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C.R.P.(MD)No.1707 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1707 of 2022

and

C.M.P.(MD)No.7507 of 2022

1.Srimathi Narayanan

2.S.Narayanan (Died)

3.S.Aruna Shanmuganathan

[The petitioners 1 and 2 are rep. by their Power Agent,
the 3rd petitioner, namely, S.Aruna Shanmuganathan]

4.Ranjani

5.Ramanan

.. Petitioners

[Petitioners 4 and 5 are brought on record as LR's. of the
deceased 2nd petitioner, vide Court order dated 06.02.2023,
made in C.M.P.(MD)No.1004 of 2023]

Versus

C.Subramanian

Through his Power Agent,

S.Chidambaram

.. Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.200 of 2021, on the file of the IV Additional District Court, Tirunelveli.

For Petitioners : Mr.H.Arumugam

For Respondent : Mr.S.Meenakshisundaram
Senior Counsel
Mr.M.Senguvijay



ORDER

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The petitioners are the defendants in O.S.No.200 of 2021 before the IV Additional District Court, Tirunelveli. The above suit has been filed by the respondent herein for a declaratory relief and for a consequential injunction to restrain the petitioners, their men, agents and servants from interfering with the respondent's peaceful possession and enjoyment of the suit schedule property.

2.This Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India to strike off the plaint in O.S.No.200 of 2021, pending on the file of the IV Additional District Court, Tirunelveli, filed by the respondent.

3.The averments in the affidavit filed in support of the Miscellaneous Petition indicate that the petitioners have also filed written statement and have also filed W.P. (MD)No.12933 of 2022 to remove the alleged encroachment made by the respondent.

4.The learned counsel for the petitioners submits that the suit filed by the respondent is nothing but an abuse of process of Court and re-litigation of the issue, which was subject matter of O.S.No.899 of 1983, filed against the petitioners' predecessors namely, C.Nellaiammal, R.Meenal and the Tirunelveli Municipality. It



is submitted that the Court had also framed issues in O.S.No.899 of 1983, wherein the first issue was as to whether the respondent had any right over the land in question, where there was a Wall for 40 feet length. It is submitted that the suit that has been filed by the respondent was thus, liable to be struck off from the file of the IV Additional District Court, Tirunelveli.

5.It is further submitted that the Wall put up by the petitioners was removed by the Tirunelveli Municipality, as it was obstructing the access to the road by the general public. While so, the respondent/plaintiff has now once again put up barbed fencing to prevent access to the petitioners herein to reach their land on the southern side and when the petitioners approached the Corporation for removal of encroachment, the present suit has been filed taking advantage of the fact that the revenue records have been altered in the name of the respondent.

6.It is the further case of the petitioners that the inclusion of the name of the respondent in the Town Survey Register itself was fraudulent act with the collusion of the officials, who were in the Office of the Tirunelveli Municipality. Therefore, it is submitted that the plaint in O.S.No.200 of 2021 is liable to be struck off from the file of the IV Additional District Court, Tirunelveli.



7. Defending the plaint filed by the respondent herein in O.S.No.200 of 2021 before the IV Additional District Court, Tirunelveli, the learned Senior Counsel has drawn the attention of this Court to the issues framed by the Court in the earlier round of litigation against the said C.Nellaiammal, R.Meenal and the Tirunelveli Municipality.

8. It is submitted that four issues were framed in O.S.No.899 of 1983 and one of the issues framed was, whether the Court had jurisdiction or not. It is submitted that the Court has categorically concluded that the suit was contrary to Section 101 of the Tamil Nadu Town and Country Planning Act, 1971. It is therefore submitted that once the Court had come to a conclusion that it had no jurisdiction, the findings rendered therein also are of no significance. It is submitted that if the petitioners were so aggrieved, nothing stopped them from invoking Order VII Rule 11 of C.P.C. stating that the suit was barred under law on account of *res judicata*. It is submitted that such a proceeding is inconceivable and therefore, the petitioners have resorted to this Civil Revision Petition under Article 227 of the Constitution of India. It is therefore submitted that the present Civil Revision Petition itself is an abuse of Court proceedings.

9. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in **Sushil Kumar Mehta vs. Gobind Ram Bohra (Dead) Through**



his LR's reported in 1990 (1) SCC 193, wherein it has been held as follows:-

"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the every authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities."

10. That apart, it is submitted that the petitioners have also filed a written statement on 29.04.2022 and thereafter, the learned IV Additional District Judge, Tirunelveli, has also framed issues and thereafter, the petitioners have filed the present Civil Revision Petition on 18.08.2022. Hence, it is prayed that the present Civil Revision Petition be dismissed with exemplary costs.

11. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Senior Counsel for the respondent/plaintiff.

12. In Page No.20-A of the typed set of papers, the extract of the proceedings in O.S.No.200 of 2021 has been filed from the eCourts Website. Page Nos.20-A and 21 appear to have been inserted subsequent to the filing of this Civil Revision Petition, as it indicates that issues were framed on 12.09.2022. The petitioners have



filed written statement on 29.04.2022 and another written statement has been filed by one of the defendants on 15.07.2022 and thereafter, on 12.09.2022 issues were framed.

13.The order passed by this Court on 22.08.2022 granting interim stay of further proceedings for a period of four weeks, which was extended from time to time, appears to have not been communicated to the Court earlier and thus, the learned IV Additional District Judge, Tirunelveli, has not only received the written statement of other defendants, but also framed issues on 12.09.2022. If the petitioners are aggrieved by the suit filed by the respondent on the ground that the issue is already decided in O.S.No.899 of 1983, which came to be dismissed on 29.10.1998 by the learned Principal District Munsif, Tirunelveli, it is always open for them to file an application to reject the plaint under Order VII Rule 11 of C.P.C.

14.Further, several disputed questions of fact including the alleged fraud committed by the respondent has been alleged in this Civil Revision Petition. This Court is not competent to decide the issue relating to fraud and short-circuit the suit, which has been instituted by the respondent. The fact remains that the learned IV Additional District Judge, Tirunelveli, has also framed issues on 12.09.2022 after the present Civil Revision Petition was filed. It is therefore incumbent on the part of the learned IV Additional District Judge, Tirunelveli, to proceed with the trial and



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dispose the suit in O.S.No.200 of 2021 on merits and in accordance with law as expeditiously as possible, preferably, within a period of nine months from the date of receipt of a copy of this order.

15.It is open for the petitioners to insist the Court for impleading the Tirunelveli City Municipal Corporation be arrayed as Defendant No.4 for proper adjudication of *inter se* dispute between them and the respondent herein.

16.With the above direction and liberty, the present Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
smn2

13.06.2023

To

The IV Additional District Judge,
Tirunelveli.



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C.SARAVANAN, J.

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Order made in
C.R.P.(MD)No.1707 of 2022

13.06.2023