



C.R.P.(MD)No.1828 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.11.2023

PRONOUNCED ON: 22.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1828 of 2023

and

C.M.P.(MD)No.9131 of 2023

1.S.Raihana Begam

2.K.Umar Farooq Abdullah

: Petitioners/Defendants 1 and 2

Vs.

1.S.Badhurnisha

: 1st Respondent/Plaintiff

2.The Sub Registrar,
Kodaikanal.

: 2nd Respondent/3rd Defendant

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records in connection with the judgment dated 10.07.2023 made in O.S.No.72 of 2015, on the file of the District Munsif cum Judicial Magistrate Court No.1, Kodaikanal and to aside the same.



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For Petitioners : Mr.M.Ajmal Khan
Senior Counsel
for M/s Ajmal Associates

For Respondents : Mr.G.Prabhu Rajadurai
for Mr.R.Shankar Ganesh
for R.1

ORDER

The Civil Revision Petition is directed against the judgment passed in O.S.No.72 of 2015, dated 10.07.2023, on the file of the District Munsif cum Judicial Magistrate Court No.I, Kodaikanal.

2. The first respondent as plaintiff has filed the above suit in O.S.No.72 of 2015, to declare that the HIBA @ Gift deed dated 01.01.2007 is not valid as the same was forgedly created by the first defendant and to declare that the subsequent gift settlement deeds dated 11.03.2013 and 26.08.2013 are not valid and will not bind the plaintiff and for permanent injunction restraining the defendants 1 and 2 from encumbering the suit property and for mandatory injunction directing the third defendant – Sub Registrar, Kodaikanal to record that the gift deeds dated 11.03.2013 and 26.08.2013 are not valid.



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3. The defendants / revision petitioners have filed their written statement. The trial Court has framed the issues and proceeded with the trial. During trial, the plaintiff has examined herself as P.W.1 and exhibited 16 documents as Exs.A.1 to A.16. The defendants 1 and 2 had examined the first defendant as D.W.1 and exhibited 10 documents as Exs.B.1 to B.10. 7 Court documents were exhibited as Exs.C.1 to C.7. The learned trial Judge has then passed the impugned judgment dated 10.07.2023, decreeing the suit as prayed for. Against the said judgment and decree, the present Civil Revision Petition has been filed by the defendants 1 and 2.

4. The learned Senior Counsel appearing for the revision petitioners would submit that after the closure of the plaintiff's evidence on 01.02.2023, the first defendant has entered into the witness box as D.W.1 and filed her proof affidavit on 22.02.2023, that D.W.1 was continuously cross-examined by the plaintiff's side till 24.04.2023, that the case was posted to 07.06.2023 for defendants' side further evidence, that the case was again adjourned to 28.06.2023, which was the date before Bakrid festival, that though the revision petitioners' Counsel sought adjournment as the revision petitioners are residing at Madurai



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and were preparing for Bakrid, the trial Judge suo motu closed the evidence and posted the case for arguments on 30.06.2023, that the revision petitioners have filed a petition to re-open the case for adducing further evidence, but the same was returned as not maintainable, that when the case was posted for arguments on 10.07.2023, the revision petitioners have re-presented their petition, but the learned trial Judge refused to receive the same, that thereafter the revision petitioners have filed a petition for transfer in Tr.O.P.No.63 of 2023 and when a memo was filed before the trial Court on 13.07.2023 informing the numbering of Tr.O.P., the learned trial Judge informed them that the judgment was already pronounced on 10.07.2023 and thereby returning the re-open petition as not maintainable, that the judgment of the trial Court is ex facie illegal and against the principles of natural justice, that the learned Judge has passed the judgment in a haste manner, that the above judgment should not be considered as a judgment in the eye of law, that the revision petitioners came to understand that the trial Judge was influenced and that is why without granting sufficient opportunities, has passed the judgment in a haste manner and that therefore, the revision petitioners are constrained to approach this Court under Article 227 of the Constitution of India for setting aside the impugned judgment.



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5. The learned Counsel for the first respondent/plaintiff would submit that the Civil Revision Petition itself is legally not maintainable, that since after full trial, the impugned judgment was passed, the remedy available to the revision petitioners is to prefer a regular appeal and as such, the revision petitioners are not entitled to invoke the provisions under Article 227 of the Constitution of India and that therefore, the Civil Revision Petition is liable to be dismissed.

6. Before going into the maintainability, it is necessary to consider the allegations levelled against the Presiding Officer.

7. It is not in dispute that after cross-examination of D.W.1, the case was posted to 07.06.2023 for the defendants' side further evidence, that since the trial Judge was on leave, the case was adjourned to 21.06.2023, that since the Advocates were on boycott, the case was adjourned to 28.06.2023, that the trial Court, on 28.06.2023, suo motu closed the defendants' side evidence and posted the case for arguments on 30.06.2023, that the revision petitioners have filed a petition to re-open the case and the same was adjourned to 05.07.2023 for checking of



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the said petition, that on 05.07.2023, the petition to re-open the case was returned and again adjourned to 10.07.2023 for arguments and that on 10.07.2023, the impugned judgment was passed.

