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C.R.P(PD)(MD).No.1503 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.04.2023

Pronounced on : 20.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.1503 of 2017

and

C.M.P(MD)No.8101 of 2017

- 1.Lalitha Paul Ponnaiah
- 2.Devakirubai Immanuel Paul
- 3.Devavaram Gamaliel Paul
- 4.Philip Phanuel Dhanasekaran ... Petitioners/Defendants

Vs.

Philip Navarathinam ... Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.255 of 2017 as well as all proceedings in the said suit on the file of the District Munsif Court, Madurai Town.

For Petitioners : Mr.S.Poornachandran

For Respondent : Mrs.P.Jessi Jeeva Priya



ORDER

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This Civil Revision Petition is filed to strike off the plaint in O.S.No.255 of 2017 on the file of the District Munsif Court, Madurai Town.

2. The brief facts of the case:

The revision petitioners are the defendants in O.S.No.255 of 2017 on the file of the District Munsif Court, Madurai Town. The respondent/plaintiff has filed the main suit in O.S.No.255 of 2017 for injunction restraining the petitioners/defendants from preventing the construction of compound wall by the respondent/plaintiff on the western side of the suit "B" schedule property. 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 strike off the plaint in O.S.No.255 of 2017 on the file of the District Munsif Court, Madurai Town.

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



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4. The learned counsel appearing for the revision petitioners has argued that the subject matter of the suit property has already decided in O.S.No.1422 of 2004 by the learned District Munsif, Madurai Town and the same was confirmed in A.S.No.56 of 2007 on the file of the Principal Sub Court, Madurai and in S.A.No.516 of 2011 on the file of this Court. Therefore, the respondent/plaintiff is precluded from reagitating the issue which already attained finality. The Trial Court ought to have rejected the plaint as the plaint averments do not disclose any cause of action. Therefore, the revision petition may be allowed by striking off the plaint in O.S.No.255 of 2017 on the file of the District Munsif Court, Madurai Town.

5. Per contra, the learned counsel for the respondent has vehemently contended that the suit "A" Schedule and "B" Schedule properties originally belonged to Pappammal @ Gnanadheepan and she constructed two houses therein. There is an open area in and around the two houses for the common enjoyment of the properties. The respondent /plaintiff and one Paul Ponniah are her sons. The revision petitioners/defendants are children of Paul Ponniah. The said Pappammal @ Gnanadheepam bequeathed the "A" schedule property to the respondent/plaintiff by way of Will dated 28.08.1974 and "B"



schedule property to his elder son Paul Ponniah by virtue of settlement deed dated 27.08.1974. Since there was demarcation of properties, dispute arose and the plaintiff's brother Paul Ponniah filed the suit for injunction regarding the common gate in between "A" schedule and "B" schedule property. Thereafter, the respondent/plaintiff has made arrangements to put a wall within the measurement as given in the Will and as the defendants restricted to put up the wall, the plaintiff has filed the present suit. The petitioners can raise preliminary issue or to file the petition before the Trial Court. Without exhausting the remedy available under the provisions of the Civil Procedure Code, directly approached this Court by filing this Civil Revision Petition, which is not entertainable. Therefore, this Civil Revision Petition may be dismissed.

6. On hearing both sides and on perusal of records, it is clear that the petitioners are defendants in O.S.No.255 of 2017 on the file of the District Munsif Court, Madurai Town. The respondent filed the main suit seeking permanent injunction restraining the respondents from preventing the construction of compound wall. On perusal of plaint, the respondent has clearly stated about the earlier suit and appeal proceedings. 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.255 of 2017 on the file of the District Munsif Court, Madurai Town.

7. At this stage, the decision of this Court in the case of **K.Ponnammal and Ors V. V.Thayanban and Ors. reported in 2012 -2 Law Weekly-193**, is required to be referred to. In the said decision it is observed 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



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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 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".

Further the judgment of the Hon'ble Supreme Court of India reported in **2022 AIAR (Civil) 879 (Mohamed Ali Vs. V.Jaya & Ors.)**, wherein it is held in paragraph No.13 as follows:



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"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 selfimposed 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....".

So it is a settled principle of law that when the plaint is filed under Civil Procedure Code and there is a remedy available under Order 7 Rule 11 of the Civil Procedure Code, to reject the plaint and this Court cannot entertain the revision to strike off the plaint under Article 227 of the Constitution of India.

8. The revision 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 Civil Procedure Code, Order VII, Rule, 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 properly 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-papers 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-papers, 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 a remedy under the provisions of the Civil Procedure Code. When there is a law provides remedy by filing a 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. The other rival arguments placed in respect of the suit need not be considered in this petition. 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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9. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

20.07.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1.The District Munsif Court,
Madurai Town.

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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