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CRP.No.1539 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

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B.K.Murugesan

... petitioner

Vs.

1.Kalaimagal Kalvi Arakattalai
by its Secretary,
D.P.Duraisamy,
North Garden, Bellukurichi Village,
Namakkal Taluk and Circle

2.Dr.S.Subha

Rep. by her P.A.Agent,
K.Somasundaram

3.P.Natesan(died)

4.G.Arunkumar

5.V.P.Natesan

6.Shanthi Minsaram

7.S.Vijayalakshmi

8.V.Sathyaprakash

9.Lakshmi

10.Vasantha

11.Suguna

(R9 to R11 brought on record as LR's of the deceased
R3 i.e. P.Natesan vide court order dated 07.12.2022
made in CMP.Nos.11458 to 11460 of 2018 in
CRP.No.1539 of 2018)

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order in IA.No.39 of 2011 in OS.No.287 of 2010 on the file of the Subordinate Judge, Namakkal dated 17.11.2017.



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For Petitioner : M/s.V.Srimathi

For Respondents

For R1 : Mr.M.Mohamed Riyaz
for Mr.S.Senthil

R2,4 to 8,
9 to 11 : notice served

R3 : Died (steps taken)

ORDER

This civil revision petition has been filed to set aside the order and decretal order in IA.No.39 of 2011 in OS.No.287 of 2010 on the file of the Subordinate Judge, Namakkal dated 17.11.2017, thereby allowed the application filed to reject the counter claim on the ground of pecuniary jurisdiction.

2. The petitioner is the fourth defendant in the suit filed by the first respondent. The first respondent filed suit for permanent injunction. On receipt of the suit summons, the defendants filed written statement with counter claim under Order 8 Rule 1 & 6(A) of CPC with prayer of declaration declaring that the removal of the defendants from the Board of Trust of Kalaimagal Educational Trust, Belukurichi, Namakkal Taluk is unlawful and void, non-est and a nullity with consequential prayer of permanent injunction. Thereafter, the first respondent filed written statement to the counter claim and filed application to



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reject the counter claim on the ground that the trial court has no pecuniary jurisdiction since the counter claim was valued at Rs.8,000/- and paid court fees.

The first respondent filed suit before the Sub Court and it has jurisdiction from Rs.1,00,001/- to Rs.10,00,000/-. It has pecuniary jurisdiction to try the suit from the value of the property at Rs.1,00,001/- to Rs.10,00,000/- Whereas from Rs.1/- to Rs.1,00,000/-, only District Munsif Court has got jurisdiction to try the suit. Therefore, the counter claim was rejected and aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner would submit that the petitioner was not given opportunity before the trial court in order to put forth his submission and the trial court passed order on the application filed by the first respondent herein.

4. Heard, the learned counsel for the petitioner and the learned counsel for the first respondent.

5. On perusal of records, revealed that after filing the application for rejection of counter claim on the ground of pecuniary jurisdiction in IA.No.39 of



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2011, the petitioner filed counter and also argued the application before the trial

court. Originally, the first respondent filed suit before the Sub Court for permanent injunction and valued the suit property for Rs.5,01,000/- and accordingly paid court fees under Section 27(c) of Tamilnadu Court Fees and Suits Valuation Act to the tune of Rs.37,575.50/-. On receipt of the suit summons, the petitioner filed written statement with counter claim. In the counter claim, the petitioner valued the claim at Rs.8,000/- and paid court fees under Section 25(d) of Tamilnadu Court Fees and Suits Valuation Act to the tune of Rs.1,000/-. The counter claim shall be treated as plaint and governed by the rules applicable to the plaint. As per Order 8 Rule 6A (4) of CPC, when the counter claim i.e. the plaint was rejected by the trial court, then the petitioner ought to have preferred an appeal. The petitioner cannot invoke Article 227 of the Constitution of India in order to challenge the rejection of plaint. The learned counsel for the first respondent rightly pointed that as per Order 43 Rule 1 of CPC, appeal shall lie from the orders passed under Rule 10 of Order 7 of CPC returning a plaint to be presented to the proper court. Therefore, the appeal only lie as against the order passed by the court below and the civil revision petition is not maintainable under Article 227 of the Constitution of India. He also relied upon the judgment of the Hon'ble Supreme Court of India in the case of



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Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs.

Tuticorin Educational Society and Others reported in (2019) 9 SCC 538, in

which the Hon'ble Supreme Court of India held as follows:

12. Secondly, the High Court ought to have seen that when a remedy of appeal under [section 104 \(1\)\(i\)](#) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors. 1*, this Court held that “though no hurdle can be put against the exercise of the Constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a Constitutional remedy”.

13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasijudicial authorities and tribunals. In respect of cases falling 1 (2000) 7 SCC 695 under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate



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remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under [Article 227](#), even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in [Surya Dev Rai vs. Ram Chander Rai](#)², pointed out in [Radhey Shyam Vs. Chhabi Nath](#)³ that “orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

6. Thus, it is clear 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. Hence, 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. Therefore, the present civil revision petition is liable to be dismissed as not maintainable. That apart, the court below rightly rejected the counter claim on the ground that the trial court has no pecuniary jurisdiction to try the counter claim. Admittedly the petitioner valued the counter claim at Rs.8,000/- and paid a



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sum of Rs.1,000/- under Section 25(d) of Tamil Nadu Court Fees and Suits

Valuation Act. Therefore, the trial court being a subordinate court has pecuniary jurisdiction only from Rs.1,00,001/- to Rs.10,00,000/-. As such, the trial court rightly rejected the counter claim and this Court finds no infirmity or illegality in the order passed by the court below.

7. Accordingly, this civil revision petition is dismissed. There shall be no order as to costs.

08.02.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
lok

G.K.ILANTHIRAIYAN, J.

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To



The Subordinate Judge, Namakkal

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