8. No doubt, the suit is pending from 2015 and as such, the proceeding with the trial of the case cannot be found fault with. As already pointed out, since the defendants have not chosen to adduce evidence on the hearings given by the trial Court, on 28.06.2023 the Court itself suo motu closed the evidence of the defendants / revision petitioners. On the next hearing ie., on 30.06.2023, the revision petitioners have filed a petition to re-open the case for adducing further evidence and the case was adjourned to 05.07.2023 and that on 05.07.2023, the learned trial Judge, by returning the re-opening petition, has posted the case for arguments on 10.07.2023. As rightly contended by the learned Senior Counsel for the revision petitioners, there is no reference in the notes paper to say that the arguments were heard by the trial Court.

9. When the above petition was moved for admission, this Court has called for an explanation from the concerned Judicial Officer and in



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pursuance of the same, he has submitted his explanation dated 16.08.2023 and wherein he has stated that the plaintiff's side had advanced their arguments on 28.06.2023 itself, but there is absolutely no entry or reference or endorsement that the arguments were advanced on 28.06.2023. As already pointed out, after closing the defendants's side evidence suo motu, the trial Court has posted the matter to 28.06.2023. Thereafter, the case was posted for arguments on 30.06.2023 and again on 05.07.2023 and then to 10.07.2023. But there was no entry or reference in "B" diary that the arguments of the plaintiff's side was already heard in any of the subsequent hearings ie., on 30.06.2023, 05.07.2023 and 10.07.2023.

10. The learned trial Judge in his explanation has stated that the plaintiff's side in addition to the oral arguments already advanced on 28.06.2023, had filed written arguments. Moreover in the explanation it has been stated that since the revision petitioners had filed the petition only to produce further evidence and not for re-opening the defence evidence, which was already closed and only because of that reason, the said application was rightly returned by the Court. It is evident from the copy of the re-opening petition filed along with the revision that the



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revision petitioners have filed a petition seeking orders to re-open the case for production of further evidence as they have to examine six more witnesses. As rightly contended by the learned Senior Counsel for the revision petitioners, since their side evidence was closed suo motu, they were forced to file the above application to re-open the case enabling them to produce further evidence. Hence, the contention of the trial Judge that since the revision petitioners have filed the petition for reception of further evidence, the same was returned, is patently false. When the matter was posted to 10.07.2023 for arguments, the impugned judgment came to be passed.

11. Considering the above, the contention of the learned Senior Counsel for the petitioners that the trial Court has proceeded to pass the impugned judgment in a haste manner cannot be rejected as one without substance. As rightly contended by the learned Counsel for the revision petitioner, the way in which the impugned judgment was passed without giving any opportunity to the revision petitioner to advance their arguments and the way in which the reopen petition was returned, are not proper. Even assuming for arguments sake that the trial Court has proceeded with the trial and passed the judgment in a haste manner, that



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by itself is not a ground to invoke Article 227 of the Constitution of India for setting aside the judgment of the trial Court.

12. The learned Senior Counsel appearing for the revision petitioners has relied on the judgment of the Hon'ble Supreme Court in ***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*** reported in (2010)8 SCC 329, wherein the Hon'ble Apex Court, taking note of its earlier decision, has formulated the principles for the exercise of the High Court's jurisdiction under Article 227 of the Constitution of India and the same are extracted hereunder:

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under [Article 227](#) of the Constitution may be formulated:

(a) A petition under [Article 226](#) of the Constitution is different from a petition under [Article 227](#). The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under [Article 227](#) cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on



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the High Courts under [Article 227](#) and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under [Article 227](#) of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them



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and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under [Article 227](#) cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of [L. Chandra Kumar vs. Union of India & others](#), reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code ([Amendment](#)) Act, 1999 does not and cannot cut down the ambit of High Court's power under [Article 227](#). At the same time, it must be remembered that such statutory amendment does not



correspondingly expand the High Court's jurisdiction of superintendence under [Article 227](#).

(l) On a proper appreciation of the wide and unfettered power of the High Court under [Article 227](#), it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas [Article 226](#) is meant for protection of individual grievance. Therefore, the power under [Article 227](#) may be unfettered but its exercise is



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subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.”

