



C.R.P.(MD)No.2169 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 07.12.2024

PRONOUNCED ON: 08.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2169 of 2023

and

C.M.P.(MD)No.10899 of 2023

1.Prabhakaran
2.Rasiya Begam
3.Saleem
4.Thaj Nisha

: Petitioners/Defendants

Vs.

Rafeek Raja

:Respondent//Plaintiff

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.69 of 2023, on the file of the District Munsif Court, Nilakottai.

For Petitioner : Mr.S.M.Ramasiva

For Respondent : Mr.M.M.Iqbal



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ORDER

The Civil Revision Petition has been filed invoking Article 227 of the Constitution of India seeking orders to strike off the plaint in O.S.No.69 of 2023, on the file of the District Munsif Court, Nilakottai.

2. The revision petitioners are the defendants. The respondent as the plaintiff has filed the above suit seeking permanent injunction restraining the defendants and their men from in any manner disturbing or interfering with the plaintiff's peaceful possession and enjoyment of the suit property as lessee and also for mandatory injunction restraining the defendants from evicting the plaintiff from the suit property illegally.

3. The case of the plaintiff is that the properties situated in S.Nos.244/4, 245, 246/2, 244/5 and 326/3 of Santhiyur Village, Nilakkottai Taluk were allotted to the share of one Mohammed Ibrahim and patta was issued in his favour, that after the death of the



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said Mohammed Ibrahim, his son Abdul Azees has become the owner of the said properties and UDR patta in patta No.66 was issued to him, that the said Abdul Azees sold the properties situated in S.Nos.244/4, 245, 246/2 to Nagarajan and Ashokkumar, vide sale deed dated 15.07.1994, that the said Abdul Azees has been in possession and enjoyment of the property in S.No.326/3, 0.20.0 Hectare in patta No.1704 and by paying kist, that the said Abdul Azees was working as an Office Assistant in Agricultural office at Iyyampalayam, Athur Taluk till 2015 and at that time, he was cultivating the said lands, that since he was transferred to Madurai in 2015, he had leased out the said land to his relative Rafeek Raja – plaintiff herein and the plaintiff by cultivating the land, has been paying yearly lease amount to the said Abdul Azees, that the plaintiff had spent more than Rs.50,000/- for putting up a panthal and Rs.37,000/- for laying PVC pipeline, that meanwhile, the legal heirs of Sheik Mydeen Rawthor – brother of Mohamed Ibrahim, had applied for transfer of patta in respect of the suit property before the Revenue Divisional Officer, that the petition was forwarded to the Tahsildar, Nilakottai and patta was transferred in the name of the defendants 2 to 4 – children of Akbar Ali, that the defendants 2 to 4



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had executed a sham and nominal sale deed dated 24.03.2023 without any consideration in favour of the first defendant by giving four boundaries fraudulently and that the defendants, with the help of the sale deed dated 24.03.2023, have been attempting to evict the plaintiff from the suit property from 25.05.2023 onwards and that therefore, the plaintiff was constrained to file the above suit.

4. The case of the revision petitioners / defendants is that Mohamed Ibrahim and Sheik Mydeen Rawthor are brothers, that Mohamed Ibrahim had a son by name Abdul Azees and whereas Sheik Mydeen Rawthor had three sons viz., Sagul Ameen, Mohamed Ali and Akbar Ali and a daughter Sheiyad Ali Fathima, that Sheik Mydeen Rawthor had purchased the suit property from one Ponnaiyamani vide document No.481/1962, an extent of 1.46 acres of land in S.No.326 of Sandhaiyar Village, Nilakottai Taluk, that the said property has been settled in favour of Akbar Ali, who is the father of the defendants 3 and 4 and the husband of the second defendant and after death of Akbar ali to his legal heirs, that the said Akbar Ali had mortgaged the said property with Canara Bank, Viruveedu branch and the Canara Bank had initiated a civil suit



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against the legal heirs of the said Akbar Ali in O.S.No.177 of 2010 before the Principal Sub court, Dindigul, then the matter was settled between the legal heirs of Akbar Ali and Canara Bank, that the said property was given back to the legal heirs of Akbar Ali, that during the pendency of the above suit in O.S.No.177 of 2010, Abdul Azees with malafide intention had obtained patta fraudulently in Patta No. 1704 without the knowledge of the defendants 2 to 4, that the said Abdul Azees after getting patta, had taken possession of the property, that the defendants 2 to 4 had immediately lodged a complaint before the Revenue Divisional Officer, Nilakottai and before the Taluk Tahsildar, that the Taluk Tahsildar had conducted a detailed enquiry and found out the fraudulent act of the said Abdl Azees and passed a detailed order, that the defendants 2 to 4 sold the property to the first defendant, vide sale deed dated 24.08.2023 and applied for survey of his land, that he also approached the High Court in CrI.O.P.(MD)No.11716 of 2023 and the property was surveyed, that the suit filed by the respondent/plaintiff is not only absurd, but also malafide and it is a clear abuse of process of law, that the same would deefinitely prejudice the revision petitioners,



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that the action of the respondent/plaintiff in filing the above suit is an illegal act and as such, the same is liable to be struck off.

