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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2022

PRONOUNCED ON : 05.12.2022

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

C.R.P. No.2812 of 2017
and C.M.P.Nos.13282 of 2017 and 359 of 2022

V.Amutha ...Defendant/Petitioner

VS.

1.Venkatesan
2.Krishnaveni ... Plaintiffs/Respondents

**Prayer** : Civil Revision Petition filed under Article 227 of Constitution of India prayed to strike of the plaint, in O.S.No.162 of 2017, on the file of the learned Principal District Judge, Chengalpattu.

For petitioner : M/s.V.J.Latha

For respondents : Mr.C.T.Mohan

**ORDER**

This Civil Revision Petition is filed by the revision petitioner/defendant praying to strike of the plaint in O.S.No.162 of 2017 filed by the plaintiffs/respondents herein.

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2. The plaint in O.S.No.162 of 2017 has been filed by the respondents herein/plaintiffs for declaration of their title to the suit property and for permanent injunction and to declare the decree and judgment in O.S.No.493 of 2008 dated 02/03/2010 as null and void and for consequential relief of permanent injunction.

3. The facts of the case in nutshell is as follows:-

The revision petitioner submits that she purchased the suit property situated at Sholinganallur under a registered sale deed dated 01.11.1993 and registered as document No.3974 of 1993. According to the revision petitioner, in the year 2006, some third party tried to trespass into the suit property. Hence the petitioner filed a suit in O.S.No.600 of 2006 on the file of District Munsif, Alandur, for an order of injunction. But the said suit was dismissed for default on 19.10.2009.

4. According to the revision petitioner, respondents encroached in the suit property and started putting up unauthorized construction. The revision petitioner filed O.S.No.493 of 2008 before the District Judge,

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Chengalpet for declaration of title and recovery of possession. The respondents remained exparte and suit was decreed on 02.03.2010.

5. The respondents filed I.A.No.214 of 2012 to set aside the exparte decree dated 02.03.2010. The said I.A., has been allowed. Against which, the petitioner filed CRP.No.2890 of 2013. The said CRP has been allowed, by setting aside the order passed in I.A.No.214 of 2012 in O.S.No.493 of 2008 and thereby decreed the suit.

6. Challenging the said order, the respondents filed SLP before the Honourable Supreme Court and the Supreme Court confirmed the order passed by this court in CRP.No.2890 of 2013.

7. The respondents as plaintiffs filed the suit in O.S.No.162 of 2017 on the file of District Court, Chengalpet, for declaration of title and for injunction against the revision petitioner herein as defendant.

8. Hence, this CRP is filed to strike of the plaint in O.S.No.162 of 2017.

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9. According to the learned counsel for the petitioner, O.S.No.493 of 2008 filed by the petitioner as plaintiff has been decreed in her favour. So another suit filed by the defendants having the judgment against them in the earlier suit on the same cause of action is an abuse of process of court. Under Section 11 of CPC, Res judicata operates. So according to the learned counsel for the petitioner, the suit in O.S.No.162 of 2017 filed by the respondents herein is nothing but relitigation and is an abuse of process of law. The learned counsel in support of her submissions relied on the decision reported in ***2022 (1) MLJ 611 [M.Ramesh Vs. G.Ravichandran and others]*** and submitted that the court should exercise its power under Order 7 Rule 11 CPC and also relied on the decisions of Honourable Supreme Court in ***AIR 1977 SC 2421 [T.Arivandandam Vs. T.V.Satyapal and another]*** stating that it has been held by the Supreme Court that bogus litigations can be shot down at the earliest stage.

10. On the other hand, the learned counsel for the respondents would submit that this civil revision petition filed under Article 227 of

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the Constitution of India, is not maintainable when an alternative remedy is available under the CPC. The learned counsel relied upon the judgment of the Honourable Supreme Court in ***Civil Appeal No.7764 of 2019 in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others***. It has been held by the Honourable Supreme Court that it is a well recognised principle that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy. 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.

11. Secondly, the learned counsel for the respondent by relying on the unreported decision of this court dated 02.09.2016 in CRP(PD).No.1356 of 2012 ***[Ramalingam and another vs Selvam and others]***, submitted that the petitioners have an alternative remedy under

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Order 7 Rule 11 of CPC for praying rejection of plaint.

