



C.R.P. (MD) No. 1009 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2024

CORAM

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

C.R.P. (MD) No. 1009 of 2024

and

C.M.P. (MD). No. 5487 of 2024

1. T.J.Prakash

2. T.J.Ramesh

3. T.J.Jegadeesh

... Petitioners / Respondent Nos. 1 to 3
/ Plaintiffs

-vs-

1. J.Arokia Roche Mary

2. M.Selvaraj

... Respondent Nos. 1 & 2 / Petitioners
/ Defendant Nos. 2 & 3

3. The Commissioner,
Madurai Corporation,
Anna Maligai,
Madurai.

... 3rd Respondent / 4th Respondent
/ 1st Defendant

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, to set aside the fair and decreetal impugned order dated 01.08.2023 passed in I.A. No.493 of 2022 in O.S. No. 363 of 2021 on the file of the Principal District Munsif, Madurai Town.

For Petitioner : Mr. K. Hemaraj



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ORDER

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This Civil Revision Petition invoking under Article 227 of the Constitution of India, 1950, has been filed against the order dated 01.08.2023 in I.A. No. 493 of 2022 in O.S. No. 363 of 2021 (hereinafter referred to as the 'impugned order' for short) passed by the Principal District Munsif Court, Madurai Town (hereinafter referred to as the 'Trial Court' for short).

2. The parties are hereinafter referred to as by the description in the proceedings in O.S. No. 363 of 2021 before the Trial Court for the sake of clarity and convenience.

3. Heard Mr. K.Hemaraj, Learned Counsel for the Plaintiffs and perused the materials placed on record apart from the pleadings of the parties.

4. The First Defendant has sent a notice dated 12.08.2021 to the Plaintiff requiring him to remove the encroachment made by him on the public pathway belonging to the Corporation of Madurai. The suit in O.S. No. 363 of 2021 was filed by the Plaintiff seeking declaration that the said notice sent by the First Defendant was void and unenforceable, and had sought for declaration of title to the said property and consequential injunction restraining the Defendants



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from preventing him from making construction in that property. The Second and Third Defendants have filed a counter-claim in the said suit seeking mandatory injunction against the Plaintiff to remove the encroachment made by him in the property and to restrain the Plaintiff from in any way interfering with the peaceful enjoyment of their rights of ingress and egress of the said public pathway for the effective use of their property. The application in I.A. No. 493 of 2022 filed by the Second and Third Defendants to appoint Advocate Commissioner to inspect the property and submit report was allowed by the impugned order.

5. The pivotal attack on the impugned order by the Second and Third Defendants is that the evidence cannot be collected through a Commission by the parties relying on the following decisions of this Court:-

(a) ***T.K.Krishnamurthy -vs- Tamil Nadu Water and Drainage Board,***
[(2006) 5 CTC 178];

(b) ***Palanivel and another -vs- Nagarajan,*** CRP. (PD). No. 2029 of 2016;

(c) ***Sri S.C.Padmanarayana -vs- The Secretary, Barandur Gram Panchayath, Barandur Village,*** Writ Petition No. 1351 of 2020 (GC-CPC);



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(d) ***Mohd.Mehtab Khan -vs- Khushnuma Ibrahim Khan*** [(2013) 9 SCC 221]

(e) ***Sarala Jain -vs- Sangu Gangadhar***, 2016 SCC Online Hyd 49; and

(f) ***K.M.A. Wahab -vs- Eswaran***, [(2008) 3 CTC 597].

There cannot be any qualms on the said proposition of law that the contesting parties would have to adduce evidence to prove their respective cases and a Commission cannot be appointed to collect evidence for either of them. In the instant case, the Trial Court has pointed out that the appointment of a Commission has become necessary to verify the factual correctness of the rival contentions of the Plaintiff and the Defendants. In other words, the appointment of the Commission in this case is not intended to collect evidence, but is an exercise to ascertain to truth in order to effectually and completely adjudicate upon the controversy involved in the suit.

6. 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:-



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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 restrain 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.



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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



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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, 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.

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
Internet : Yes/No
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To

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



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P.D. AUDIKESAVALU, J.

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