

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2023

CORAM

THE HON'BLE MR.JUSTICE **C.KUMARAPPAN**

CRP(MD).No.1917 of 2019 and
CMP(MD).No.9784 of 2019

S.Santhi

Petitioner

Vs.

Mathusri Akkaboι Ammanichairman Charities,
Pattukottai rep. by its alleged
Hereditary Trustee S.Anadakumar

Respondent

PRAYER : Civil Revision Petition filed under Section 115 C.P.C., against
the Judgment and Decree of Trial Court in O.S.No.207 of 2017, dated
08.08.2019, on the file of the District Munsif Court, Pattukottai.

For Petitioner : Mr.N.Balakrishnan

For Respondent : Mr.Niranjan S.Kumar

ORDER

This Civil Revision Petition has been filed against the
Judgment and Decree, dated 08.08.2019 made in O.S.No.207 of 2017, on
the file of the District Munsif Court, Pattukottai.

2. The plaintiff is the revision petitioner before this Court. He filed a suit for the relief of declaration to declare that the decree, dated 21.04.1984 passed in O.S.No.321 of 1977, and for permanent injunction restraining the defendant and his men from interfering his peaceful possession and enjoyment of the suit property. In the said suit, order was passed by the Court below on 08.08.2019. For easy understanding, it is relevant to extract the order passed by the learned trial Judge.

“1. The suit was filed by the plaintiff to pass a decree and judgment that the decree, dated 21.04.1984 passed in O.S.No.321 of 1977 is null and void abinito and not binding on the plaintiff and for the relief of permanent injunction against the defendant and for other reliefs.

2. Plaintiff called absent and no representation for him. The counsel for the plaintiff reported no instruction. On perusal of case records this Court found that the petitioner filed E.A.No.5 of 2018 in E.P.No.28 of 2010 in O.S.No.321 of 1977 under Order 21 Rule 97 CPC to declare the Right and title over the suit property. In both proceeding suit property is one and same. As per Order XXI Rule 103 of CPC. The plaintiff is entitled to claim her right through Order XX Rule 97 of CPC and separate suit not maintainable. Hence, the suit is dismissed and no order as to costs.

3. The learned counsel appearing for the revision petitioner would contend that a mere perusal of the above order would show the

non-application of mind and inherent contradictions. He would further submit that the learned Trial Judge instead of deciding the matter on merits, dismissed the suit by directing the petitioner to approach the executing Court. Therefore, the learned counsel for the petitioner would submit that the said order is cryptic in nature and therefore, contended that the same is liable to be set aside under Article 227 of the Constitution of India.

4. However, the learned counsel appearing for the respondent strenuously contended that even though, for arguments sake, the order is construed as cryptic one and non speaking, still, when an appeal remedy is provided under the Civil Procedure Code, no question of filing an application under Article 227 of the Constitution of India would arise. Therefore, prayed for dismissal of this revision in respect of his relief.

5. The first and foremost submission of the learned counsel appearing for the petitioner is that the learned trial Judge while ordering, has firstly recorded no representation for the plaintiff, and on the same breadth has also recorded that there is no instruction. Both no representation and reporting no instruction will not go together.

6. It is curious to note that if there is no representation on behalf of the plaintiff, how the learned trial Judge could record “no instruction” on behalf of the plaintiff. However, after proceeding the same, the learned trial Judge has proceeded to direct the petitioner to approach the executing Court under Order XXI Rule 97 of CPC. This Course was seriously objected by the learned counsel appearing for the petitioner and would submit that when the suit is pending and when the only mode available for the trial Court is to dispose of the same by framing issues, has usurped the non existent advisory jurisdiction.

