule 'B' property in favour of third parties, consequential permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of suit schedule properties.

3. According to 1<sup>st</sup> respondent, he is absolute owner of 'A' schedule property. The 1<sup>st</sup> respondent has put up construction and residing with his family. The petitioner has property on western side and eastern side of North-South Road, 30 feet North-South Road is running on the eastern side of 'A' schedule property. The existence of North-South Road is mentioned in the sale deed purchased by the 1<sup>st</sup> respondent itself. On the northern side of North-South Road, the petitioner purchased the property and also he owns the property on the eastern side of the road. The petitioner merged the properties lying on East and West of 30 feet road and thereby encroached the entire stretch of the road, which is the only access available to the 1<sup>st</sup> respondent, through which only he is having ingress and egress. The 3<sup>rd</sup> respondent also erected electric posts on the eastern side of 30 feet North-South Road diagonally opposite to the 1<sup>st</sup> respondent's house, i.e., in front of the petitioner's property situated on the eastern side of the said road. The petitioner has put up construction in the encroached portion of the road



blocking the ingress and egress of the 1<sup>st</sup> respondent to his property. The petitioner by encroaching the road, has put up super structure in the Venugopal Layout road, which is meant for public use, especially the 1<sup>st</sup> respondent used to reach the 'A' Schedule property. The petitioner by encroaching 30 feet North-South Road blocked the ingress and egress of 1<sup>st</sup> respondent to 'A' schedule property as well as ingress and egress of others. On these averments, the 1<sup>st</sup> respondent filed the suit in O.S.No.361 of 2016 for the relief stated above.

4.The petitioner filed the present Civil Revision Petition to strike off the plaint in O.S.No.361 of 2016 on the ground that it is abuse of process of law and Court and it is re-litigation of the issue. The suit filed by the 1<sup>st</sup> respondent is vexatious and forum shopping and the suit is barred by principles of Order II Rule 2 of the Code of Civil Procedure.

5.The learned counsel appearing for the petitioner contended that the petitioner filed suit in O.S.No.2316 of 2014 for permanent injunction restraining the 1<sup>st</sup> respondent and defendants 2 to 4 therein from interfering with his peaceful possession and enjoyment of suit schedule property and



also the construction work put up by him. In the said suit, the 1<sup>st</sup> respondent filed written statement along with counter claim on 01.06.2015. In the counter claim, the 1<sup>st</sup> respondent has alleged that petitioner has encroached 30 feet North - South Venugopal Layout Road and has put up construction by blocking the ingress and egress of the 1<sup>st</sup> respondent and others and prayed for mandatory injunction directing the petitioner to demolish the entire constructed portion of the building on 30 feet North - South Venugopal Layout Road situated on the East of the petitioner's property.

6.Subsequently, the 1<sup>st</sup> respondent also earlier filed suit in O.S.No.2416 of 2014 against the petitioner for permanent injunction restraining the petitioner from putting up any construction in the 30 feet North - South Venugopal Layout Road situated on the East of the 1<sup>st</sup> respondent's property and interference with his peaceful possession, enjoyment and occupation in respect of very same property. Again the 1<sup>st</sup> respondent on 26.02.2016 filed the present suit in O.S.No.361 of 2016 for declaration, mandatory injunction and permanent injunction in respect of very same property. In view of the counter claim made in O.S.No.2316 of 2014 filed by the petitioner and relief sought for by the 1<sup>st</sup> respondent in



O.S.No.2416 of 2014, the present suit filed by the 1<sup>st</sup> respondent is hit by

Order II Rule 2 of the Code of Civil Procedure as the 1<sup>st</sup> respondent is

claiming the very same relief in a different form. The learned counsel

appearing for the petitioner further contended that the 1<sup>st</sup> respondent cannot

file the present suit on the very same cause of action. He also submitted that

the 1<sup>st</sup> respondent has filed the present suit on the very same cause of action

and he cannot maintain the present suit on the very same cause of action after

filing the counter claim in O.S.No.2316 of 2014 and earlier suit in

O.S.No.2416 of 2014 without obtaining leave of the Court. Filing of

successive suits one after other in respect of same cause of action amounts to

forum shopping and it is abuse of process of Court and also amounts to re-

litigation. The 1<sup>st</sup> respondent suppressed the fact of interim injunction

granted by the Principal Sub Court, Coimbatore in C.M.A.No.10 of 2015 and

submitted that suit in O.S.No.361 of 2016 is not maintainable and prayed for

striking off the plaint in O.S.No.361 of 2016 and relied on the following

judgments:

(i) Order of this Court reported in ***1998 (I) CTC 66, [Ranipet Municipality rep. by its Comer. and Special Officer, Ranipet VS. M.Shamsheerkhan]***;



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(ii) Order of this Court reported in **2003 (4) CTC 347,**

**[K.K.Swaminathan Vs. Srinivasagam];**

(iii) Order of this Court reported in **2009 (5) CTC 710, [Tamil Nadu Handloom Weavers Cooperative Society rep. By its Managing Director, 350, Pantheon Road, Egmore, Chennai – 8 Vs. S.R.Ejaz];**

(iv) Order of this Court reported in **2011 (1) MWN (Civil) 113, [M.V.Jayavelu Vs. M.V.Umapathy]** and

(v) Paragraph No.10 of the order of this Court reported in **2018 (2) MWN 172, [Mani alias Nagamani and others Vs. P.Ramakrishnan];**

*“ ... 10. Considering the above facts in entirety, it reveals that the present suit O.S.No.48 of 2015 filed by the respondent is clearly abuse of process of law and amounts to relitigation for title of the suit property. The judgments relied on by the learned counsel for the petitioners are applicable to the facts of the present case. The judgments relied on by the learned Senior Counsel*



*for the respondent do not advance the case of the respondent. By order dated 16.02.2017, C.R.P.(MD)No.563 of 2015 (PD) was dismissed by me on the ground that the defendant sought for striking off the plaint on disputed question of facts. Therefore, the plaint in O.S.No.48 of 2015 is liable to be struck off and it is hereby struck off.”*

and submitted that Courts have held that Court should not allow the party to re-litigate the issues.

7.Per contra, the learned counsel appearing for the 1<sup>st</sup> respondent contended that the present Civil Revision Petition is without any merits and filed only to drag on the proceedings and harass the 1<sup>st</sup> respondent. The petitioner has encroached 30 feet North - South Venugopal Layout Road and blocked the road and has put up construction preventing the 1<sup>st</sup> respondent and general public, the ingress and egress of their property through 30 feet road to reach their property. When the 1<sup>st</sup> respondent and others objected to the illegal action of the petitioner, the petitioner filed suit in O.S.No.2316 of 2014 and obtained interim injunction. On the guise of interim injunction, he tried to put up construction in the 30 feet road. In view of the imminent



danger of encroachment and illegal construction, the 1<sup>st</sup> respondent filed suit in O.S.No.2416 of 2014 for permanent injunction. In spite of interim injunction granted to the petitioner in O.S.No.2316 of 2014 filed by him being vacated and suit in O.S.No.2416 of 2014 filed by the 1<sup>st</sup> respondent, the petitioner during night time illegally putting up construction. In view of the illegal action of the petitioner, the 1<sup>st</sup> respondent in the written statement filed in the suit in O.S.No.2316 of 2014 made a counter claim for the issue of mandatory injunction and for a direction to the petitioner to demolish the entire constructed portion of the building at 30 feet North-South Venugopal Road, situated on the east of the petitioner's property. Subsequently, the 1<sup>st</sup> respondent filed the comprehensive present suit in O.S.No.361 of 2014 against the petitioner and respondents 2 to 4 for the relief of declaration to declare that petitioner encroached 30 feet Venugopal Layout Road 33 ¼ feet and 65 feet North South X 30 feet East West in the Schedule 'B' property, for a mandatory injunction directing the petitioner to remove the encroachment made in Schedule 'B' property, permanent injunction restraining the petitioner from in any manner alienating, encumbering or otherwise disposing of Schedule 'B' property in favour of third parties, consequential permanent injunction restraining the defendants from interfering with peaceful



possession and enjoyment of suit schedule properties. The cause of action for counter claim in O.S.No.2316 of 2014 and O.S.No.2416 of 2014 are different from cause of action in the present suit. In view of the different cause of action, the present suit is not barred under provision of Order II Rule 2 of the Code of Civil Procedure. The learned counsel appearing for the 1<sup>st</sup> respondent further contended that the Civil Revision Petition is not maintainable as the petitioner has alternate remedy under Code of Civil Procedure. The petitioner without availing the said remedy, has directly approached this Court under Article 227 of the Constitution of India, which is not maintainable. In support of his contention, he relied on paragraph No.13 of the Judgment of the Hon'ble Apex Court reported in **(2019) 9 SCC 538, [Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others]**:

*“ ... 13. 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,*



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*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.”*

Whether the present suit is barred under Order II Rule 2 of the Code of Civil Procedure can be decided only after full fledged trial considering the evidence let in by the parties. The suit filed by the 1<sup>st</sup> respondent is not abuse of process of Court and Law. The petitioner has not made out any case for striking off the plaint under Article 227 of the Constitution of India, which is an extra ordinary power conferred on the Court and prayed for dismissal of Civil Revision Petition.

8.Though notice has been served on the 4<sup>th</sup> respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

9.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1<sup>st</sup> respondent and the learned counsel appearing for the 2<sup>nd</sup> respondent and perused the entire materials on record.



10.The issue to be decided in the Civil Revision Petition is whether on the facts and circumstances of the case, the plaint in O.S.No.361 of 2016 is liable to be strike off by exercising power under Article 227 of the Constitution of India.

11.The petitioner has filed the present Civil Revision Petition under Article 227 of the Constitution of India to strike off the plaint in O.S.No.361 of 2016 filed by the 1<sup>st</sup> respondent. According to learned counsel appearing for petitioner, the suit filed by the 1<sup>st</sup> respondent is abuse of process of Court and law, it is vexatious and frivolous suit it amounts to forum shopping and the same is barred by law as per the provisions of Order II Rule 2 of the Code of Civil Procedure. From the materials on record, it is seen that the 1<sup>st</sup> respondent is seeking relief of declaration that petitioner has encroached 30 feet Venugopal Layout Road 33 ¼ feet and 65 feet North-South X 30 feet East-West for mandatory injunction and permanent injunction. According to 1<sup>st</sup> respondent, the said suit property is used as ingress and egress of 1<sup>st</sup> respondent as well as general public to reach their properties. When the petitioner tried to put up construction in the said road, the 1<sup>st</sup> respondent prevented the same. The petitioner filed suit in O.S.No.2316 of 2014 on the



file of the District Munsif Court, Coimbatore and obtained interim injunction against the 1<sup>st</sup> respondent. In the guise of interim injunction, the petitioner was hurriedly trying to put up construction in the 30 feet North-South Venugopal Layout Road in front of the 1<sup>st</sup> respondent's building. In order to prevent the petitioner from taking up imminent action and to prevent him from putting up further construction, the 1<sup>st</sup> respondent filed suit in O.S.No.2416 of 2014 against the petitioner for permanent injunction. It is also seen from the records that after the filing of said suit on 29.11.2014, the 1<sup>st</sup> respondent filed written statement with counter claim on 01.06.2015 in O.S.No.2316 of 2014, seeking mandatory injunction to direct the petitioner to remove the construction put up by him on the 30 feet North-South Venugopal Layout Road. From the relief sought for in the counter claim, it is seen that according to 1<sup>st</sup> respondent, the petitioner has blocked and encroached the said road and has put up construction. In view of mandatory injunction claimed by the 1<sup>st</sup> respondent in the counter claim, it is clear that at that time itself relief of declaration that petitioner encroached 30 feet North-South Venugopal Road was available to the 1<sup>st</sup> respondent. But the 1<sup>st</sup> respondent did not seek the said relief in the counter claim, instead, the 1<sup>st</sup> respondent has claimed only the relief of mandatory injunction.



12.For easy reference, Order II Rule 2 of the Code of Civil Procedure is extracted hereunder:

**Order II Rule 2 of C.P.C:**

***“2.Suit to include the whole claim – (1)***

*Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

***(2) Relinquishment of part of claim –***

*Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.”*

13.As per Order II Rule 2 of the Code of Civil Procedure, a plaintiff has to claim all the reliefs available to him when he files suit against the opposite party. If the plaintiff fails to claim all the relief available to him in the suit filed by him, it amounts to plaintiff has abandoned or relinquished the relief which he has not sought for in the suit. It is open to the plaintiff to obtain the leave of the Court to file subsequent suit seeking the relief not



claimed in the earlier suit. If the plaintiff fails to obtain leave to file subsequent suit as per Order II Rule 2 (3) of the Code of Civil Procedure, the

plaintiff is not entitled to file subsequent suit seeking for the relief not

claimed in the earlier suit. In the present suit, the 1<sup>st</sup> respondent filed counter claim in the written statement filed on 01.06.2015 in O.S.No.2316 of 2014 paying Court fee of Rs.75.50 under Section 27(c) of the Tamilnadu Court fees and Suit Valuation Amendment Act towards the mandatory injunction and claiming mandatory injunction. It is well settled that counter claim is in the nature of suit and Court has to consider the counter claim along with suit as an independent suit. Even if suit filed by the plaintiff is dismissed, Court can consider the averments in the counter claim, grant the relief sought for to the defendant. The object and scope of Order II Rule 2 of the Code of Civil Procedure is to prevent the party to file multiple suit on the same cause of action, which will cause hardship and will amount to harassment of defendant driving him to face multiple suit on the same cause of action.

14.After filing counter claim on 01.06.2015, the 1<sup>st</sup> respondent has filed the present suit in O.S.No.361 of 2016 on 26.02.2016 for the very same relief of mandatory injunction including the relief of declaration to declare that petitioner has encroached 30 feet North-South Venugopal Road and for



permanent injunction. The present suit is based on the very same cause of action based on which counter claim was made by 1<sup>st</sup> respondent in O.S.No.2316 of 2014, which was filed by the petitioner. The 1<sup>st</sup> respondent did not obtain any leave of the Court to file subsequent suit for declaration and permanent injunction based on same cause of action.

15.As far as contention of the learned counsel appearing for the 1<sup>st</sup> respondent that Civil Revision Petition is not maintainable in view of the alternative remedy is concerned, when the suit is frivolous, vexatious, barred by law, abuse of process of law and Court and when the facts are not controverted, the defendant is entitled to invoke the provisions of Article 227 of the Constitution of India to strike out the plaint at the earliest. The Hon'ble Apex Court in the judgment reported in **2013 (1) LW 491, [N.Babu Vs. S.Shanmugam and others]** held in paragraph No.25 as follows:

*“ ... 25.Further, though an alternative remedy is available to the revision petitioner, for striking off the suit under Order 21 Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of Court and when the facts are not controverted and admitted*



*by the plaintiff / first respondent, the Court can exercise the extra ordinary jurisdiction of the Court under Article 227 of the Constitution of India and strike off the plaint and as a matter of fact, this Court and Honourable Supreme Court held that the right conferred under Article 227 must be exercised very sparingly and it is also settled law that when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of Article 227 of the Constitution of India.”*

16.In view of the ratio in the above judgment, the contention of the learned counsel appearing for the 1<sup>st</sup> respondent is not acceptable. The judgment relied on by the learned counsel appearing for the 1<sup>st</sup> respondent does not advance the case of the 1<sup>st</sup> respondent.

17.Considering the object and scope of Order II Rule 2 of the Code of Civil Procedure, the present suit is hit by provisions of Order II Rule 2 of the Code of Civil Procedure and barred by law. The 1<sup>st</sup> respondent is initiating multiplicity of proceedings based on same cause of action. This amounts to frivolous, vexatious proceedings which amounts to abuse of process of Court.



When the plaintiff initiates such a proceeding, the Court has power under Article 227 of the Constitution of India to stop such proceeding summarily and prevent the time of public and Court being wasted. Such a power is discretionary power and such discretionary power has to be exercised sparingly and in special cases. The power of the Court under Article 227 of the Constitution of India is superintending power of the High Court over all Sub Court including Tribunals and this Court can interfere when there is clear abuse of process of Court based on averments or the pleadings, in order to avoid miscarriage of Justice. The power under Article 227 of the Constitution of India can be invoked by the High Court on following grounds:

- (i) To prevent abuse of process of law;
- (ii) To prevent miscarriage of justice;
- (iii) To prevent grave injustice and
- (iv) To establish both administrative as well as judicial power of High Court.

