



C.R.P.(MD)No.610 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 22/03/2024

Date of Pronounced : 20/06/2024

**CORAM**

The Hon'ble Mr.Justice **G.ILANGO VAN**

**C.R.P(MD)No.610 of 2022**

**and**

**CMP(MD)No.2512 of 2022**

Kandhasay : Petitioner/5<sup>th</sup> Defendant

Vs.

1.K.Duraisamy : 1<sup>st</sup> Respondent/Plaintiff

2.Gunaseelan

3.Venkateswaran

4.Vigneshwaran

5.R.Premavathi

: Respondents 2 to 5/  
Defendants 1 to 4

**PRAYER:-**Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the entire records relating to proceedings filed in – O.S.No.379 of 2021 on the file of the District Judge, Tiruchirapalli and strike off the same and pass such other or other orders.

For Petitioner : Mr.S.R.Rajagopal  
Senior Counsel  
for Mr.VR.Shanmuganathan

For 1<sup>st</sup> Respondent : Mr.P.Thiyagarajan  
for Mr.K.S.Kathiravan

For R2 to R4 : No appearance

For 5<sup>th</sup> Respondent : Mr.R.Shankar Ganesh



## **ORDER**

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This civil revision petition has been filed seeking to strike off the proceedings filed in O.S.No.379 of 2021 on the file of the District Judge, Tiruchirapalli.

### **2.The facts in brief:-**

Suit in O.S.No.319 of 2021 was filed by the respondents herein with the following averments:-

The property comprised in Survey No.4/2 in Abishekapuram Village, Trichy, measuring about 69 acre and 24759 sq. feet was registered in the name of 27 persons as per the Town Survey Re-Settlement Register. Each pattadarar have 2.56 acres. Later the survey number was changed as T.S No.5/1A1A1A/1A1 and other sub divisions. The plaintiff is concerned with T.S.No.5/1A1A1A/1A1. The 12<sup>th</sup> Pattadars namely Valliammal had 2.46 acres. She was in possession of the above said extent with specific boundaries. Renga Mazhavarayar-Valiammal had no children. After the death of Valiammal, it devolved upon her husband and he is in possession as absolute owner. After his death, it devolved upon the 2<sup>nd</sup> wife namely Pondhai Ammal and her daughter namely Pitchai Ammal. Pothai Ammal died leaving Pitchai Ammal. Pitchai Ammal had three daughters. They were in possession



and enjoyment of the property and executed 9 registered sale deeds in favour of Afsal Hussain, Anwar Hussain, Akthar Hussain, all are sons of Late Sathar Sahib through separate sale deeds. Apart from that, 21 cents were sold by Pitchai Ammal and three daughters to one Mallikunnissa. Later Afsal Hussain, Anwar Hussain, Akthar Hussain sold their respective properties in favour of several persons as detailed in the plaint. So the predecessors namely Sarangan, Rengarai, Thiyagaraj, Kulothungam, Akila, Ramamoorthy, Ilamathi, Balasubramanian, Natarajan and Ponnusamy became the absolute owners of the property comprised in Survey No.4/2 corresponding to New TS No. 5/1A1A1A/1A1. The above said persons executed a power of attorney in favour of Balasubramanian as detailed in the plaint. Balasubramanian on behalf of the Principal sold an extent of 1.91 Acres to the plaintiff, his son namely Gunaseelan, Venkateshwaran, Vigneshwaran, his daughter Premavathi and Pushapavathi, who are arrayed as the defendants 1 to 4. Chitta, patta and adangal were also transferred in their name. Later the plaintiff settled his undivided 1/5<sup>th</sup> share in favour of the first defendant on 29/06/2007. Later Pushpavathi also executed a settlement deed in favour of the plaintiff on 21/06/2013. Acquisition proceedings were taken by the Land Acquisition Officer, Trichy. That was challenged by the 5<sup>th</sup> defendant by filing Writ Petition in WP(MD)No.9677 of 2007 and



in the writ petition, the 5<sup>th</sup> defendant has stated that he has purchased an extent of 12.21 Acres in TS No.5/1, 5/24 to 5/33. That application was dismissed on 06/07/2007. The 5<sup>th</sup> defendant got the survey number changed as Survey Nos.5/30, 5/31, 5/32 and 5/33. Later got the sale deed in his favour. But this happened prior to the purchase made by the plaintiff. Now the 5<sup>th</sup> defendant claims right over the property of the plaintiff and the defendants 1 to 4.