7. However, without going into all these submissions of the learned counsel for the petitioner, the learned counsel for the respondents would submit that even for the arguments sake, if the order is cryptic and has got inherent inconsistency, the only remedy available for the petitioner is to approach the appropriate forums provided under Civil Procedure Code. The learned counsel for the respondent relied upon the Judgment of the Hon'ble Supreme Court, dated 03.10.2019 made in ***Civil Appeal Number. 7764 of 2019*** in the case of ***Virudhuangar Hindu Nadargal Dharma Paribalana Sabi and others Vs. Tuticorin Educational Society***

and ors. Wherein at paragraph Nos. 8 to 15 it is held as follows:

8. *As against the order of the trial court granting injunction, the fifth defendant in the suit (the third respondent in this appeal) who claiming to be the Patron for life, filed a Regular Appeal in C.M.A No.1 of 2018 on the file of the Sub- Court at Thothukudi under Order XLIII Rule 1(r) of was the Code of Civil Procedure. But the respondent nos.1 & 2 herein who were the defendant Nos.1 & 6 respectively, instead of filing a Regular Appeal, filed a Civil Revision in C.R.P. (MD) (PD) No.1084 of 2018 on the file of the Madurai Bench of the Madras High Court, under Article 227 of the Constitution of India.*

9. *Despite objections to the maintainability of the revision on the ground of availability of an appellate remedy under the Code, the High Court allowed the Civil Revision Petition and set aside the order of injunction granted by the trial Court. It is against the said order that the plaintiffs have come up with the above appeal.*

10. *The objection to the maintainability of the revision was sought to be overcome by the High Court on the basis of a few decisions which revolved around the supervisory jurisdiction of the High Court to keep the subordinate courts within the bounds of law. Then the High Court found fault with the trial Court for taking up the application for injunction filed on 24.04.2018, for hearing 25.04.2018 and passing an order on 26.4.2018. This, in the opinion of the High Court, justice being buried. hurried Therefore, the and High was a case of consequently getting Court revision and set aside the order of injunction. allowed the on*

11. *Primarily the High Court, in our view, went wrong in overlooking the fact that there was already an appeal in C.M.A. No. 1 of 2018 filed before the Sub-Court at Tuticorin under Order XLI, Rule 1 (r) of the Code, at the instance of the fifth defendant in the suit (third respondent*

herein), as against the very same order of injunction and, therefore, there was no justification for invoking supervisory jurisdiction under Article 227.

12. Secondly, the High Court ought to have seen that the when a remedy of appeal under section 104 (1) (i) read with Order XLIII, Rule 1 (r) of the Code of Civil Procedure, 1908, was directly available, the respondents 1 and 2 ought to have taken recourse to the same. It is true that the availability of a remedy of appeal may not always be a bar for the exercise of supervisory jurisdiction of the High Court. In *A. Venkatasubbiah Naidu Vs. S. Chellappan & Ors.*, this Court 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".

13. But courts should always bear in mind 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 authorities and tribunals. In respect of cases falling a quasi-judicial 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, overruling the a 3 member Bench of this court, decision in *Surya Dev Rai Chander Rai*, pointed out in *Radhey Shyam Vs. Chhabi Nath* that "orders of civil court stand on different vs. while Ram footing from the

orders of authorities or Tribunals or courts other than judicial/civil courts.

14. 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 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.

15. Another aspect that was overlooked by the High Court was that the second respondent herein namely Shri A. Rajendran was already restrained by the Sub-Court, from functioning as the Secretary of the first respondent society. It is seen from the records that the civil revision was filed before the High court by the first respondent society as well the second respondent herein. The second respondent herein was not only the second petitioner in the Civil Revision Petition filed before the High Court, but he also sought to represent the first respondent-Society as its Secretary, before the High court in the Civil Revision.”

