



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2022

PRONOUNCED ON : 02.01.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.2036 of 2022

and

C.M.P.No.10455 of 2022

Arulmigu Akkaraipatti Ponkaliamman
Arulmigu Akkaraipatti Muthusamy and
Arulmigu Molipili Annamar Swami Deities
Represented by the Executive Officer,
Arulmigu Varadharaja Perumal Vagaiyara
Thirukkoil Devasthanam
Vengumbur Village,
Erode Taluk.

... Petitioner

Vs.

1.R.Periasamy
2.R.Sivasubramaniyan
3.G.Guhan
4.Mrs.Hemalatha Mutukumar
5.Arulmigu Bhaghavathiamman Deity
Represented by Dharmakartha K.S.Shanmugam,
Kalvettuppalayam, Vengumbur Post,
Unjalur Via, Erode Tk.,

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to struck off the plaint filed in O.S.No.156 of 2014 on the file of the Hon'ble 1st Additional District Judge, Erode.



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For Petitioner : Mr.N.R.R.Arun Natarajan
Special Government Pleader
(HR & CE)

For R1 : Mrs.Chitra sampath
Senior Counsel
For Mr.T.S.Baskaran

For R2 : Mr.C.K.Chandrasekhar

ORDER

The Civil Revision Petition has been filed to struck off the plaint filed in O.S.No.156 of 2014 on the file of the Hon'ble 1st Additional District Judge, Erode.

2. The Revision petitioner is the 5th defendant and the 1st respondent filed a suit for Partition and Separate possession of the suit properties. The suit 'A' Schedule property was originally owned by K.S.Ramasamy Gounder (father of the plaintiff). The said K.S.Ramasamy Gounder purchased some properties under the Registered Sale Deed dated 19.02.1984 out of his own earnings and his self-earnings from the properties allotted to him, which all are listed as 'A' Schedule property in the plaint and treated as self-acquired property. The Suit 'B' Schedule properties are ancestral and they are not the subject matter of Partition Deed dated 07.06.1970. The 5th respondent is Arulmigu Akkaraipatti Ponkalamman Arulmigu Akkaraipatti Muthusamy



and Arulmigu Molipili Annamar Swami Deities, Represented by the
Executive Officer.

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3. Part of the suit property is claimed by the revision petitioner/Temple and the said property gifted to the Deities is under the control and administration of Arulmigu Varadharaja Perumal Vagaiyara Thirukkoil Devasthanam, which is part of of Hindu Religious and Charitable Endowments Department of the Government of Tamil Nadu.

4. Thus, it is claimed that the Government of Tamil Nadu is the owner or Guardian of the part of the suit property, which is the subject matter of the plaint. Thus, notice under Section 80 of C.P.C is mandatory. However, the 1st respondent herein instituted the suit without issuing two months prior notice as required under Section 80 of the Code of Civil Procedure and therefore, the suit is liable to be dismissed for non-compliance of the mandatory requirement contemplated under Section 80 of C.P.C.

5. The revision petitioner contended that as per Section 12 of the Hindu Religious and Charitable Endowments Act, 1959 [in short, 'HR & CE Act'], the Commissioner, Joint Commissioner and the Executive Officers are



the Government servants and exercising the powers under the provisions of the Act and thus, they are deemed to be public servants and their salaries, allowances and pensions and other remunerations are paid from the consolidated fund of the State.

6. The present revision petition is filed mainly on the ground that the 1st respondent/plaintiff has not complied with Section 80 of C.P.C, which is mandatory.

7. This Court has already considered the issue raised in this revision petition in C.R.P.No.2037 of 2022 and the findings of the trial Court with reference to Section 80 of C.P.C has been set aside by this Court in its order dated 02.01.2023.

8. As far as the present Civil Revision Petition is concerned, it is filed under Article 227 of the Constitution of India. High Court cannot exercise the power under Article 227 in a routine manner. Power under Article 227 of the Constitution of India is to be exercised sparingly and self-restraint, while exercising the said power is of paramount importance. When the petitioner is having an efficacious alternate remedy under the Code of Civil



Procedure, at the first instance, the said remedies are to be exhausted by following the procedures.

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9. 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 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.”

10. The Chief Justice Harries in the Full Bench decision in the case of **Dalmia Jain Airways Ltd. vs. Sukumar Mukherjee**, reported in **AIR 1951 Calcutta 193 (SB) (B)**, 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 2 corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power, which may be exercised at the 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.”

11. 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.



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12. In view of the fact that the revision petitioner has a remedy under Order 7 Rule 11 or to struck off the plaint under the Code of Civil Procedure, the revision petitioner at liberty to approach the trial Court by filing an appropriate application for consideration.

13. With the above liberty, the Civil Revision Petition in C.R.P.No.2036 of 2022 stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2023

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Index : Yes
Speaking order

To

The Judge,
I Additional District Court,
Erode.



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S.M.SUBRAMANIAM, J.

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