3.The plaintiff and the defendants namely the defendants 1 to 5 filed a suit in OS No.228 of 2009 on the file of the III Additional District Munsif, Trichy to declare that the sub divisions made are invalid and for declaration that the patta in favour of the 5<sup>th</sup> defendant is not valid.

4.The 5<sup>th</sup> defendant later filed CRP(MD)(PD)Nos.1181 of 2018 and another CRP(MD)(MD)No.1182 of 2018 before this Bench. The suit filed was also struck off stating that no declaratory relief is sought. Against that, the plaintiff and others filed SLP Nos.12470 of 2019 and 12471 of 2019 before the Hon'ble Supreme Court. That were dismissed granting liberty to them to pursue the remedies which are available to them.



5.Patta granted in favour of the 5<sup>th</sup> defendant is not valid in law. It was issued behind their back. The 5<sup>th</sup> defendant also similarly purchased the properties from others by mentioning the old survey numbers. The suit is laid for partition and separate possession of the plaintiff's 1/5 share ad for consequential injunction.

6.Pending further process, this revision is filed under Article 227 of the Constitution of India to strike off the plaint on the ground that it is a clear case of *res-judicata* since there is a clear abuse of process of court without approaching the trial court under Order 7 Rule 11 CPC, this petition is maintainable.

7.Before going into the factual aspect in this matter, the first question is to be decided is whether a petition in the form of Revision under Article 227 of the Constitution of India will lie directly for rejection of plaint before this Court without invoking the jurisdiction of the trial Court under Order 7 Rule 11 of Civil Procedure Code.

8.This question remains the matter for consideration from the inception of Indian High Courts Act, which is also known as Charter Act, 1861 and has evolved and again through various developments in the



form of Legislative enactments and judicial pronouncement. Still the issue goes on. Let us briefly survey the development of law on this point, as has been elaborately discussed by the Allahabad High Court in the case of ***Ram Roop v. Biswa Nath*** reported in ***AIR 1958 All. 456***, had traced the origin as mentioned about the Indian High Courts Act, 1861. Later, came the Civil Procedure Code, 1877, wherein the revision powers were conferred upon the High Courts, that too restricted only in certain circumstances. One, when the Subordinate Court exercise the jurisdiction not vested in it or failed to exercise the jurisdiction.

9.Later came the new Act namely the Code of Civil Procedure, 1908. When the Original Act namely Civil Procedure Code of 1908, there was no provision in Section 115 of Civil Procedure Code. Later the Government of India Act, 1915, was enacted. Section 107 conferred power of Superintendents to the High Courts.

10.The question whether the power of Superintendents will include the power of judicial Superintendents also involved and finally now confirmed that it includes the judicial Superintendents also.



11. Again another problem arose when specific provision under Section 115 of the Civil Procedure Code is available, whether the power under Article 227 of the Constitution of India can be invoked also become the process of evolution. So it was answered by Two Judges Bench of the Honourable Supreme Court in the case of ***Surya Dev Rai vs. Ram Chander Rai & Ors***, reported in ***AIR 2003 SC 3044*** that in spite of amendment by the Amendment Act 46/1999 w.e.f. 01.07.2002, Section 115 of C.P.C. will not affect the jurisdiction conferred upon the High Court under Article 226 and 227 of the Constitution of India. And this was clarified by Honourable Three Judges Bench of the Honourable Supreme Court in the case of ***Radhey Shyam and Ors. Vs. Chhabi Nath and Ors.*** reported in ***MANU/SC/0200/2015***. Paragraph No.22 of the Judgment can be extracted for better appreciation.

*“22. The Bench in **Surya Dev Rai** also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Article 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in Para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 Code of Civil Procedure by Act 46*



of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including **Waryam Singh and Anr. vs. Amarnath and Anr.**, MANU/SC/0121/1954; AIR 1954 SC 215 ; 1954 SCR 565, **Ouseph Mathai vs. M. Abdul Khadir** MANU/SC/0718/2001 : 2002(1) SCC 319, **Shalini Shyam Shetty vs. Rajendra Shankar Patil** MANU/SC/508/2010: 2010 (8) SCC 329 and **Sameer Suresh Gupta vs. Rahul Kumar Agarwal** MANU/SC/0555/2013 : 2013 (9)SCC 374. In **Shalini Shyam Shetty**, this Court observed :

“64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.