(Emphasis supplied by this Court)

8. The learned counsel has also relied upon the Judgment of the Hon'ble Supreme Court reported in **2022 LiveLaw (SC) 574** in the case of **Mohammed Ali Vs. Jaya and ors**, has followed **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. Vs. Tuticorin Educational**

Society and Ors (cited supra) and ultimately held in paragraph Nos.6.2 and 7 as follows:

6.2 Even otherwise and as observed hereinabove, against the ex-parte judgment and decree, the remedy by way of an appeal before the First Appellate Court was available. Therefore, the High Court ought not to have entertained the revision application under Section 115 of CPC and under Article 227 of the Constitution of India. The High Court ought not to have entertained such a revision application challenging the ex-parte judgment and decree. Once there was a statutory alternative remedy by way of an appeal available to the defendants, the High Court ought not to have entertained a writ petition or revision application under Article 227 of the Constitution of India.

7. At this stage, the decision of this Court in the case of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Ors. Vs. Tuticorin Educational Society and Ors.; (2019) 9 SCC 538, is required to be referred to. In the said decision, it is observed and held by this Court that wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under CPC, will deter the High Court and therefore, the High Court shall not entertain the revision under Article 227 of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself. While holding so, it is observed and held in paragraphs 11 to 13 as under: -

9. The learned counsel for the respondent also relied upon the Judgment of the Hon'ble Supreme Court reported in **2022 LiveLaw (SC) 698** in the case of *My Palace Mutually Aided Co-operative Society Vs. B.Mahesh and others* and submitted that even as per Section 151 CPC this Court cannot interfere with the order of the learned trial Judge and the remedy is available only under Section 96 CPC. The relevant portion of the said Judgment reads as follows:

“27. In exercising powers under Section 151 CPC, it cannot be said that the civil Courts can exercise substantive jurisdiction to unsettle already decided issues. A Court having jurisdiction over the relevant subject matter has the power to decide any matter that may come either to a right or a wrong conclusion. Even if a wrong conclusion is arrived at or an incorrect decree is passed by the jurisdictional Court, the same is binding on the parties until it is set aside by an appellate court or through other remedies provided in law.

28. Section 151 of the CPC can only be applicable if there is no alternate remedy available with the existing provisions of law. Such inherent power cannot override statutory prohibitions or create remedies which are not contemplated under the Code. Section 151 cannot be invoked as an alternative to filing fresh suits, appeals, revisions, or reviews. A party cannot find solace in Section 151 to allege and rectify historic wrongs and bypass procedural safeguards inbuilt in the CPC.”

10. The learned counsel appearing for the petitioner invited the attention of this Court in respect of the Judgment of this Court reported in **2015(4) CTC 673**, wherein, this Court has set aside the Judgement under Article 227 of the Constitution of India since it was not as per Order 20 Rule 5 CPC and has a cryptic Judgment. Further, to support the maintainability of this revision, the learned counsel appearing for the petitioner relied upon a decision of the Hon'ble Supreme Court reported in **2003(6) SCC 675** in the case of **Surya Dev Rai Vs. Ram Chander Rai and others**, wherein, at paragraph Nos.7 and 40 it is held as follows:

7. H.W.R. Wade & C.F. Forsyth define certiorari in these words :-

"Certiorari is used to bring up into the High Court the decision of some inferior tribunal or authority in order that it may be investigated. If the decision does not pass the test, it is quashed – that is to say, it is declared completely invalid, so that no one need respect it.

The underlying policy is that all inferior courts and authorities have only limited jurisdiction or powers and must be kept within their legal bounds. This is the concern of the Crown, for the sake of orderly administration of justice, but it is a private complaint which sets the Crown in motion." (Administrative Law, Eighth Edition, page 591).

40. The appeal is allowed. The order of the High Court refusing to entertain the petition filed by the appellant, holding it not maintainable, is set aside. The petition shall stand restored on the file of the High Court, to be dealt with by an appropriate Bench

consistently with the rules of the High Court, depending on whether the petitioner before the High Court is seeking a writ of certiorari or invoking the supervisory jurisdiction of the High Court.

