



WEB COPY



C.R.P. (MD) No. 894 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.04.2024**

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

C.R.P. (MD) No. 894 of 2024
and
C.M.P. (MD) No. 4952 of 2024

Ganesan

... Petitioner/
Defendant

Vs.

Nirmala,
Represented through
her mother as registered Power Agent,
Rathinam.

... Respondent /
Plaintiff

PRAYER: Petition filed under 115 of the Civil Procedure Code, 1908, to set aside the fair and decreetal order dated 29.01.2024 made in E.P. No. 24 of 2017 in O.S. No. 158 of 2015 on the file of the District Munsif, Uthamapalayam, by allowing this Civil Revision Petition.

For Petitioner : Mr. K.Guhan

For Respondent : Mr. D.Saravanan



C.R.P. (MD) No. 894 of 2024

ORDER

WEB COPY

This Civil Revision Petition invoking Section 115 of the Civil Procedure Code, 1908, has been filed against the order dated 29.01.2024 in E.P. No. 24 of 2017 in O.S. No. 158 of 2015 (hereinafter referred to as the 'impugned order' for short) passed by the District Munsif, Uthamapalayam (hereinafter referred to as the 'Trial Court' for short).

2. The parties are hereinafter referred to as per their description in the suit in O.S. No. 158 of 2015 before the Trial Court for the sake of clarity and convenience.

3. Heard Mr. K.Guhan, Learned Counsel for the Defendant and Mr. D.Saravanan, Learned Counsel for the plaintiff, and perused the materials placed on record, apart from the pleadings of the parties.

4. The suit in O.S. No. 158 of 2015 has been filed seeking declaration of title to the property and recovery of its possession from the Defendant in which an *exparte* decree dated 28.07.2016 was passed. In the execution proceedings in E.P. No. 24 of 2017 filed by the Plaintiff, the Defendant raised



an objection that the property is not within four boundaries mentioned in the schedule to the plaint in the suit, but it was overruled by the impugned order.

5. It is settled position of law that Execution Court cannot go beyond the decree under execution as reiterated by the Hon'ble Supreme Court of India in ***S.Bhaskaran v. Sebastian*** [(2019) 9 SCC 161]. As rightly pointed out by the Trial Court, the *exparte* decree passed on 28.07.2016 has become final in the absence of any application to set it aside or any appeal against it. The Plaintiff cannot be indefinitely denied the fruits of the decree obtained. In such circumstances, it is not possible to entertain the belated objections raised by the Defendant at the execution stage of execution proceedings. It is needless to clarify here that the Plaintiff is entitled to execute the decree for recovery of possession of the property as described in the schedule to the plaint in the suit.

6. 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:-

WEB COPY

- (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.



- (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.



WEB COPY



C.R.P. (MD) No. 894 of 2024

- (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.



WEB COPY



C.R.P. (MD) No. 894 of 2024

- (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



C.R.P. (MD) No. 894 of 2024

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, the Civil Revision Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

05.04.2024

Index : Yes/No
NCC : Yes/No
sm

8/10



C.R.P. (MD) No. 894 of 2024

TO:

WEB COPY

1.The District Munsif, Uthamapalayam.



WEB COPY



C.R.P. (MD) No. 894 of 2024

P.D.AUDIKESAVALU, J.

Sm

C.R.P. (MD) No. 894 of 2024

05.04.2024