



C.R.P.(MD).No.632 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	16.08.2023
Pronounced on	20.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.632 of 2023

and

C.M.P.(MD) No.2931 of 2023

1.Subbiah Thevar

2. Palanivel

3. Vimala

4. Usha

...Petitioners

Versus

Thirumaran

... Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of Constitution of India to strike off the impugned plaint filed in O.S.No.169 of 2022, pending on the file of the Additional District Court, Pudhukottai, as the same does not disclose any cause of action and also an abuse of process of law.

For Petitioners : Mr.S.Ramu

For Respondent : Mr.R.Paranjothi



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ORDER

The above Civil Revision Petition is preferred to strike off the plaint in O.S.No.169 of 2022 on the file of the Additional District Court, Pudhukottai.

2. According to the revision petitioners, the suit properties were purchased by the 2nd petitioner out of his own income in the name of his father, who is the 1st petitioner herein and in the name of the 2nd petitioner himself. However, the respondent/plaintiff has filed a suit in O.S.No.169 of 2022 before the Additional District Court, Pudhukottai for partition, which is clearly an abuse of process of law and filed only for the purpose of harassing the petitioners herein. It is further submitted that the respondent/plaintiff in the suit has made false averments and allegations by suppressing the material facts. The respondent/plaintiff never contributed funds for purchasing the suit properties. He had made contradictory statements in the plaint by stating that the suit properties are the ancestral properties but in another place he had stated that the suit properties are



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jointly purchased by them. If the respondent/plaintiff has contributed funds for purchasing the suit properties, he would not have allowed to purchase them in the name of the petitioners herein, when he was very much available in the native place during the purchase of the suit properties. The respondent/plaintiff never made any objection for purchasing properties in the name of the petitioners and also at the time of transfer of pattas. Therefore, it is crystal clear that the above suit is filed with ulterior motive and therefore, the same shall be struck off.

3. The learned counsel appearing for the revision petitioners would submit that in order to prevent the abuse of process of law and miscarriage of justice, the revision petitioners herein are entitled to invoke Article 227 of the Constitution of India to strike off the plaint at earliest in order to prevent the time of public and the Court being wasted. Since the present suit filed by the respondent/plaintiff was clearly abuse of process of law, the plaint is liable to be struck off.

4. To support his contention he has relied upon the following decisions reported in



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- 1.M.Devaprakash Vs. P.P.Devaraj [2022 (3) CTC 154]***
- 2.N.A.Chinnasamy Vs. S. Vellingirinathan [2013 (6) CTC 809]***
- 3.Raahul Foundations Private Ltd. Vs. S.Chandrababu [2019 (3) MLJ 321]***
- 4.Mani @ Nagamani Vs. P.Ramakrishnan [(2018) 4 MLJ 182]***

5. On the other hand, the learned counsel for the respondent would submit that wherever the proceedings are under the Code of Civil procedure and the forum is the Civil Court, the availability of a remedy is under the CPC. This Court cannot entertain the revision petition to strike off the plaint under Article 227 of the Constitution of India. He would further submit that when there is a law providing remedy by filing a petition under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint, this Civil Revision Petition could not be entertained under Article 227 of the Constitution of India. Therefore, the Civil Revision Petition is liable to be dismissed.

6. Heard learned counsel on both sides and perused the materials on record.



7. Admittedly, the respondent/plaintiff has filed the suit in O.S.No.169 of 2022 claiming 1/5th share in the suit properties. According to the respondent/plaintiff, the plaintiff and the 2nd defendant are the sons of the 1st defendant and the defendants 3 and 4 are the daughters of the 1st defendant. The suit properties are the joint family properties and till date no partition was effected among the family members. Since the defendants were attempting to alienate the suit properties without allotting the share of the plaintiff, he was constrained to file the above suit for partition.

8. Per contra, the petitioners/defendants would submit that the suit properties were purchased by the 2nd petitioner/2nd defendant out of his own income in the name of his father and in his name. The respondent/plaintiff did not contribute any funds for purchasing the suit property and the above suit for partition is filed by the plaintiff with ulterior motive to harass the petitioners herein. Hence, the suit is only abuse of process of law and liable to be struck off.

9. It is well settled law that when there is a law which provides remedy by filing a petition under Order 7 Rule 11 of CPC for rejection of



plaint, civil revision petition could not be entertained under Article 227 of Constitution of India. However, when there is abuse of process of law, the petitioners/defendants can invoke Article 227 to struck off the plaint in a suit to meet the end of justice and prevent abuse of process of Court.

10. In the instant case, as per the plaint averments, the suit properties are joint family properties and therefore, the plaintiff is entitled for share in the suit properties. Whether the properties mentioned in the suit are available for partition is a question of fact, which has to be adjudicated at the time of trial by recording evidence. In the referred cases on the side of the petitioners, the plaintiff was found guilty of filing vexatious suit and therefore, Article 227 was invoked for striking off the plaint. In the present case, it is not so. Whether the suit properties is a separate property of the 2nd petitioner or it is a joint family property can be ascertained only by way of evidence. Even assuming that the case of the petitioners is true, but the petitioners have remedy under provisions of Civil Procedure Code by filing a petition under Order 7 Rule 11 of C.P.C for rejection of plaint. The decision of this Court in the case of ***K.Ponnamal and Ors. Vs. Vs.Thayanban and Ors. [2012 (2) LW 193]***, wherein it held as follows:-



“It can safely be concluded that :

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(i) power of judicial superintendence under Article 227 must be exercised sparingly only to keep the courts and tribunals within their bounds of authority and not to correct mere errors;

(ii) the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameter and not to correct an error apparent on the face of the record;

(iii) where the law provides remedy by filing an appeal or revision, then exercise of power under Article 227 may be refused, on the ground of availability of such alternative efficacious remedy by way of appeal or revision to the aggrieved party.

21. Apart from that the petitioners herein have other statutory alternative remedies available under the Code of Civil Procedure. The petitioners herein, who are the defendants in the pending suit, may also move the Court below by filing an application for rejection of the plaint under Order 7 rule 11 of the C.P.C.

22. It is, therefore, manifest that the respondents/petitioners herein instead of availing the remedies provided under the Code of Civil Procedure have erroneously invoked the jurisdiction of this Court under Article 227 of the



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Constitution of India".

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11. Therefore, this Civil Revision Petition cannot be entertained under Article 227 of Constitution of India as there is remedy available for the revision petitioners under the provisions of the CPC. In the light of the above, this Civil Revision Petition is dismissed. No Costs. Connected Miscellaneous Petition is also closed.

20.12.2023

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Index:Yes/No

Speaking Order : Yes/No

K.GOVINDARAJAN THILAKAVADI,J.

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To

The Additional District Court, Pudhukottai.

Order made in

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and
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