11. However, the learned counsel for the respondent would invite the attention of this Court that the said ***Surya Dev Rai*** (cited supra) case subsequently overruled by three Judges Bench of the Hon'ble Supreme Court in ***Radhay Shyam Vs. Ram Chander Rai reported in (2015) 5 SCC 2423*** and in this regard he invited this Court to paragraph 13 of the Judgment in the case of ***Virudhunagar Hindu Nadargal Dharma Paraibalana Sabai & Ors vs. Tuticorin Educational Society & ors*** as cited supra.

12. Therefore from all the submissions what emerges from the submission of the learned counsel for the respondent is that, even though the order of the trial Court is cryptic and a non speaking order, and not inconsonance with Order 20 CPC, the only remedy available to the party would be under Section 96 CPC by preferring regular appeal.

13. Though this Court finds inherent inconsistency in the order of the Court below, in view of the ratio laid down by the Hon'ble Supreme Court, this Court cannot interfere with the Judgment of the learned Trial Judge under Article 227 of the Constitution of India. Hence, this Civil Revision Petition is liable to be dismissed.

14. However, the learned counsel appearing for the petitioner seeks liberty of this Court to prefer a regular appeal before the appropriate Court and to exclude the limitation period during which period this Civil Revision Petition pending.

15. In this connection, the learned counsel appearing for the respondent invited the attention of this Court by producing the Judgment of the Hon'ble Supreme Court reported in **2002 LiveLaw (SC) 209** in the case of ***M.Chinnamuthu (dead) Vs. Kamaleshan @ Shanmugam (dead) through LRs***, wherein, it is held as follows:

“The present proceedings initiated by the judgment-debtor are nothing but an abuse of process of law and the Court. It is very unfortunate that an order which was passed in favour of the respondent judgment-creditor for eviction of the petitioner passed

on 28.08.1989 is yet not permitted to be executed by the judgment-debtor by initiating the proceedings one after another. It is very unfortunate that even after a period of 33 years, the judgment-creditor in whose favour the order is passed in the year 1989 is not able to enjoy the fruit of the litigation and the decree passed in his favour. It is rightly said that in our justice delivery system, the real litigation starts only after the decree is passed and the judgment-creditor has to wait for number of years for enjoying the fruit of the decree and the litigation. If such a delayed tactics is permitted, the litigant would lose the confidence in the justice delivery system. Every litigation has to put to an end at a particular time. The judgment-creditor is entitled to enjoy the fruit of the litigation within a reasonable time. As observed herein above, this is a clear example of the abuse of the process of law and the Court and not permitting the judgment-creditor to get the benefit under the decree which is passed in his favour in the year 1989.

It is also to be noted that even before the original judgment-creditor enjoy the fruit of the decree in his favour, unfortunately he died. During his lifetime, he could not enjoy the fruit of the decree. Even the original respondent has also died during the pendency of the proceedings. The present Special Leave Petitions stand dismissed with cost which is quantified at Rs.25,000/- (Twenty Five Thousand only) to be paid by the petitioner(s) with the Tamil Nadu State Legal Services Authority, Chennai within a period of four weeks from today.

The Executing Court is directed to finally decide and dispose of the execution proceedings within a period of six months from the date of receipt of the present order. All concerned are directed to cooperate with the learned Executing Court to finally decide and dispose of the execution proceedings at the earliest and within the time as stated herein above.”

In the above Judgment, the Hon'ble Supreme Court held that if such a delaying tactics is permitted, then the litigant would loose confidence in

the justice delivery system. Therefore, the counsel for the respondent has objected for such a discretionary relief of giving liberty. Therefore, considering the long pendency of the litigation and chequered history since 1977, this Court is not inclined to grant any exemption of period of limitation in the even of filing regular appeal according to law.

16. In the result, this Civil Revision Petition is dismissed as indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.07.2023

Index : Yes / No
Internet : Yes / No
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To

The the District Munsif Court, Pattukottai.

CRP(MD).No.1917 of 2019

C.KUMARAPPAN, J.,

trp

CRP(MD).No.1917 of 2019 and
CMP(MD).No.9784 of 2019

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