



C.R.P(PD).No.1726 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.1726 of 2022
and C.M.P.No.8709 of 2022

1.B.Kanniammal
2.B.Saikumar
3.B.Balaji

... Petitioners

..Vs..

1.V.Bhakthavatchalam
2.The Sub Registrar,
Office of the Sub Registrar,
Rajalakshmi Nagar,
Chennai 600 042.

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, to strike of the plaint in O.S.No.2982 of 2022 on the file of the II Assistant City Civil Court, Madras.

For Petitioners : Mr.Sharath Chandran

For Respondents : Mr.A.Velmurugan for R1
Mr.E.Vijayanand
Addl. Govt. Pleader for R2



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ORDER

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This Civil Revision Petition has been preferred to strike off the plaint in O.S.No.2982 of 2022 on the file of the II Assistant City Civil Court, Madras.

2.The revision petitioners are the defendants in the suit, against whom, the first respondent/plaintiff has filed the suit for declaration, mandatory injunction and permanent injunction.

3.The learned counsel for the petitioners/defendants submitted that the plaint has been filed by suppressing the order already passed in W.P.No.18790 of 2020; further, the plaint has been filed on the basis of the sale deed obtained in favour of the 1st defendant/1st petitioner herein which is only for the namesake and the 1st petitioner is just a name lender; such kind of pleadings cannot be made for the obvious reasons and that such transactions are barred under the Benami Transaction (Prohibition) Act; the learned trial Judge ought to have rejected the plaint in view of the bar under Section 4 of the Benami Transaction (Prohibition) Act.



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4.The learned counsel for the first respondent submitted that the 1st defendant is the wife of the plaintiff; purchasing the property in the name of the spouse is the only exception to the Benami Transaction (Prohibition) Act and hence, the suit is maintainable.

5.While exercising the superintendence power under Article 227 of Constitution of India, this Court cannot make any interference on those issues for which the remedy is available under the Civil Procedure Code. The submission now made by the revision petitioners about the earlier order passed in the Writ Petition may not be known to the Civil Court, unless the defendants make their appearance and file their written statement. It is also open to them to file a petition under Order 7 Rule 11 CPC by claiming that the suit itself is not maintainable for the reasons known to them. Since there is an alternate efficacious remedy is available before the Civil Court, this Court need not exercise the power of the Court under Article 227 of Constitution of India.



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6.Reliance is placed upon the decision of the Hon'ble Supreme Court held in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Others Vs. Tuticorin Educational Society & Others* reported in **2019 (9) SCC 538**. In the said case, it is held that the High Court should not, as a matter of discipline and prudence, exercise the power of superintendence under Article 227 of the Constitution of India, when there is a remedy available under the Code of Civil Procedure before the trial Court.

7.In view of the above discussion, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

01.08.2022

vk
Index:Yes No
Speaking Order:Yes/No

To

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1.The II Assistant Judge, City Civil Court,
Chennai.

2.The Section Officer,
VR Section, Madras High Court,
Chennai.

R.N.MANJULA,J.



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