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CRP.No.2015 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 20.03.2023

Delivered On: 06.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

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and

CMP.No.12555 of 2020

1. R.Ramachandran
2. R.Srinivasan
3. Rajamani
4. Dhanalakshmi
5. C.Arunkumar
6. C.Udayakumar
7. C.Ragunath
8. PL.Meenachisundaram ... Defendants 1 to 8/Petitioners

Vs.

1. Masathal
2. Nataraj ... Plaintiffs/Respondents 1 & 2
3. R.Thiruvengkatasamy
4. R.Ranganathan
5. Sivashanmugam
6. Rajeswari
7. Venkatachalam
8. Subramani
9. Sivakumar
10. Ramakrishnan
11. The Sub-Registrar,
Singanallur Sub Registrar Office,
Singanallur, Coimbatore.



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12. The Tahsildar,
Madukkarai Taluk Office,
Madukkarai,
Coimbatore District.

13. The District Collector,
Coimbatore. ... Defendants 9 to 19/Respondents 3 to 13

(The Respondents 3 to 13 are not necessary parties in the CRP and they are only formal parties and hence given up)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to strike off the Plaint in O.S.No.316 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Madukkarai.

For Petitioners : Mr.A.E.Ravichandran
For Respondents : Mr.A.Saranraj for R1 and R2
R-3 to R-13 – Given up

ORDER

This Petition has been filed to strike off the Plaint in O.S.No.316 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Madukkarai.

2. The learned Counsel for the Revision Petitioner submits that the Revision Petition has been filed to strike off the pleadings in O.S.No.316



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of 2019 on the file of the learned District Munsif-cum-Judicial Magistrate, Madukkarai. It is the contention of the learned Counsel for the Petitioner that in the year 1947 Rama Koanar and Palani Koanar executed a release deed in favour of Rangasamy Koanar for entire 3.86 acres. Subsequently, in the year 1975, the land was sub divided into S.F.No.85/1A, 85/1B and 85/1C measuring an extent of 0.11 Acre, 1.07 acre and 2.68 acres respectively. Out of this S.F.No.85/1B measuring 1.07 acre was acquired by the National Highways Department in the year 1975. With regard to S.F.No.85/1C about 2.68 acres, a settlement deed was executed by Rangasamy Koanar in favour of the Petitioners 1 to 7 herein and they are the absolute owners for 2 acres 68 cents in S.F.No.85/1C. The land measuring about 0.11 acre in S.F.No.85/1A still stands in the name of Rangasamy Koanar.

2.1. On 27.01.2014 the Respondents 3 and 4 herein had filed a suit in O.S.No.195 of 2014 on the file of the learned IV Additional District Munsif, Coimbatore against the Respondents 1 and 2 and one Mandhiriyappa Koanar, who is the father of the Respondents 5 to 10, for permanent injunction in Survey No.85/1C measuring 71 cents. It was filed



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through Counsel R.Sundarabalan, Advocate. On 01.03.2014, these persons along with the Advocate Commissioner and Surveyor and the Police attempted to survey the property in Survey No.85/1C measuring 71 cents along with warrant issued by the learned IV Additional District Munsif, Coimbatore. Therefore, the Petitioners herein to protect their property had filed the suit in O.S.No.489 of 2014 before the very same District Munsif Court, Coimbatore against the Respondents 1 to 4, the said Mandhiriyappa Koanar and others seeking for a declaration to declare the title of the property measuring an extent of 70.39 cents in S.F.No.85/1C2 which is part of the total extent of 2.68 acres land in Vellaloor Village and for consequential injunction. The Petitioners had filed an I.A for impleading themselves in O.S.No.195 of 2014 in which the impleading parties/the Petitioners herein had also stated the pendency of O.S.No.489 of 2014 on the file of the very same District Munsif Court. While so, summons were served on Defendants in O.S.No.489 of 2014, the learned Counsel appearing in O.S.No.195 of 2014, R.Sundarabalan represented that he undertakes to file Vakalat for the Defendants in O.S.No.489 of 2014. On 14.10.2014, since the Defendants had not filed vakalat, they were set ex-parte. The 7th Defendant in O.S.No.489 of 2014



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filed written statement.

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2.2. Meanwhile on 03.02.2017 the petition filed by the Petitioners herein in I.A.No.2092 of 2014 in O.S.No.195 of 2014 was re-numbered as I.A.No.283 of 2017 in O.S.No.195 of 2014 and was allowed. After trial, the Suit in O.S.No.489 of 2014 was decreed on 27.04.2017. The Petitioners herein who are the Plaintiffs in O.S.No.489 of 2014 executed the sale deed in favour of the 8th Petitioner herein through registered sale deed. The Respondents 1 and 2 herein had filed a suit in O.S.No.1166 of 2019 which was re-numbered as O.S.No.316 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Madhukkarai, Coimbatore against the Petitioners seeking for a declaration that the sale deed dated 20.12.2018 is null and void.

