



C.R.P(MD).No.1110 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 25.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**C.R.P(MD).No.1110 of 2023**

**and**

**C.M.P(MD).No.5357 of 2023**

1.N.Punithavathi Alias Punitha  
2.N.Dinesh Kumar  
3.N.Rajiv

... Petitioners/Defendants

Vs.

D.Sundarapandian

... Respondent/Plaintiff

**PRAYER:-** This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to strike off the plaint dated 23.02.2023 in O.S.No. 77 of 2023 on the file of the Principal District Court, Madurai and allow the Civil Revision Petition.

For petitioners : Mr.B.Prahalad Ravi

**ORDER**

This Civil Revision Petition has been filed by the petitioners to strike off the plaint dated 23.02.2023 in O.S.No.77 of 2023 on the file of the Principal District Court, Madurai.

2.The petitioners are the defendants in O.S.No.77 of 2023 on the file of the Principal District Court at Madurai. The suit has been filed for recovery



of money allegedly advanced by the respondent herein to the petitioners. In the said suit, it has been also averred that the petitioners have created the equitable mortgage by depositing the title deed of the property. It is submitted that the respondent herein, who is the plaintiff in O.S.No.77 of 2023 and also the defendant in O.S.No.57 of 2020 has not whispered about the alleged equitable mortgage which is said to have been created on 03.03.2020 in the written statement filed in O.S.No.57 of 202. The written statement was filed on 23.02.2021.

3.It is further submitted that the subsequent suit filed by the respondent against the petitioners is nothing but an abuse of Court proceedings. On an query as to why the petitioners have not filed any application under Order VII Rule 11 of CPC. There is no answer.

4.In my view, the prayer of the petitioners cannot scuttle and short circuit the proceedings under Article 227 of Constitution of India. Merely because, a prior suit has been instituted by the petitioners in O.S.No.57 of 2020 the suit cannot be directed to be struck off from the filed of the Court. At best the petitioner can file an application under Order VII Rule 7 of CPC to reject the plaint.



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5. Therefore, I am inclined to dismiss the Civil Revision Petition.

However, liberty is given to the petitioners to work out their remedy if so advised by moving appropriate application under Order VII Rule 11 of CPC. If such application filed, the learned Principal Court, Madurai, shall consider the same and dispose the same on merit in accordance with law.

6. With the above direction, this Civil Revision Petition is dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

**25.04.2023**

NCC : Yes/No  
Index : Yes/No  
Internet: Yes/No  
dss

To

1. The Principal District Court,  
Madurai.
2. The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.



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C.SARAVANAN,J.

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