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C.R.P(PD)(MD).No.2377 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.04.2023

Pronounced on : 10.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.2377 of 2018

and

C.M.P(MD)No.10620 of 2018

1.V.A.K.Sheik Mohideen

2.V.A.K.Mohamed Ferrous

... Revision Petitioners

Vs.

K.Natarajan

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to reject the plaint in O.S.No.12 of 2018 on the file of the Subordinate Court, Pudukottai and allow this Civil Revision Petition.

For Petitioners : Mrs.M.Rajeswari
for Mr.S.M.S.Jonny Bhasha

For Respondent : Mr.J.Barathan



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ORDER

This Civil Revision Petition is filed to reject the plaint in O.S.No. 12 of 2018 on the file of the Subordinate Court, Pudukottai.

2. The brief facts of the case:

The revision petitioners are the defendants in O.S.No.12 of 2018 on the file of the Subordinate Court, Pudukottai. The respondent has filed a main suit in O.S.No.12 of 2018 for the relief of declaration that the suit property belonged to him and for permanent injunction against the revision petitioners. On service of suit notice along with the copy of plaint, the revision petitioners have filed this present Civil Revision Petition under Article 227 of the Constitution of India, to reject the plaint in O.S.No.12 of 2018 on the file of the Subordinate Court, Pudukottai.

3. Heard both sides and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioners has argued that the respondent has already filed a suit in O.S.No.42 of 2009 on the file of the District Munsif Court, Keeranaur against the District Collector, Tahsildar and the revision petitioners herein seeking injunction



in respect of the suit property and the said suit was dismissed.

Thereafter, the respondent has filed the main suit in O.S.No.12 of 2018 on the file of the Subordinate Court, Pudukottai for declaration and injunction. The Trial Court ought not to have numbered the suit as it is barred under Order II Rule 2 (2) of the Civil Procedure Code and the Trial Court ought to have rejected the plaint under Order VII Rule 11 (a) of the Civil Procedure Code as the plaint does not disclose any cause of action. At the time of admission, this Court held that it is a case of re-litigation and therefore, this Civil Revision Petition is admitted for striking off the plaint. The Trial Court has not considered these aspects and the dismissal of the earlier suit. Therefore, the Civil Revision Petition may be allowed by striking off the plaint in O.S.No.12 of 2018 on the file of the Subordinate Court, Pudukottai.

5. Per contra, the learned counsel for the respondent has vehemently contended that the earlier suit was filed against the government officials and the revision petitioners and in that suit the learned District Judge observed that the suit was filed seeking only a bare injunction, but the plaintiff therein had not sought for declaratory relief in respect of suit property and hence, the suit was not maintainable.

Thereafter, the respondent has made averments and filed the present suit



in O.S.No.12 of 2018 on the file of the Subordinate Court, Pudukottai specifically for the relief of declaration that the suit property belonged to the respondent and for permanent injunction against the revision petitioners alone. The petitioners have not filed the decree copy of the earlier suit in this Civil Revision Petition. The petitioners have mentioned their names which differed from the suit. If the petitioners state that the present plaint is hit by *res judicata* or Barred by Limitation, the petitioners have to raise the same as a preliminary issue in the suit itself and they could not directly approach this Court under Article 227 of the Constitution of India, for striking the plaint. As per the provisions of Order 7 Rule 11 of the Civil Procedure Code, there is a remedy available before the Civil Court itself. This Court has supervisory jurisdiction conferred under Article 227 of the Constitution of India only to see whether the Subordinate Court has proceeded within the parameter and the Hon'ble Supreme Court already held that when law provides a remedy by filing a petition before the Civil Court, then the exercise of power under Article 227 of the Constitution of India might be refused. Therefore, this Civil Revision Petition cannot be entertained by this Court. In support of his argument, the learned counsel for the respondent has relied on the judgment of this Court reported in **2012-2 Law Weekly 193 (K.Ponnamal & Ors. /v/ V.Thayanban & Ors.)**, wherein it is held



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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



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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".

6. On hearing both sides and on perusal of records, it is clear that the petitioners are the defendants in O.S.No.12 of 2018 on the file of the Subordinate Court, Pudukottai. The respondent filed the main suit seeking a declaration that the suit property belonged to the respondent and a consequential injunction. There is no denial of earlier suit filed by the respondent in O.S.No.42 of 2009 on the file of the District Munsif Court, Keeranur. On perusal of plaint averments in O.S.No.12 of 2018 on the file of the Subordinate Court, Pudukottai, the respondent has clearly stated about the earlier suit and the observation made in the judgment passed therein. Admittedly the suit in O.S.No.42 of 2009 was



filed only for a bare injunction. On receipt of the present suit summons, the defendants/revision petitioners herein have directly filed this Civil Revision Petition under Article 227 of the Constitution of India, for striking off the plaint in O.S.No.12 of 2018 on the file of the Subordinate Court, Pudukottai without exhausting the remedy available in the Code of Civil Procedure. The plaint was filed under Order VII Rule 1 of the Civil Procedure Code. 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 VII Rule 11 of the Civil Procedure Code, which reads as under:-

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 property 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-paper 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-paper, 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.

Therefore, the petitioners have remedy under the provisions of the Civil Procedure Code. Such being the facts, this Court already held that when there is a law provides a remedy by filing the petition under Order VII Rule 11 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. It is settled by the Hon'ble Supreme Court that where the law provides a remedy by filing an appeal or revision, then exercise of power under Article 227 of the Constitution of India may be refused. The other rival arguments placed in respect of the suit need not be considered in this petition. The citation relied on by the respondent side squarely applies to the facts of the present case on hand. Therefore, this Court is of the view 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 a remedy available for the revision petitioners under the provisions of the Civil Procedure Code.



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7. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is also dismissed.

10.07.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Subordinate Court,
Pudukottai

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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