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65. *We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.*

66. *We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in Surya Dev and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.*

67. *As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil*



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*and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their jurisdiction will adhere to them strictly.” (emphasis added)”*

12.Now it has been clarified that the power of Superintendents under Article 227 of the Constitution of India has not extended or expanded the power. Under what circumstances Article 227 of the Constitution of India can be invoked has already been settled, which requires no repetition.

13.Now this case is on the one line of the issue where some orders passed by the trial Court.



14. Another line of petitions are with reference to the striking off of the Constitution of India without proper application under Order 7 Rule 11 of C.P.C. before the concerned trial Court and this also become the process of evolution.

15. In some cases such a power was exercised directly and matters were dealt by the High Courts. But, again this was not approved by the Supreme Court. The power under Article 227 of the Constitution of India in a like manner was decided by the Honourable Supreme Court in the case of ***Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil***, reported in ***2011 (1) CTC 854 (SC)***. Wherein, it has been held as follows:

*“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:*

*(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.*

*....*

*(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*



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*tribunals or courts inferior to it. Nor can it, 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.*

...

*(e). According to the ratio in Waryam Singh V. 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.*

.... ...

*(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.*

...

(o). *An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."*

16.Perhaps *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil* was followed in *Radhey Shyam and Ors. Vs. Chhabi Nath and Ors.* referred above.

17.By referring to this judgment the Co-ordinate Bench of this



Court in a Judgment in the case of ***T.K.Chithran V. C.Samsari @***

***Chithran and Ors.*** reported in **2015(3) CTC 485**, after relying upon the

*Shalini Shyam Shetty's case*, observed as follows:

*“13. From the above decision, it is clear that power under Article 227 of the Constitution of India has to be exercised sparingly and only in appropriate cases, where judicial conscience of this Court dictates it to act lest a gross failure of justice would occasion. This Court in exercise of power under Article 227 of the Constitution of India having supervisory jurisdiction will not convert itself into an appellate Court and appreciate or evaluate the facts by itself and draw inference. In my considered view, the remedy open to the petitioner is to move the same Court where the suits are filed under Order 7 Rule 11 of the Code of Civil Procedure and make out the applicability of the ingredients of the said Rule. Without doing so, the petitioners cannot be permitted to rush to this Court.”*

18.Now, we will also go further to the judgment of the Honourable Supreme Court made in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society & Ors.*** in ***Civil Appeal No.7764 of 2019***. The Honourable



Supreme Court by relying upon the judgment of the Honourable Supreme

Court in the case of ***A.Venkatasubbiah Naidu Vs. S.Chellappan & Ors.***,

made the following observation:

*“13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi judicial authorities and tribunals. In respect of cases falling 1 (2000) 7 SCC 695 under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai vs. Ram Chander Rai<sup>2</sup>, pointed out in Radhey Shyam Vs. Chhabi Nath<sup>3</sup> that “orders of civil court stand on different footing from the orders of authorities or Tribunals or courts*



*other than judicial/civil courts.*

*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.”*

19. So, this observation throws much light upon the issue now. No more interpretation by this Court is required except making further observation of judgment of this Co-ordinate Bench of this Court in the case of ***M.Kishanlal and another Vs. K.Pushpavalli @ Elizabeth Pushpavalli and others*** made in ***C.R.P.(PD).No.1512 of 2021*** dated 05.01.2022, the following observation has been made in paragraph No.3.

*“3. The Hon’ble Supreme Court as well as this Court have repeatedly held that Order VII Rule 11 of the Code of Civil Procedure is not exhaustive and a plaint can be rejected on grounds other than the ones enumerated Order VII Rule 11 also. The*



*Hon'ble Supreme Court in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others v. Tuticorin Educational Society and Others, reported in (2019) 9 SCC 538, has held that the High Court will refrain from exercising jurisdiction under Article 227 of the Constitution of India, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, when a remedy under the code of Civil Procedure is available to the party approaching the High Court. I am therefore of the considered opinion that this is not a fit case to exercise jurisdiction under Article 227 of the Constitution of India."*

20. So this line of judgments are against invoking the Article 227 of the Constitution of India directly when alternative remedy is available.

21. Another line of judgments are also available quite opposite to this. We can also briefly survey those judgments to keep the record and discussion complete. ***Azhar Hussain V. Rajiv Gandhi, 1986 (Supp) SCC 315***, wherein, it has been held that when the pleadings show that clear abuse of the process of the law, causing embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law.



