



C.R.P.(MD)No.508 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.508 of 2024

and

C.M.P(MD)No.2546 of 2024

1.C.Indira

2.C.Kannadasan

3.C.Kalpana

4.C.Kayalvizhi

: Petitioners/Petitioners/
Plaintiffs

Vs.

1.K.Thavamani

2.T.Ilayaraja

: Respondents/Respondents/
Defendants

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.1 of 2023, dated 15.09.2023 in O.S.No.7 of 2023 on the file of the Sub court, Melur, Madurai District.

For Petitioner : Mr.N.Sundaresan



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ORDER

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The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2023, dated 15.09.2023 in O.S.No.7 of 2023 on the file of the Sub court, Melur, Madurai District, dismissing the petition filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

2. The revision petitioners as plaintiffs have filed the suit in O.S.No.7 of 2023 to declare that the sale deeds, dated 16.09.1970 and 16.12.2020 are null and void and not binding on the plaintiffs and for recovery of possession of the schedule 1 and 3 of the suit property.

3. The plaintiffs have also filed an application claiming temporary injunction restraining the defendants from in any way alienating the suit property, pending disposal of the suit. The respondents/defendants have filed their counter statements. During enquiry, the plaintiffs have produced and exhibited four documents as Ex.P.1 to Ex.P.4 and the respondents have produced and exhibited 11 documents as Ex.R.1 to Ex.R.11. The learned Subordinate Judge, Melur, upon considering the pleadings and the evidence and on hearing the arguments of both the sides, has passed the



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impugned order, dated 15.09.2023, dismissing the injunction petition.

Aggrieved by the order of dismissal, the plaintiffs, invoking Article 227 of the Constitution of India, have preferred the present revision.

4. At the outset, it is pertinent to note that any order passed under Rule 1, Rule 2, Rule 2(a), Rule 4 or Rule 10 of the Order 39 is an appealable order under Order 43 of C.P.C.

5. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others* reported in **2019 9 SCC 538**, wherein the Hon'ble Apex Court has specifically held 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, 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 Code of Civil Procedure itself and the relevant passages are extracted hereunder :



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“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 2 (2003) 6 SCC 675 3 (2015) 5 SCC 423 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.”

6. In the case on hand, the the petitioner has not given any special or specific reason for invoking Article 227 of the Constitution of India without availing the statutory appeal remedy. Hence, this Court has no hesitation to hold that the Civil Revision under Article 227 of the Constitution of India is not maintainable and as such, the same is liable to be dismissed.



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7. In the result, the Civil Revision Petition is dismissed. The petitioners are at liberty to prefer an appeal before the appropriate Court, if so advised. Consequently connected Miscellaneous Petition is closed. No costs.

26.02.2024

das

Note : Registry is directed to return the original petition filed along with the civil revision petition, after getting necessary acknowledgement.

To

- 1.The Sub Judge, Melur,
Madurai District.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Order made in
C.R.P.(MD)No.508 of 2024
and
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Dated : 26.02.2024