



CRP (MD) No.277 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	31.07.2023
Pronounced on	27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.277 of 2023

and

CMP(MD)No.1306 of 2023

T.Palaniyammal

... Petitioner

Vs.

P.Chandra

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and strike off the plaint in O.S.No.144 of 2022 on the file of the Principal District Munsif Court, Vendasandur and allow this civil revision with costs.

For Petitioner : Mr.K.Samidurai

For Respondent : Mr.M.Vignesh Kumar



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ORDER

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This revision is preferred by the petitioner/defendant to strike off the plaint in O.S.No.144 of 2022 on the file of the Principal District Munsif Court, Vedasanthur.

2. The above suit in O.S.No.144 of 2022 was filed by the respondent/plaintiff for declaration of title and for permanent injunction. According to the revision petitioner, as per order 7 Rule 11 of CPC, the plaint can be rejected only under the circumstances stated therein and not otherwise. As far as the present case is concerned, the plaint is sought to be rejected only by invoking Sub Rule (a) of Rule 11 of Order 7 CPC, under which, it is contemplated that the plaint shall be rejected if it does not disclose the cause of action. It is submitted that on a bare reading of the averments made in the plaint, it does not disclose any cause of action. The plaintiff has averred that as per the settlement deed, dated 05.04.2022, the suit property belonged to the plaintiff and therefore, she had sought for declaration of title and for permanent injunction. The further contention of the revision petitioner is that the property bearing Survey No.248 measuring to an extent of 84 cents in the



suit village, is now in the possession and enjoyment of the revision petitioner/defendant. The property originally belonged to one Chinna Azhagu Pandaram, who owned 5 acres 4 cents. After his demise, his legal heirs orally partitioned the property, in which, the father of the plaintiff's husband was allotted $1/6^{\text{th}}$ share, which is, 84 cents. The father in law of the revision petitioner was also allotted $1/6^{\text{th}}$ share. The father of the plaintiff's husband and the revision petitioner's father in law, are brothers and while so, the father of the plaintiff's husband sold his share in Survey No.248 measuring an extent of 84 cents by way of a registered sale deed dated 30.12.1981 to his brother Chellaiah, who is the revision petitioner's father in law. After the death of her father in law, the revision petitioner's husband who is the only legal heir of the deceased Chellaiah executed a document in favour of the revision petitioner in respect of the above property and from the year 2018, the revision petitioner is in possession and enjoyment of the same. Since the father of the plaintiff's husband died, the husband of the plaintiff, using the opportunity, executed a document on 05.04.2022 in favour of his wife, the plaintiff herein, in respect of the same property which was sold by his father in the year 1981 itself. In pursuant to the order passed in the writ



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petition, the District Registrar issued a notice to the respondent/plaintiff and to the revision petitioner's husband to appear for the enquiry, which was to be held on 25.07.2022. The revision petitioner submitted the petition to the District Registrar on 16.05.2022 and 01.06.2022 for cancelling the document registered in favour of the plaintiff on 05.04.2022. Thereafter, the plaintiff's husband filed a writ petition in WP(MD) No.12165 of 2022 before this Court, in which, the District Registrar was directed to hold an enquiry. The District Registrar accordingly conducted an enquiry and issued the proceedings on 22.08.2022, in which, he had held that the husband of the plaintiff has no right in the property and further directed the Sub Registrar not to register any document in favour of the plaintiff and to register the document submitted by the revision petitioner. While so, the plaintiff filed the above suit by stating that there is a settlement deed in her favour and sought for declaration of title, when the settlement deed itself was amend by the District Registrar. Therefore, there is no cause of action to file the suit by the plaintiff. The above suit is nothing but only to harass the revision petitioner.



3. The learned counsel appearing for the revision petitioner would rely upon the case in Azhar Hussain Vs Rajavi Gandhi, in which this Court has held as follows:-

12....The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocle need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary Civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.