22.Further in *K.K.Modi Vs. K.N.Modi, 1998 (3) SCC 573;*

*Lakshmi V. Prasanna Mani, 2011 (2) MWN (Civil) 363; Ranipet Municipality rep. by its Commissioner and Special Officer, Ranipet V. M.Shamsheerkhan, 1998 (1) CTC 66; Tamil Nadu Handloom Weavers'Co-operative Society Vs. S.R.Ejaz., rep. by his Power Agent, Muralidhar T. Balani, 2009 (5) CTC 710;* has held that revision can be directly filed when there is case of abuse of process of the law and re-litigation.

23.Further in *Maria Soosai and another Vs. Esakkiammal,* reported in *1999 (1) LW 227,* the following observation is made.

*“The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.”*

*“Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely*



*groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts' discretion whether such proceedings should be stopped or not.”*

24. But, now as mentioned above, that position was clarified by the Honourable Supreme Court in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society & Ors.* holding the field now when alternative and efficacious remedy is available it is nothing but proper on the part of the High Court to direct the revision petitioner to approach the trial Court by filing proper petition under Order 7 Rule 11 of CPC.

25. In the light of the above said development, let us go to the argument advanced on either side.

26. The learned Senior Counsel appearing for the petitioner would be referring to the judgment of the Hon'ble Supreme Court in *K.K. Modi Vs. K.N. Modi* [1998(3) SCC 573] and other judgments to impress upon the Court that the civil revision petition is maintainable before this court



without approaching the trial court under Order 7 Rule 11 CPC. When there is a clear abuse of process of court, I have dealt the matter above.

So it does not require any repetition.

27.The learned Senior Counsel appearing for the petitioner is referring to para 3 of the plaint. The concluding sentence reads that the original survey No.4/2 was sub-divided as TS No.5/1A1A1A/1A1 and no sub-divisions. The subject matter of the property is situated in TS No. 5/1A1A1A/1A1. He is also referring to para 6 of the plaint, which deals about the sale effected in respect of this property which is also repeated in para 7 and the concluding last sentence in para No.9 and would submit that the patta was also referred in the previous suit and para 15 which deals about the filing of the suit in OS No.2010 on the file of the District Munsif, Trihey and para No.18 regarding the order passed by this court in CRP(MD)No.1181 of 2018 and CRP(MD)No.1182 of 2018.That was struck off by the order dated 02/08/2018. The order passed in SLP No. 12470 of 2019. SLP was dismissed, of course granting liberty to the plaintiff to pursue the remedies, which are now available.

28.The learned Senior Counsel appearing for the petitioner would submit that in this context the remedy available to the plaintiff is only to



sue against their vendors and not certainly, the petitioner herein. So according to him, it is nothing, but an attempt on the part of the respondents to re-litigate the matter, which was already concluded. He was also referring the order passed by this court in the above said CRPs and would contend that in more than one stage, this court has pointed out that the remedy itself is barred by limitation. Without seeking any declaratory relief, now they want to sustain the suit in OS No.228 of 2009. By pointing out this categorical finding by this court, which was also confirmed by the Hon'ble Supreme court, it is contended that it is a clear abuse of process of court and law. As stated above, the respondents can only proceed against their vendors.

29.Per contra, the learned counsel appearing for the respondents would submit that in the earlier suit and CRPs, the title of the parties were not discussed and decided. There is an observation in the CRP order. The cause of action for the present suit arose after the dismissal of the earlier suit. The title is disputed by the parties. Neighbours also filed suits and they are also pending. So according to him, valuable right available over the title should not be a matter for consideration by this court in this petition.



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30. But however, in view of the above settlement of law, I am of the considered view that liberty may be granted to the petitioner to move appropriate application before the trial court under Order 7 Rule 11 CPC, if so advised. On that ground, without going into the merits of the argument advanced on either side, this civil revision petition is liable to be dismissed.

31. For that purpose, I am not going to the factual aspects now and the arguments advanced on either side. If any observation or discussion is made on the factual aspects, it may cause unnecessary issues, some times prejudicial in nature. It may affect the free mind of the parties and as well as Presiding Officer, who is going to deal this matter. So I am avoiding the discussion on factual aspects and the arguments advanced by both sides, direct the revision petitioner to approach the trial Court by filing proper petition under Order 7 Rule 11 application.

32. With this directions and liberty, this civil revision petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

20/06/2024



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Index: Yes/No

Internet: Yes/No  
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To,

1. The District Court,  
Trichy.
2. The Section Officer,  
ER/VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**G.ILANGOVA, J.**

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