18.The averments in plaint in O.S.No.361 of 2016 clearly reveals that said suit is barred by Order II Rule 2 of the Code of Civil Procedure as well as it is abuse of process of Court. I had an occasion to consider the said issue



in ***C.R.P.(MD) (PD).No.563 of 2015, [Dr.R.Arun Vs. Dr.D.Manivannan and other]*** and after considering the following judgments:

**WEB COPY** (i) ***1998 (3) SCC 573, [K.K.Modi Vs. K.N.Modi and others];***

(ii) ***2013 (5) LW 810, [S.R.Nanda Kishore Vs. The Body of Villagers of No.29, Mambakkam Village and others];***

(iii) ***2013 (6) CTC 809, [N.A.Chinnasamy and another Vs. S.Vellingirinathan];***

(iv) ***2013 (1) LW 491, [N.Babu Vs. S.Shanmugam and others];***

(v) ***2009 (2) CTC 57, [Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai and another Vs. Selvaraj and another];***

(vi) ***1999 (3) LW 897, [T.Palanisamy Gounder Vs. Sankara Ramanathan and 4 others];***

(vii) ***1998 (1) LW 255, [Madhya Pradesh Electricity Board Vs. M/s.Klen & Marshalls, Manufactures & Exports Ltd. and another];***

(viii) ***1997 (2) LW 761, [Ranipet Municipality Commissioner etc. Vs. M.Shamsheerkhan];***

(ix) ***2004 (3) CTC 241, [The General Manager, Telecommunications, Trichy and others Vs. K.Natrayan and others];***

(x) ***2001 (1) LW 202 [Senni @ Sundarammal Vs. Ramasamy and others];***



(xi) **2003 (4) CTC 176, [Surya Dev Rai Vs. Ram Chander Rai and others];**

WEB COPY (xii) **2010 (1) CTC 199, [Madras Gymkhana Club and others Vs. K.C.Sukumar];**

(xiii) **2013 (2) TNCJ 592 (MAD) (MB), [Naachiarammal and others Vs. Jainulbhurhaniya Banu and others];**

(xiv) **M/s.Ishwarya Health Care, Partnership Firm, Rep. by its Partner Dr.K.Veluchamy and another Vs. T.P.M.Nagar Resident's Welfare Association, Rep. by its Secretary and others, [C.R.P.(MD).(PD).No.1346 of 2016, dated 24.11.2016];**

(xv) **S.Sivasami Vs. S.Balachandran and others, [C.R.P.(PD).No.1040 of 2016, dated 01.04.2016] and**

(xvi) **Mrs.Uma Ramanan Vs. M/s.Vignesh Weighers, Rep. by its Proprietor, Mr.K.Harikrishnan, [C.R.P.(NPD).Nos.2593 & 2594 of 2007, dated 05.02.2008].**

I held in paragraph Nos.12 & 13 as follows:

*“ ... 12.The power conferred on the Courts under Article 227 of the Constitution of India is an extraordinary power. As per the said power,*



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*the Court has supervisory control over Subordinate Courts. The Court has power to stop the proceedings and strike out the plaint, if the said proceeding is abuse of process of Court; the plaint does not reveal cause of action; the Court has exceeded its jurisdiction or failed to exercise its jurisdiction or from the averments in the plaint, it is seen that there is no possibility of plaintiff succeeding in the suit or the suit is abuse of process of Court. Article 227 of the Constitution of India can be invoked also to prevent miscarriage of justice and grave injustice and the relief sought for is contrary to justice and public policy. The Court can exercise this power even if the party has not exhausted the alternative remedy. The vexatious, obstructive or dilatory action can be struck off at the threshold itself.*

*13.It is pertinent to note that the Court must exercise this power sparingly and only in extraordinary cases. The plaint can be struck off only when the Court is satisfied that it is a fit case to exercise the power under Article 227 of the Constitution of India. This power is discretionary power and the Court must exercise the power judicially. The Court can consider only the averments in the plaint to decide whether the*



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*plaint is liable to be struck off or not. The written statement or any document relied on by the defendant cannot be considered.”*

19.The ratio in the order and judgments relied on by the learned counsel appearing for the petitioner are squarely applicable to the facts of the present case.

20.In view of the above materials, plaint in O.S.No.361 of 2016 is liable to be struck off and it is hereby struck off.

21.For the above reasons, the Civil Revision Petition is allowed. Consequently, the connected Miscellaneous Petitions are also closed. No costs.

**10.01.2022**

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Index : Yes

Internet : Yes

To

The Learned Subordinate Judge,  
Coimbatore.



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**V.M.VELUMANI, J.**  
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