



C.R.P. (MD) No. 302 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2024

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

C.R.P. (MD) No. 302 of 2024
and
C.M.P. (MD) No. 1394 of 2024

Robinson

... Petitioner

Vs.

Georgemani

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A. No. 867 of 2023 in O.S. No. 71 of 2022 on the file of the learned District Munsif, Sathankulam, dated 07.12.2023 and allow this civil revision petition.

For Petitioner : Mr. T.Augustine Ebenezer

For Respondent : Mr. M.P.Senthil



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ORDER

This Civil Revision Petition invoking under Article 227 of the Constitution of India has been filed challenging the order dated 07.12.2023 in I.A. No. 867 of 2023 in O.S. No. 71 of 2022 (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 suit in O.S. No. 71 of 2022 had been filed seeking permanent injunction restraining the Defendant from disturbing the possession of the property said to be owned by the Plaintiff situate in Survey No. 247/2 at Sasthavinallur Village, Sathankulam Union. The Defendant in his Written Statement filed in the suit has resisted the claim of the Plaintiff by asserting that the property claimed by him actually belongs to CSI Church, which has purchased it by Sale-Deed dated 18.08.2008 registered as Document No.998 of 2008 in the Office of the Sub-Registrar, Kommadikottai, and that the Defendant was acting on behalf of the said CSI Church to protect its property, and he does not claim any independent right over the same.



3. In that backdrop, the Defendant had made application in I.A. No. 867 of 2023 for appointment of Advocate Commissioner to inspect the property to substantiate his contentions. In pursuance to the impugned order passed in that application, the Advocate Commissioner has inspected the property and filed his report.

4. The pivotal attack of the impugned order by the Plaintiff is that when the Defendant claims that he is acting only on behalf of CSI Church and does not have any independent right over the property, there was no necessity to appoint the Advocate Commissioner to inspect the property.

5. Having regard to the contentions of the parties to the suit, despite the Defendant pointing out that the property actually belongs to CSI Church, whose rights he was seeking to protect, the Plaintiff has not taken any steps thereafter to amend the plaint for declaring his title to the property against CSI Church and implead it as party. As such, the Defendant has sought to prove his case by requiring the property to be measured in the Commission, which cannot be faulted.



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

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.

7. 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.



- (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.



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- (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 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, the Plaintiff has not been able to show any infirmity in the impugned order warranting interference in the exercise of supervisory jurisdiction by this Court.

In the result, this Civil Revision Petition, which does not deserve to be entertained, is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
NCC : Yes/No
Index : Yes/No
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P.D.AUDIKESAVALU, J.

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TO:

1.The District Munsif, Sathankulam.

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