5. Before entering into further discussion, it is necessary to refer the legal position with regard to the striking off plaint under Article 227 of the Constitution of India. Any defendant can seek rejection of plaint on showing any of the grounds as contemplated under Order 7 Rule 11 C.P.C., and can also seek striking off the plaint before the High Court under Article 227 of the Constitution of India for the grounds not contemplated under Order 7 Rule 11 C.P.C. It is pertinent to note that when a defendant invokes Article 227 of the Constitution of India, the requirement to struck off the plaint is more than what is required to reject the plaint under Order 7 Rule 11 C.P.C. If filing of the suit itself is a clear abuse of process based on the plaint averments and the admitted facts of the plaintiffs, this Court can very well invoke Article 227 of the Constitution of India to strike off the plaint. If it is established that the suit has been filed as an abuse of process of Court, in order to prevent the abuse of process of Court and to avoid miscarriage of justice, this Court has to necessarily order strike off the plaint. It is pertinent to note that



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when there is abuse of process of Court or filing the suit itself is contrary to justice and against public policy, this Court can very well exercise its power under Article 227 of the Constitution of India. If the suit is frivolous or vexatious, as per the pleadings of the plaintiff and the Court process is being wasted, then this Court can intervene under the said Article. It is also settled law that the jurisdiction under the Article 227 of the Constitution of India should be exercised sparingly and the plaintiff could be struck off only in the rarest cases when there is clear abuse of process of law and the Court and the Hon'ble Supreme Court in ***K.K.Modi Vs. K.N.Modi and others*** reported in ***1998(3) SCC 573***, has specifically held that the petition filed under Article 227 of the Constitution of India has to be allowed to prevent abuse of process of law and to meet the ends of justice.

6. Bearing the above legal position in mind, let us consider the case on hand. It is not in dispute that Mohamed Ibrahim and Sheikh Mydeen Rawthor are brothers and that Mohamed Ibrahim had a son by name Abdul Azees and whereas Sheikh Mydeen Rawthor had three sons viz., Sagul Ameen, Mohamed Ali and Akbar Ali and a daughter



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Sheiyad Ali Fathima. The plaintiff has claimed leasehold right in respect of the suit property from Abdul Azees, who in turn is claiming title to the suit property through his father Mohamed Ibrahim. The defendants have claimed title to the suit property through Akbar Ali, who in turn claimed title through his father Sheik Mydeen Rawthor. The revision petitioners/defendants, after narrating the factual aspects, have alleged that the suit filed by the respondent/plaintiff is not only absurd, but malafide and that it is a clear case of abuse of process of law. Even in the affidavit filed in support of the revision petition, the defendants have stated that during the pendency of the suit in O.S.No.177/2010 between Canara Bank and the legal heirs of Akbar Ali, Abdul Azees had obtained patta in patta No.1704 fraudulently and on that basis, he had taken possession of the suit property.

7. It is also not in dispute that Abdul Azees through whom the plaintiff herein has been claiming leasehold right, has filed a suit in O.S.No.246 of 2023 against the revision petitioners/defendants to declare that the suit property is belonging to him and for permanent injunction restraining the defendants from interfering with his



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peaceful possession and enjoyment of the suit property and also to declare that the sale deed dated 24.03.2023 executed by the defendants 2 to 4 in favour of the first defendant herein is invalid, illegal and is not binding on the plaintiff and the same is pending on the file of the District Court, Dindigul.

8. The learned Counsel for the revision petitioner has relied on the decision of this Court in M.Devaprakash Vs. P.P.Devaraj and others in C.R.P.(PD)No.796 of 2016, wherein also the revision was filed to strike off the plaint. The learned Judge of this Court by specifically observing that the averments in the plaint clearly reveals that the suit is barred by Order 2 Rule C.P.C., as well as it is an abuse of process of Court, has allowed the revision and the plaint was ordered to be struck off.

9. But in the case on hand, the revision petitioners have not pleaded any such bar under Order 2 Rule 2 C.P.C., or that is a re-litigation.



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10. On a cursory perusal of the grounds of revision, this Court is at loss to ascertain the grounds on which the revision petitioners are attacking the plaint. In the grounds, the revision petitioners have alleged that the plaintiff has been in illegal possession of the property, that the person in unlawful possession is liable to pay mesne profits and that the ostensible proprietor is not the genuine owner of the property to address the outsiders.

11. As rightly contended by the learned Counsel for the respondent, since the plaintiff has filed the above suit to protect his possession as lessee under Abdul Azees and as such, the plaintiff has to prove that he has been in possession and enjoyment of the suit property. The revision petitioners have nowhere whispered that the plaintiff has abused the process of law / Court. As rightly contended by the learned Counsel for the respondent, the revision petitioners without canvassing any ground or assigning any reason, have sought to strike off the plaint. Since the plaintiff has sought for striking off the plaint without any valid reason or ground, the very revision itself is legally not sustainable.



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12. Considering the entire facts and circumstances, this Court is constrained to say that the very filing of the present revision is a clear abuse of process of law. Consequently, this Court concludes that the revision petition is absolutely devoid of merits and the same is liable to be dismissed with costs.

13. In the result, the Civil Revision Petition is dismissed with costs of Rs.10,000/-(Rupees Ten Thousand Only) payable the revision petitioners / defendant to the Legal Services Authority attached to this Bench within a period of fifteen days from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is also dismissed.

List the matter after four weeks for reporting compliance.

08.03.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To
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1. The District Munsif Court, Nilakottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

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