4. The learned counsel for the petitioner would further contend that since the right of the revision petitioner was confirmed in the enquiry conducted by the Registrar, the suit filed by the respondent/plaintiff amounts to re-litigation and abuse of process of law. Therefore, the present plaint in the suit in O.S.No.144 of 2022 is liable to be struck off, since the trial Court cannot effectively adjudicate the issues. To support his contentions, he has



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relied upon the decision reported in (2012) 8 SCC 706 and the cases in CRP.

Nos.2529 and 2530 of 2018, CRP.No.885 of 2018 and CRP(MD) No.463 of 2010.

5. On the other hand, the learned counsel for the respondent/plaintiff would contend that the petitioner ought not to have invoked the revision under Article 227 of the Constitution of India, when there is a remedy available under the provisions of Civil Procedure Code. He would further submit that when there is a law provides remedy by way of filing a petition under Order 7 Rule 11 of CPC for rejection of plaint, this Civil Revision Petition could not be entertained under Article 227 of the constitution of India. Hence, this civil revision is liable to be dismissed. To support his contention, he has relied upon the order of this Court in CRP(MD) No.1596 of 2017.

6. Heard on both sides and records perused.



7. The contention of the revision petitioner is that in the present suit, the cause of action was based on a settlement deed, which was already negated by the District Registrar. The suit filed by the respondent/plaintiff based on the above said settlement deed, is nothing, but only an abuse of process of law. Therefore, the suit is liable to be struck off, since the trial Court cannot effectively adjudicate the issue. However, the revision petitioner has directly filed this revision petition under Article 227 of the Constitution of India for striking off the plaint in O.S.No.144 of 2022 on the file of the Principal District Munsif Court, Veda sandur. As rightly contended by the learned counsel for the respondent, in CRP(MD)No. 1596 of 2017, this Court has held as hereunder:-

"7. At this stage, the decision of this Court in the case of K.Ponnammal and Ors V. V.Thayanban and Ors. reported in 2012 -2 Law Weekly-193, is required to be referred to. In the said decision it is observed in paragraph Nos.1, 10, 18, 21 and 22 as follows:

"1. Petitioners have filed this Civil Revision Petition under Article 227 of the Constitution of India seeking to strike off the plaint in the suit filed by the first respondent herein, viz. O.S. No.8134 of 2011 on the file of the XVI



Assistant City Civil Court Judge, Chennai.

10. The only question therefore that falls for consideration is as to whether in the facts and circumstances of the case, can this Court, in exercise of its supervisory power under Article 227 of the Constitution of India strike off the plaint.

18. In the light of the principles laid down by the Supreme Court, in the aforesaid cases, it can safely be concluded that :

(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 Constitution of India".*

Further the judgment of the Hon'ble Supreme Court of India reported in 2022 AIAR (Civil) 879 (Mohamed Ali Vs. V.Jaya & Ors.), wherein it is held in paragraph No.13 as follows:

"13. 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 CPC, will deter the High Court, not merely as a measure of selfimposed 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....".



So it is a settled principle law that when the plaint is filed under Civil Procedure Code and there is a remedy available under Order 7 Rule 11 of the Civil Procedure Code, to reject the plaint and this Court cannot entertain the revision to strike off the plaint under Article 227 of the Constitution of India.

8.The petitioner herein, who is the first defendant in the pending suit, may also move the Court below by filing an application for rejection of the plaint under Order VII Rule 11 of the Civil Procedure Code, Order VII, Rule 11 reads as follows:

"11.Rejection of plaint:- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*



(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

8. Therefore, when there is a remedy available under the provisions of the Civil Procedure Code, for rejection of plaint, this civil revision petition could not be entertained under Article 227 of the Constitution of India. Article 227 of the constitution of India can be invoked only in rarest of rare cases, when there is abuse of process of law. Therefore, this Court is of the view of that this civil revision petition cannot be entertained by this Court by exercising its power under Article 227 of the Constitution of India as there is



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a remedy available for the revision petitioner under the provisions of the Civil Procedure Code. The revision petitioner ought to have invoked Order 7 Rule 11 of CPC, when the plaint does not disclose any cause of action to file the above suit.

9. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

To

The Principal District Munsif,
Vedasandur

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K.GOVINDARAJAN THILAKAVADI

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Pre-delivery order made in
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