



C.R.P. (MD) No. 256 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2024

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

C.R.P. (MD) No. 256 of 2024

and

C.M.P.(MD) Nos. 1165 of 2024

1.Saroja

2.Mangalraj

... Petitioners/
Defendants 2 & 3

-VS-

1.Anna Packiyam

2.Daniel

... Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to call for the records relates to the petition order dated 14.12.2023 passed in I.A.No.02 of 2023 in O.S. No.70 of 2023 on the file of the District Munsif Court, Alangulam and set aside the same by allowing this Civil Revision Petition.

For Petitioners : Mr. S.Balamurugan

For Respondents : Mr. A.Haja Mohideen

ORDER

This Civil Revision Petition invoking under Article 227 of the Constitution of India has been filed challenging the order dated 14.12.2023 in I.A. No. 2 of 2023 in O.S. No. 70 of 2023 on the file of the District Munsif Court, Alangulam (hereinafter referred to as 'the Trial Court' for short).



C.R.P. (MD) No. 256 of 2024

2. The parties are hereinafter referred to as by the description in the suit in O.S. No. 70 of 2023 before the Trial Court for the sake of clarity and convenience.

3. Heard Mr. S.Balamurugan, Learned Counsel for the Second and Third Defendants and Mr. A.Haja Mohideen, 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. 70 of 2023 has been filed seeking a declaration of ownership of the plaintiff in respect of Schedule – I property and for consequential mandatory injunction to remove the encroachment in Schedule – II property (which forms part Schedule – I property) to the plaintiff in the suit. The Trial Court by order dated 14.12.2023 in I.A. No. 2 of 2023 filed by the plaintiff has appointed the Advocate Commissioner to inspect the property along with the Taluk Surveyor to ascertain whether there is any encroachment in Schedule – II property as claimed by the Plaintiff in the suit, which is assailed in this Civil Revision Petition by the Second and Third Defendants.

5. 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



C.R.P. (MD) No. 256 of 2024

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.



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- (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



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C.R.P. (MD) No. 256 of 2024

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



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C.R.P. (MD) No. 256 of 2024

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.”



C.R.P. (MD) No. 256 of 2024

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Having regard to the aforesaid legal position, the Second and Third Defendants have not been able to show as to how any prejudice has been caused to them by the impugned order at this pre-decree stage, or that it falls within the limited scope of interference in the exercise of Superintending Jurisdiction that could be exercised by this Court, particularly when Section 105(1) of the Code of Civil Procedure, 1908, reads as follows:-

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.



C.R.P. (MD) No. 256 of 2024

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In the result, the Civil Revision Petition is dismissed. Consequently the connected Miscellaneous Petition is closed. No costs.

05.04.2024

Index : Yes/No
Internet : Yes/No
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To

1. The District Munsif, Alangulam.
2. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P. (MD) No. 256 of 2024

P.D. AUDIKESAVALU, J.

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C.R.P. (MD) No. 256 of 2024

05.04.2024