



C.R.P(MD)No.1038 of 2009

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.04.2023
DELIVERED ON : 30.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1038 of 2009

1.Balakrishnan
2.Rajkumar

... Petitioners

Vs.

Perumal

... Respondent

PRAYER : Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the judgment and decree dated 04.07.2008 passed in A.S.No.17 of 2005 on the file of the Principal Subordinate Court, Dindigul as reversing the judgment and decree dated 30.11.2004 passed in O.S.No.37 of 2004 on the file of the District Munsif Court, Nilakkottai.

For Petitioners : Mr.S.Ramasamy

For Respondent : Mr.R.J.Karthick



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ORDER

This Civil Revision Petition is filed assailing the order passed by the Principal Subordinate Judge's Court at Dindigul in A.S.No.17 of 2005 by reversing the judgment and decree dated 30.11.2004 passed in O.S.No.37 of 2004 on the file of the District Munsif Court at Nilakkottai.

2. The original suit in O.S.No.37 of 2004 was one for damages for an amount of Rs.31,000/- seeking to compensate the unforeseen difficulties and loss of income faced by the plaintiffs as a result of the false complaint lodged by the defendant as against the plaintiffs. The learned Trial Court framed three issues and the learned Trial Court was pleased to adjudicate the case on merits, decided all the three issues in favour of the plaintiffs and passed a decree directing the defendants to pay a compensation of Rs.5,000/- to the plaintiffs. The said suit was valued at Rs.31,000/- and a Court fee for the same was also been paid by the plaintiffs. Assailing the said judgment and decree passed by the learned Trial Court in O.S.No.37 of 2004, an appeal was preferred by the defendant in A.S.No.17 of 2005 on the



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file of the learned Principal Subordinate Judge's Court at Dindigul.

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3. The learned Principal Subordinate Judge's Court at Dindigul allowed the said appeal on 04.07.2008, thereby setting aside the judgment and decree passed by the learned District Munsif Court at Nilakkottai, thereby dismissing O.S.No.37 of 2004 with a cost of Rs.520/-. As against the judgment and decree passed by the first Appellate Court in A.S.No.17 of 2005 by the learned Principal Subordinate Judge's at Dindigul, the petitioners / respondents / plaintiffs have preferred this Civil Revision Petition.

4. Heard Mr.S.Ramasamy, the learned Counsel for the petitioners and Mr.R.J.Karthick, the learned Counsel for the respondent at length. The learned Counsel for the petitioners elaborated the various aspects of malicious prosecution and the need to uphold the trial Court judgment.

5. Per contra, the learned Counsel for the respondent sought dismissal of the Trial Court judgment and to uphold the judgment and decree passed by the first Appellate Court.

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6. Precisely before going elaborately into the merits of the case, this Court is seized of the provision under Section 102 of the Code of Civil Procedure which is extracted as follows:

“102. No second appeal in certain cases.- No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees.”

7. The suit valuation in O.S.No.37 of 2004 was Rs.31,000/-. In view of the mandate in Section 102 of the Code of Civil Procedure, 1908 in any original suit when the subject matter is for recovery of money exceeding an amount of Rs.25,000/-, the remedy would be by way of a second appeal. This Court is ridiculed by the way as to how this Civil Revision Petition is maintainable in a original suit filed seeking damages to a tune of Rs.31,000/-, in which Court fee for the said amount has also been paid. Hence, the maintainability of this Civil Revision Petition itself has to be looked into.



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8. On perusal of the available records, it is found that the memo of valuation clearly mentioning the value of suit as Rs.31,000/- has been filed along with the Civil Revision Petition. It is also seen that this Civil Revision Petition was filed on 09.02.2009. However, it is found that on 10.02.2009, the entire file was returned by the Registry / AE seeking clarification as to how this Civil Revision Petition is maintainable. The learned Counsel for the petitioners / respondents / plaintiffs has represented the petition on 03.04.2009 with the following endorsement:

"Since the value of the appeal is only Rs.5,000/- (Rupees Five Thousand Only) so, it is maintainable. Direction complied with."

9. On accepting the said endorsement, it is found that this Civil Revision Petition is numbered on 15.07.2009.

10. However, Section 52 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 as amended as Tamil Nadu Act 20 of 2021 is extracted herein for better appreciation:



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“52. Appeals.- *The fee payable in an appeal shall be the same as the fee that would be payable in the court of first instance on the subject-matter of the appeal:*

Provided that, in levying fee on a memorandum of appeal against a final decree by a person whose appeal against the preliminary decree passed by the Court of first instance or by the Court of appeal is pending, credit shall be given for the fee paid by such person in the appeal against the preliminary decree.”

11. The above provision would make it clear that a fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject matter of the appeal and not on the value of the decree passed by the Court of first instance. However, in this case, the revision petitioner has paid a Court fee on the value of the decree passed by the Court of first instance and not on the value of the subject matter of the original suit before the Court of first instance, thereby invoking the civil revision jurisdiction under Section 115 of the Code of Civil Procedure, 1908. The Hon'ble Apex Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs. Tuticorin Educational Society and Others reported in [MANU/SC/1365/2019]*** dated 03.10.2019 while dealing with a similar case, distinguished that in cases where alternate remedy is



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available before the civil Courts in terms of the provisions of the Code of Civil Procedure, revision jurisdiction of the High Court shall not be invoked by the respective parties and the relevant portion of which is extracted 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 v. S. Chellappan and Ors. MANU/SC/0581/2000 : (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 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



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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 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 Code of Civil Procedure, 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 v. Ram Chander Rai MANU/SC/0559/2003 : (2003) 6 SCC 675, pointed out in Radhey Shyam v. Chhabi Nath MANU/SC/0200/2015 : (2015) 5 SCC 423 that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

14. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the Code of Civil Procedure, 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



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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.”

12. The Hon'ble Apex Court in another case of ***Mohamed Ali Vs. V.Jaya and Others reported in [MANU/SC/0863/2022]*** dated 11.07.2022 has held that, when there is a statutory alternative remedy by way of an appeal available to the defendants, the High Court should not entertain a revision application. Hence, it is pertinent to observe 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 Code of Civil Procedure will deter the High Court and therefore, the High Court cannot entertain revision especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.

13. Even in this case, the valuation of the original suit in O.S.No.37 of 2004 on the file of the District Munsif Court, Nilakkottai being Rs.31,000/-, the natural remedy available for the revision petitioner would be to prefer a second appeal before the High Court as against the judgment and decree passed by the first Appellate Court in A.S.No.17 of 2005, that is,



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the Subordinate Judge's Court, Dindigul. On the other hand, it is erroneous on the part of the revision petitioner to have valued the revision petition as Rs.5,000/- on the basis of the decree amount decreed by the Court of first instance and to have invoked the revision jurisdiction before this Court. Such an exercise is fully illegal and not sustainable in law. Hence, on the ground of maintainability itself, this Court is inclined to dismiss this Civil Revision Petition.

14. In view of the specific bar under Section 102 of the Code of Civil Procedure, 1908 and the provisions under Section 52 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 as amended as Tamil Nadu Act 20 of 2021, this Civil Revision Petition is not maintainable when there is a specific remedy of appeal as provided under the Code of Civil Procedure, 1908.

15. In the result, this Civil Revision Petition stands dismissed. There shall be no order as to costs.

30.06.2023

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NCC : Yes
Index : Yes
Internet : Yes
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To

- 1.The Principal Subordinate Court,
Dindigul.
- 2.The District Munsif Court,
Nilakkottai.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

BTR

Order made in
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