2.3. It is the contention of the learned Counsel for the Petitioners that there was already a decree after contest in O.S.No.489 of 2014. Based on the decree, the Plaintiffs in O.S.No.489 of 2014 had sold the property to the 8th Petitioner herein. Therefore, the Suit in O.S.No.316 of 2019 seeking declaration that the sale deed dated 20.12.2018 as null and void



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itself, is not maintainable. Therefore, he seeks to strike out the Plaint in O.S.No.316 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Madhukkarai, Coimbatore District.

3. The learned Counsel for the Respondents seeks time to file written submissions and submitted that this Civil Revision Petition filed by the Revision Petitioner under Article 227 of Constitution of India to strike down the Plaint in O.S.No.316/2019 without exercising right under Code of Civil Procedure under Order VII, Rule 11 of CPC and straight away approaching this Court by invoking the powers of this Court under Article 227 of Constitution of India, is not at all maintainable. Therefore, he seeks to dismiss this Petition as not maintainable.

3.1. Further the learned Counsel for the Respondents submits that the Revision Petitioners herein are Defendants in the Suit in O.S.No.316/2019 on the file of the learned District Munsif cum Judicial Magistrate, Madukkarai, Coimbatore District. The Revision Petitioners herein as Defendants in the Suit in O.S.No.316/2019 ought to have filed Petition under Order VII Rule 11 of Civil Procedure Code to reject the



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plaint. After that had been filed, the Plaintiff in O.S.No.316/2019 will have the benefit of filing of counter before the learned District Munsif cum Judicial Magistrate, Madukkarai, Coimbatore District. The learned trial Judge/District Munsif cum Judicial Magistrate, Madukkarai after conducting enquiry shall pass appropriate Orders. After such Orders are pronounced, if it is not in favour of the Defendants in the Suit, they ought to have filed Appeal before the Appellate Authority concerned. Instead, bypassing the Code of Civil Procedure, the Revision Petitioner had approached this Court straight away under Article 227 of Constitution of India which is not at all maintainable.

3.2. In support of the contention of the learned Counsel for the Respondents, he submitted following rulings:

(i) ***(2019) 9 SCC 538 in the case of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs. Tuticorin Educational Society and others***, the relevant portion reads as follows:

“10. Primarily the High Court, in our view, went wrong in overlooking the fact that there was already an appeal in C.M.A. No. 1 of 2018 filed before the Sub-Court at Tuticorin under Order XLI, Rule 1 (r) of the Code, at the instance of the fifth defendant in the suit (third respondent herein), as against the very same order of



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injunction and, therefore, there was no justification for invoking the supervisory jurisdiction under [Article 227](#).

*11. 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”.*

*12. 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 quasi-judicial 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 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 (2000) 7 SCC 695 in the case of [Surya Dev Rai vs. Ram Chander Rai](#), pointed out in (2003) 6 SCC 675 in the case of *Radhey Shyam Vs. Chhabi Nath* that “orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.”*



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(ii) **2022 SCC Online SC 817 in the case of Mohamed Ali Vs.**

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V.Jaya and Others, the relevant portion reads as follows:

“21.At this stage, the decision of this case in this case of Virudhunagar Hindu Dharma Paribalana Sabai v. Tuticorin Educational Society; (2019) 9 SCC 538, is required to be referred to. In the said decision, it is observed and held by this Court that wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under CPC, will deter the High Court and therefore, the High Court shall not entertain the revision under Article 227 of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself. While holding so, it is observed and held in paragraphs 11 to 13 as under:-

“11. Secondly, the High Court ought to have seen that when a remedy of appeal under Section 104(1)(i) read with Order 43, Rule 1(r) of the Civil Procedure Code, 1908, was directly availed, 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 v. S. Chellappan [A. Venkatasubbiah Naidu v. S. Chellappan, (2000) 7 SCC 695], 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 recognised 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.”

22.Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under Article 227 of the Constitution of India against the ex-parte judgment and decree passed by the learned Trial Court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition



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under Article 227 challenging the ex-parte judgment and decree passed by the learned Trial Court and in quashing and setting aside the same in exercise of powers under Article 227 of the Constitution of India.”

(iii) The learned Single Judge of this Court by an Order dated 22.11.2021 in **CRP(PD).No.2263/2021** in the case of **A.Preethi and another Vs. S.Jayalakshmi and others**, the relevant portion reads as follows:

2. The Hon'ble Supreme Court in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Others Vs. Tuticorin Educational Society & Others reported in 2019 (9) SCC 538 has held that the High Courts should not, as a matter of prudence, entertain revisions under Article 227, when an alternative remedy is available under the Code of Civil Procedure. Hence, this Civil Revision Petition is dismissed.

