



C.R.P. (MD) No.906 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **05.04.2023**

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

C.R.P. (MD) No. 906 of 2024
and
C.M.P. (MD) No. 4983 of 2024

S.Radha

... Petitioner

Vs.

P.Thavamani

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, to strike off the impugned plaint in O.S. No. 31 of 2021 pending on the file of the learned District Munsif Court, Theni.

For Petitioner

: Mr. P.M.Vishnuvarthanan



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ORDER

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This Civil Revision Petition invoking under Article 227 of the Constitution of India has been filed to strike-off the plaint in O.S. No. 31 of 2021 on the file of the District Munsif Court, Theni (hereinafter referred to as the 'Trial Court' for short) under Rule 1 of Order VII of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC' for short).

2. The parties are hereinafter referred to as by the description in the suit in O.S. No. 31 of 2021 before the Trial Court for the sake of clarity and convenience.

3. Heard Mr. P.M.Vishnuvarthanan, Learned Counsel for the Defendant and perused the materials placed on record apart from the pleadings of the parties.

4. Before proceeding further, it must be recapitulated here that the Hon'ble Supreme Court of India in *Virudhunagar Hindu Nadargal Dharma*



Paribalana Sabai -vs- Tuticorin Educational Society [(2019) 9 SCC 538]

has examined the question relating to maintainability of a Civil Revision Petition directly invoking the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India in the following words:-

“13. 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 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.”

5. In the context of the present case, it must be pointed out that clause (d) of Rule 11 of Order VII of CPC empowers the Trial Court to reject the plaint where it appears from the statement made in it that the suit is barred by any law. That apart, Rule 2 of Order XIV of CPC reads as follows:-



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“Court to pronounce judgment on all issues.—

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

- (a) the jurisdiction of the Court, or
- (b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

Further, the Hon'ble Supreme Court of India in ***K.K. Modi -vs- K.N. Modi***, [(1998) 3 SCC 573] has observed as follows:-

“42. Under Order 6 Rule 16, the court may, at any stage of the proceeding, order to be struck out, inter alia, any matter



in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the *Code of Civil Procedure*, (15th Edn., Vol. II, p. 1179, note 7) has stated that power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of the court on the basis of what is stated in the plaint.

43. *The Supreme Court Practice 1995* published by Sweet & Maxwell in paragraphs 18/19/33 (p. 344) explains the phrase “abuse of the process of the court” thus:

“This term connotes that the process of the court must be used bona fide and properly and must not be abused. 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.”

44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as *res judicata*. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely



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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 the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.

Moreover, the Hon'ble Supreme Court of India in the decision in ***S.P. Chengalvaraya Naidu -vs- Jagannath*** [(1994) 1 SCC 1] has observed as follows:-

“5. ...The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the



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court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

6. Having due regard to the aforesaid legal position, it has not been demonstrated before this Court that the Defendant has been impeded from canvassing what is sought to be agitated in this Civil Revision Petition by resorting to the available legal remedies before the Trial Court itself as explicated supra and the Memorandum of Grounds of Revision is also bereft of details in that regard.

7. In such circumstances, Learned Counsel for the Defendant seeks permission of the Court to withdraw the Civil Revision Petition reserving the right of the Defendant to raise all her contentions in an appropriate application for rejection of plaint before the Trial Court, and depending upon its outcome, to determine the further course of action in accordance with law. He has also made an endorsement to that effect in the court record.



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In fine, the Civil Revision Petition is dismissed as withdrawn with the aforesaid clarification. Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No
NCC : Yes/No
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To

1. The District Munsif Court, Theni.



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P.D.AUDIKESAVALU,J.

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