13. The learned Senior Counsel has also relied on the judgment of the Hon'ble Supreme Court in ***Radhey Shyam and another Vs. Chhabi Nath and others*** reported in **(2015)8 SCC 423**, wherein a reference was made to the Three Judges Bench of the Hon'ble Supreme Court to consider the correctness of the law laid down by the Hon'ble Supreme Court in ***Surya Dev Rai Vs. am Chander Rai*** reported in **(2003)6 SCC 675** that an order of the civil Court was amenable to writ jurisdiction under Article 226 of the Constitution of India. The Hon'ble Apex Court, after elaborate discussion, has answered the reference by holding that the judicial orders of the civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution of India and that the jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

14. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Virudhunagar Hindu Nadargal Dharma***



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Paribalana Sabai and Others Vs. Tuticorin Educational Society and

Others reported in ***(2019)9 SCC 538***, wherein the Hon'ble Apex Court has specifically held that when a remedy of appeal under Section 104(1) (i) r/w Order 43 Rule 1(r) of the Civil Procedure Code was directly available, the respondents ought to have taken recourse to the same. The Hon'ble Supreme Court in ***A.Venkatasubbiah Naidu Vs. S.Chellappan*** reported in ***(2000)7 SCC 695***, has held that though no hurdle can be put against the exercise of the constitutional powers of the High Court, it is a well recognized principle which gained judicial recognition that the High Court should direct the party to avail himself of such remedies before he resorts to a constitutional remedy.

15. It is necessary to refer the following passages in

Virudhunagar Hindu Nadargal Dharma Paribalana Sabai's case:

“12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be



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quasi-judicial authorities and tribunals. In respect of cases falling 1 (2000) 7 SCC 695 under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under [Article 227](#), even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in [Surya Dev Rai vs. Ram Chander Rai](#)², pointed out in [Radhey Shyam Vs. Chhabi Nath](#)³ that “orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

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 self imposed restriction, but as a matter of discipline and 2 (2003) 6 SCC 675 3 (2015) 5 SCC 423 prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under [Article 227](#) especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”



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16. The learned Counsel for the first respondent would submit that the judgments referred by the learned Senior Counsel for the petitioners are actually in support of the respondent's case and relied on the judgment of the Hon'ble Supreme Court in ***Mohamed Ali Vs. V.Jaya and Others*** reported in ***2022 LiveLaw (SC) 574*** and the relevant passages are extracted hereunder:

“ 7.1 Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under [Article 227](#) of the Constitution of India against the ex-parte judgment and decree passed by the learned Trial Court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition under [Article 227](#)-challenging the ex-parte judgment and decree passed by the learned Trial Court and in quashing and setting aside the same in exercise of powers under [Article 227](#) of the Constitution of India. 7.2 Even otherwise considering the impugned common judgment and order passed by the High Court, it appears that while setting aside the ex-parte judgment and decree, the High Court has commented upon the legality and validity of the judgment



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and decree passed by the learned Trial Court as if the High Court was exercising the appellate jurisdiction against the judgment and decree passed by the learned Trial Court. Before considering the judgment and decree on merits and/or expressing anything on merits on the legality and validity of the judgment and decree (ex-parte), the High Court was required to consider whether the learned Trial Court was justified in passing the ex-parte judgment and decree or not. The High Court was also required to consider whether the learned Trial Court was justified in refusing to condone the delay of 1522 and 2345 days in filing the petition challenging the ex-parte judgment and decree. Therefore, in the facts and circumstances of the case, the impugned common judgment and order passed by the High Court is unsustainable, both, on law as well as on facts. The High Court has exceeded in its jurisdiction while setting aside the ex-parte judgment and decree in exercise of powers under [Article 227](#) of the Constitution of India. The impugned common judgment and order passed by the High Court is on irrelevant considerations and the relevant aspects as observed hereinabove have not been considered and dealt with by the High Court. Under the circumstances, the impugned common judgment and order passed by the High Court deserve to be quashed and set aside. ”



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17. As rightly contended by the learned Counsel for the first respondent, even in the case of exparte judgment and decree, the Hon'ble Apex Court has observed that the High Court ought not to have entertained the revision petition filed under Article 227 of the Constitution of India, in view of the specific remedy of appeal is available under the Code of Civil Procedure and that the High Court has committed a grave error in entertaining the revision petition under Article 227 of the Constitution of India challenging the exparte decree and judgment.

18. In the case on hand, as already pointed out, after examination of the witnesses on both sides, the trial Court has passed the impugned judgment. Even assuming that the judgment is erroneous or is not in accordance with law, they cannot invoke Article 227 of the Constitution of India to challenge the judgment and decree, but instead they should have preferred an appeal as contemplated under Order 41 of the Code of Civil Procedure. As already pointed out, though the learned trial Judge has acted in haste and has given some wrong information, in his explanation with regard to the hearing dates and the purpose of the hearings, that by itself is not a ground to challenge the impugned judgment under Article



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227 of the Constitution of India. Considering the above, this Court has no hesitation to hold that the Civil Revision Petition itself is legally not maintainable and the same is liable to be dismissed.

19. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. There shall be no order as to costs. The revision petitioners are at liberty to prefer an appeal before the appropriate Forum, if advised so..

22.12.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. The Principal Subordinate Court, Dindigul.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

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22.12.2023