(iv) The learned Single Judge of this Court by an Order dated 12.07.2022 in **CRP(PD).No.944/2022** in the case of **S.Sivakumar and others Vs. Santhosh Kumar and others** observed as follows:

“5.At the time when the plaintiffs presented the plaint before the Court, the Court may not be aware of the another suit pending in some other Court in the same fashion with the array of same parties in respect of the same suit property. Had the respondents/plaintiffs filed a copy of the plaint along with plaint documents and claimed that the new plaint is also maintainable and the Court had taken the new plaint after perusing the copy of the old plaint also, it is understandable that there is some apparent error and the Court has exercised its jurisdiction wrongly.



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6. Admittedly, in the suit documents, the respondents/plaintiffs have not filed copy of the earlier plaint. No doubt, if the respondents/plaintiffs have filed the same suit once again, it is abuse of process of law. However, the revision petitioners/defendants are not without any remedy and it is always open to them to raise the maintainability of the suit as preliminary issue or to file a petition under Order VII Rule 11 of CPC to reject the plaint. In the instant case, it is submitted by the revision petitioners/defendants that the earlier suit is still pending. Even in that case, it is possible to produce the certified copy of the earlier plaint for consideration of the learned trial Judge and expose that the respondents/plaintiffs have abused the Court. The trial Court has to go with the averments to see whether a prima-facie case is made out. So, it is advisable that the revision petitioners can seek the remedy before the Civil Court itself by way of filing appropriate applications.”

4. Point For Consideration

Whether this Court exercising discretion under Article 227 of Constitution of India shall strike down the Plaint in O.S.No.316/2019 on the file of the learned District Munsif cum Judicial Magistrate, Madukkarai?

5. On consideration of the rival submissions and on perusal of the rulings relied by the learned Counsel for the Respondents, the submission of the learned Counsel for the Respondents is found acceptable in the light of the reported ruling of the Hon'ble Supreme Court in **(2019) 9 SCC**



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538 in the case of *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs. Tuticorin Educational Society and others* which was followed in the Orders passed by the learned Single Judge of this Court in *CRP(PD).No.2263/2021 in the case of A.Preethi and another Vs. S.Jayalakshmi and others.*

5.1. On perusal of the grounds in this Petition and the typed set of papers filed by the learned Counsel for the Revision Petitioner, it is found that the Revision Petitioner had not at all filed any Petition invoking the powers of the trial Court under Order VII Rule 11 of Civil Procedure Code before ever filing a Petition under Article 227 of Constitution of India.

5.2. When the Code of Civil Procedure lays down the procedure to strike out the Plaint or to reject the Plaint before the trial Court, the conduct of the Defendants in O.S.No.316/2019 in not invoking those powers and without exhausting the remedies available before the trial Court, straightaway approached this Court under Article 227 of



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Constitution of India is found unacceptable. Therefore, in the light of the above rulings, this Civil Revision Petition under Article 227 of Constitution of India, ignoring the Civil Procedure Code and the remedies available through the Civil Procedure Code is found unacceptable.

5.3.The Hon'ble Supreme Court has clearly and categorically laid down in the case of *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs. Tuticorin Educational Society and others [(2019) 9 SCC 538]* that there is a total bar in respect of cases where alternative remedy is available before civil courts in terms of the provisions of Civil Procedure Code for availing constitutional remedy under Article 227 of Constitution of India. Therefore, this Court exercising discretion under Article 227 of Constitution of India, cannot strike out the Plaint in O.S.No.316/2019 on the file of the learned District Munsif cum Judicial Magistrate, Madukkarai, Coimbatore District.

5.4. The point for consideration is answered in favour of the Respondents and against the Revision Petitioners. This Court exercising discretion under Article 227 of Constitution of India, shall not strike down



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the Plaint in O.S.No.316 of 2019 on the file of the learned District
Munsif-cum-Judicial Magistrate, Madukkarai, Coimbatore District.

In the result, this ***Civil Revision Petition is dismissed*** as having no
merits. Consequently, connected Miscellaneous Petition is closed. No
costs.

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dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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To

1. The District Munsif cum
Judicial Magistrate,
Madukkarai, Coimbatore.
2. The Sub-Registrar,
Singanallur Sub Registrar Office,
Singanallur, Coimbatore.
3. The Tahsildar,
Madukkarai Taluk Office,
Madukkarai, Coimbatore District.
4. The District Collector,
Coimbatore.
5. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
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