



C.R.P.No.116 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.116 of 2023

and

C.M.P.No.939 of 2023

Loganathan

... Petitioner

Vs

- 1.Sekar
- 2.Kannan
- 3.Hemalatha
- 4.Sathishkumar
- 5.Lalitha
- 6.Govindammal
- 7.Pongavanam
- 8.Shantha
- 9.Rani
- 10.Padma
- 11.Seetharaman
- 12.Govindan
- 13.Parthasarathy
- 14.Venkatesan
- 15.Santhanam
- 16.Thavamani
- 17.Prabhakaran



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18.Lakshmipathi @ Lakshmanan

19.Radha

20.Amaravathi

21.Mohana

22.Ganesh

23.Gomathi

24.Amutha

25.Vijayalakshmi

26.Devi

27.T.Selvam

28.Saravanan

29.Thulasi

30.T.Sheela

31.Roja

32.Raja

33.M.Sasikala

34.Minor Kaviya

35.Minor Ranjith

... Respondents

(33 respondent is the Natural guardian of 34 and 35 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.102 of 2022 on the file of the District Munsif Court at Vanthavasi and allow this civil revision petition.

For Petitioners : Mr.D.S.Ramesh



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ORDER

The Civil Revision Petition is filed to strike off the plaint in O.S.No.102 of 2022, on the file of the District Munsif Court at Vanthavasi. The revision petitioner is the 32nd defendant in the suit instituted by respondents 1 to 4 for declaration and permanent injunction.

2.The relief sought in the suit is to declare the sale deed of the year 1962 and the subsequent document as null and void. Several documents were challenged in the plaint and the revision petitioner states that the suit was instituted without any specific cause of action. That apart, the suit is time-barred and ought not to have been numbered by the Trial Court. When the documents of the year 1969 is sought to be declared as null and void, the Trial Court ought not to have numbered the suit in service.

3.However, the cause of action in the plaint reveals that several documents were subsequently registered which all are raised as a cause for



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the purpose of the institution of the suit. The partition deeds and subsequent sale deed of 21.07.2022 and notice and reply notice were also stated in the cause of action set out in the plaint. When the cause of action has been set out covering several documents up to the year 2022, this Court cannot consider the grounds raised by the petitioner that the first document specified is of the year 1969, and therefore, the suit is time-barred.

4.All these issues are to be adjudicated with reference to the documents and evidences between the parties. It is a triable issue and therefore, High Court cannot exercise the powers under article 227 of the Constitution of India to strike off the plaint.

5. In paragraph 14 at page 217 of Waryam Singh and another vs. Amarnath and another [AIR 1954 SC 215], the Supreme Court neatly formulated the ambit of High Court's power under Article 227 in the following words:

“The power of superintendence conferred by Article 227 is, as



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pointed out by Harries C.J., in ‘Dalmia Jain Airways Ltd. vs. Sukumar Mukherjee’, AIR 1951 Calcutta 193 (SB) (B), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

6. The Chief Justice Harries in the Full Bench decision in Dalmia case (supra) stated the principles on which the High Court can exercise its power under Article 227 very succinctly which would better, quote :
“Though this Court has a right to interfere with decisions of Courts and tribunals under its power of superintendence, it appears to me that that right must be exercised most sparingly and only in appropriate cases. The matter was considered by a Bench of this Court in Manmathanath vs. Emperor [AIR 1933 Calcutta 132]. In that case a Bench over which Sir George Rankin C. J. presided held that Section 107, Government of India Act (which roughly corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power, which may be exercised at the



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Court's discretion to remove the hardship of particular decisions. The power of superintendence it confers is a power of a known and well-recognised character and should be exercised on those judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep Subordinate Courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.”

7. The power of the High Court under Article 227 to be plenary and unfettered, but at the same time, the High Court should be cautious in its exercise. No doubt, when there is gross abuse of jurisdiction, the High Court can interfere under Article 227, whether there is gross abuse or not, is the factual aspect, which is to be considered in each case. Every case cannot be brought under the principles of gross abuse of jurisdiction.

8. The Apex Court and the Constitutional Courts across the country have repeatedly emphasised that High Court should exercise restraint while



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exercising the powers under Article 227 of the Constitution of India.

Wherever there is a factual dispute, or unnecessary parties have been impleaded, or certain parties are claiming as alien to the suit, or otherwise have to be decided on merits and in accordance with law. Those parties raising such grounds are having an alternate remedy under the Code Of Civil Procedure by filing an appropriate application before the Trial Court concerned, the High Court must allow the Trial Courts to exercise such powers as conferred under the Code Of Civil Procedure.

9. When an efficacious alternate remedy is contemplated under the Code of Civil Procedure, the High Court cannot exercise its power under Article 227 of the Constitution of India. Parties approaching the High Court are expected to exhaust the alternate remedy contemplated under the Code Of Civil Procedure. The High Court cannot adjudicate certain complex facts and circumstances by exercising the powers under Article 227 of the Constitution of India which would prevent the parties to adjudicate the issues with reference to the original documents and evidence. Therefore,



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this Court is of an opinion that the petitioner has to approach the Trial Court for the purpose of redressing these grievances in the manner contemplated under the Code Of Civil Procedure

10. Accordingly, the Civil Revision Petition stands **dismissed**.

However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order

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S.M.SUBRAMANIAM, J.

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