12. I have gone through the said judgment. In paragraph 14 of the above said judgment, it is held as follows:

> "14. All the above judgments referred above clearly shows that the defendants cannot invoke the jurisdiction under Article 227 of the Constitution of India, but to invoke alternative remedy namely under Order 7 Rule 11 of CPC before the same court where the suit is filed for rejecting the plaint on the ground stated above. But in this case, this petitioners/defendants 2 and 3, who invoke the jurisdiction under Article 227 of the Constitution of India is not at all maintainable before this Court for struck off of the suit in O.S.No.115 of 2011, but they have an alternative remedy under Order 7 Rule 11 of CPC for rejecting the plaint on the ground of cause of action or any other ground as per the above provision."

13. The learned counsel for the respondents also submitted that the suit is barred on the question of res judicata. On a perusal of the plaint alone it cannot be said that the suit is barred by the principle of res

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judicata. The rule of res judicata does not strike at the root of the jurisdiction of the court trying the subsequent suit. It is necessary that the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried.

14. It has been pointed out by the learned counsel for the respondents that this court in the decision reported in ***2018 2 Law Weekly 817, [Arumugam and others Vs. Rathinam Chettiyar (died) and others]***, has made it clear that since earlier decree was only an exparte decree, the principles of res judicata will not be applicable.

15. The learned counsel for the respondents also brought to the attention of this court to the judgment of the Honourable Supreme Court in the case of ***Mohamed Ali Vs. V.Jaya and others [Civil Appeal No.4113 & 4114 of 2022]*** . It has been held by the Honourable Supreme Court that before considering the judgment and decree on merits and or expressing anything on merits on the legality and validity of the judgment and decree (ex-parte), the High Court was required to consider

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whether the learned trial court was justified in passing the exparte judgment and decree or not.

16. Heard both sides and perused the records carefully.

17. As far as the arguments advanced by the learned counsel for the revision petitioner who sought for rejection of plaint, is concerned, her main contention is that second suit filed by respondents was abuse of process of court as it was nothing but re-litigation. But in any event it is to be seen that 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, as held by the Honourable Supreme Court in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalanai Sabai and others Vs. Tuticorin Educational Society and others (2019) 9 SCC 538***.

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18. The learned counsel for the petitioner relied on the decision of this court reported in ***(2022) 1 MLJ 611*** and submitted that suit was also abuse of process of law and the suit is barred by res judicata. However, it has to be noted that in the said case, the plaint refers to the preliminary decree as well as final decree in the earlier suit, wherein, the issues were framed and trial went on. But in the case on hand, the court below while decreeing the suit in favour of the plaintiff in O.S.No.493 of 2008, would not consider any evidence or enter into a disputed question of fact or law. Hence in the considered opinion of this court, the plea of res judicata sought for by the petitioner to reject the plaint is unsustainable. In the exparte decree obtained by the revision petitioner, there is no trial and no issues framed.

19. The above referred to judgments clearly shows that the revision petitioner/defendant cannot invoke the jurisdiction under Article 227 of the Constitution of India, but to invoke alternative remedy namely under Order 7 Rule 11 of CPC before the same Court where the suit is filed for rejecting the plaint on the ground stated above.

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20. This court is not inclined to entertain the revision petition for more than one reason. In this case, the revision petitioner has remedy by way of filing of an application before the trial court under Order 7 Rule 11 of CPC for rejecting the plaint. It is only when such an application is filed, the trial court will be in a position to decide whether the plaint should be rejected at the threshold without trial. In the event of the rejection of the plaint, the aggrieved party has right to challenge the same before the appropriate forum. The power under Article 227 of the Constitution is extraordinary and it is supervisory jurisdiction. By the exercise of the supervisory power of jurisdiction, this court cannot convert itself into the court of appeal as held by the Supreme Court in Abdul Razak v. Mangesh Rajaram Wagle reported in (2010) 2 SCC 432 and in paragraph 23, it was observed as follows :

> “The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

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21. For the reasons stated above, this civil revision petition is dismissed as not maintainable before this Court which has been filed praying to strike of the plaint in O.S.No.162 of 2017, with an observation that when an alternative remedy is available under the CPC, the Revision Petitioner/defendant is to invoke the jurisdiction under Order 7 Rule 11 of CPC. No costs. Consequently, connected CMPs are closed.

05.12.2022

Index :Yes/No
Internet:Yes/No
Speaking order/Non-speaking order

nvsri

To

1.The learned Principal District Judge, Chengalpattu.

2.The Section Officer, V.R.Section, High Court of Madras.

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**J.NISHA BANU, J.**

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C.R.P. No.2812 of 2017

05.12.2022

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