



C.R.P. (MD) No. 1027 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

C.R.P. (MD) No. 1027 of 2024

and

C.M.P. (MD) No. 5685 of 2024

Soundarajan

... Petitioner

-VS-

1.Ganesa Perumal

2.Karutha Pudhiyavan Jeyakumar

... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, to call for the records, set aside the fair and decreetal order of the District Munsif Court, Sathankulam dated 01.12.2023 passed in I.A. No. 663 of 2023 in O.S. No. 20 of 2013.

For Petitioner : Mr. M.R.S.Prabhu

For Respondents : Mr. C.K.M. Appaji



C.R.P. (MD) No. 1027 of 2024

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ORDER

This Civil Revision Petition invoking Article 227 of the Constitution of India, 1950, has been filed challenging the order dated 01.12.2023 in I.A. No. 663 of 2023 in O.S. No. 20 of 2013 (hereinafter referred to as the 'impugned order' for short) passed by the District Munsif Court, Sathankulam (hereinafter referred to as the 'Trial Court' for short).

2. The parties are hereinafter referred to as per their description in the suit in O.S. No. 20 of 2013 before the Trial Court for the sake of clarity and convenience.

3. Heard Mr. M.R.S.Prabhu, Learned Counsel for the Defendant and Mr. C.K.M.Appaji, Learned Counsel for the Plaintiffs, and perused the materials placed on record, apart from the pleadings of the parties.

4. The suit in O.S. No. 20 of 2013 has been filed seeking declaration of ownership of the property and for recovery of possession from the Defendant



C.R.P. (MD) No. 1027 of 2024

from the properties in the schedule to the plaint in the suit. It is the case of the Defendant that at the instance of the Plaintiff, a Commissioner was appointed to inspect the said property and measurements were taken with the assistance of the Surveyor and that the Defendant had filed the objections to the report of the Commissioner. Subsequently, the Defendant made another application in I.A. No. 663 of 2023 to scrap the report of the Commissioner, but it was rejected by the impugned order.

5. The pivotal attack of the Learned Counsel for the Defendant on the impugned order is that the observations made therein tend to create an impression as if the Plaintiff has proved his claim over the property which would prejudicially affect the rights of the Defendant at the trial of the suit.

6. The plain language of Rule 10 of Order XVI of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC' for short) makes it clear that the report of the Commissioner with the evidence taken by him shall be the evidence in the suit and shall form part of the record, and that the Commissioner shall be liable to be examined in open Court touching any of the matters referred to him or mentioned in this report including the manner in



C.R.P. (MD) No. 1027 of 2024

which he has made investigation, and the Court may for any reason, if it is dissatisfied of the proceedings of the Commissioner may direct such further enquiry to be made as it may deem fit. This would obviously mean that if the Defendant intends to dislodge the report of the Advocate Commissioner, he would have to lead evidence to the contrary and confront the Advocate Commissioner with it at the time of his cross-examination. However, it is not possible to accept the claim of the Defendant that the report of the Advocate Commissioner has to be scrapped without recourse to that procedure and another Advocate Commissioner has to be appointed to inspect the property and submit report.

7. In any event, the Plaintiff has not been able to show as to how any prejudice has been caused to him by the impugned order at this pre-decree stage, especially when Section 105(1) and clause (1) of Rule 1-A of XLIII of the Code of Civil Procedure, 1908, read as follows:-



C.R.P. (MD) No. 1027 of 2024

WEB COPY

Section 105 of CPC

Other orders.—(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

Rule 1-A(1) of Order XLIII of CPC

Right to challenge non-appealable orders in appeal against decrees.—

(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

8. At this juncture, it would be relevant to extract the principles on the exercise of the jurisdiction of the High Court under Article 227 of the Constitution as formulated by the Hon'ble Supreme Court in the decision in *Shalini Shyam Shetty -vs- Rajendra Shankar Patil* [(2010) 8 SCC 329], which reads as follows:-



- (a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the 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 the High Courts under Article 227 and have been discussed above.
- (c) High Courts cannot, at 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 the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.



- (d) The parameters of interference by High Courts in exercise of their 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 -vs- Amarnath* (AIR 1954 SC 215) and the principles in *Waryam Singh -vs- Amarnath* (AIR 1954 SC 215) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.
- (e) According to the ratio in *Waryam Singh -vs- Amarnath* (AIR 1954 SC 215), 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 and by not declining to exercise the jurisdiction which is vested in them.



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- (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 the 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) The 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 ***L. Chandra Kumar -vs- Union of India*** [(1997) 3 SCC 261] and therefore abridgment 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.
- (k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised *suo motu*.
- (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.
- (m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of



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the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

Having regard to the aforesaid legal position, there does not appear to be any infirmity in the impugned order warranting interference by this Court in the exercise of supervisory jurisdiction under Article 227 of the Constitution.

9. It is hasten to add that the observations made by the Trial Court in the impugned order for the limited purpose of deciding the said application filed by the Defendant shall not inhibit or influence the Trial Court while determining the rights of the parties on the basis of evidence adduced by the parties on merits and in accordance with law at the time of passing judgment in the suit.



C.R.P. (MD) No. 1027 of 2024

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In the result, the Civil Revision Petition is dismissed with the aforesaid clarifications. Consequently the connected Miscellaneous Petition is closed.

No costs.

18.04.2024

Index : Yes/No

Internet : Yes/No

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To

1.The District Munsif Court, Sathankulam.

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



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C.R.P. (MD) No. 1027 of 2024

P.D. AUDIKESAVALU, J.

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C.R.P. (MD) No. 1027 of 2024

18.04.2024