



C.R.P.(MD)No.2547 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.12.2023

PRONOUNCED ON: 01.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2547 of 2023

and

C.M.P.(MD)No.13171 of 2023

1.K.Shanthi

2.K.Krishnasamy

: Petitioners/Defendants 1 & 2

Vs.

1.The Executive Officer,
City Corporation,
Promenade Road,
Tiruchirappalli.

: 1st Respondent/3rd Defendant

2.K.Doraisamy

3.D.Vigneshwaran

(the respondents 2 and 3 represented by
Power Agent Managing Partner of Crown
property Developers, a registered
partnership Firm J.Stephen) : Respondents 2 & 3/Plaintiffs 1 & 2

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.375/2022, on the file of the Sub Court, Tiruchirappalli.



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For Petitioners : Mr.N.Mohan

For Respondents : Mr.K.R.Kishore Ram
for M/s R.B.Law Associates
for R.1
: Mr.S.Balasubramanian
for R.2 and R.3

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.375 of 2022, on the file of the Subordinate Court, Tiruchirappalli.

2. The revision petitioners are the defendants 1 and 2 and the respondents 2 and 3 through their Power Agent have filed the above suit seeking declaration that the pathway shown as ABCD in the layout plan as well as in the rough plan is a public pathway and the plaintiff has got unfettered right to pass and repass through ABCD from Thanjavur main road on the North to the suit property on the South to and fro as of right and as a consequential relief of permanent injunction restraining the defendants 1 and 2 and their men from disturbing the plaintiffs' right of



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access to pass through ABCD lane to and fro either by obstructing the pathway or in any manner whatsoever and also for mandatory injunction directing the defendants 1 and 2 to remove all obstructions placed in the ABCD pathway, which is nothing but a continuous nuisance, failing which to have the same done through process of Court.

3. The case of the plaintiffs is that they have purchased their property vide sale deed dated 04.06.2010, that they have executed a power of attorney in favour of Crown Property Developers, a registered partnership firm, that the suit property which was purchased as agricultural land has got right of access for all purposes on their northern side through Survey No.2/3A part (old) and new Survey No.2/3B2 in Varaganeri Village, Tiruchirappalli East Taluk in order to have access to the Thanjavur road to and fro, that the property situated in northern side was owned by one Savarinathan and he has plotted out his land and also obtained permission from the Director of Town and Country Planning, that the pathway shown as ABCD is the only access for the plaintiffs to reach the main road to and fro for all purposes and if that pathway is closed, the suit property will become land locked, that the owner of the northern side property seemed to have executed a Will in favour of his



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children, that he has bequeathed unsold plots in favour of his two daughters vide Will dated 29.09.1977, that the said Will was executed by the original owner as per the approved layout plan in favour of his two daughters, that the first daughter who got the plots under the said Will sold out the same to the third party vide sale deed dated 10.12.1981 by quoting the approved lay out plan and the plot numbers, that the second daughter – Mrs.Philomina Thilak who got plots Nos.6, 7, 8 and 9 under the said approved layout, sold out the same by suppressing the Will and approved layout, by including the space left out for pathway in North to South direction and as well as the space earmarked for playground, that the same was purchased by Smt.Josephine Lusi and she had executed a general power of attorney along with Joseph Selvam in favour of one Balakrishnan on 16.04.2002, that the said Power of Attorney Agent sold an extent of 7100 sqft out of 0.34 Acres well within specified boundaries by suppressing the plot numbers and the pathways, playground covered under the lay out to the defendants 1 and 2 on 30.06.2005, that the defendants 1 and 2 started making attempts to block the right of access to the plaintiffs to reach Thanjavur road to and fro from the suit property, that the plaintiffs gave a complaint before the District Collector, who in turn forwarded the same to the Member Secretary, Local Planning



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Authority, Tiruchirapalli, who in turn directed the Commissioner of City Corporation to remove the encroachment committed in the pathways covered under the layout as well as the children playground on 30.01.2016, that the said encroachments were not cleared and the plaintiffs find it very difficult to reach the Thanjavur main road, that the defendants have no right to block the right of access through ABCD, but they are disturbing the plaintiffs right to access by blocking ABCD and that therefore, the plaintiffs were constrained to file the above suit.

4. The defendants 1 and 2, after entering into appearance, has filed the above revision contending that they have purchased the property in S.No.2/3B2B2 measuring 7100sqft for valid consideration on 30.06.2005 and they have been in possession, that the plaintiffs were interfering with the enjoyment of the property claiming that there is a pathway in the western side of S.No.2/3B2B2 to reach his property in the southern side, that the plaintiffs colluded with the then Joint Commissioner and sent a notice on 09.12.2013 to the defendants and the same was challenged in W.P.No.20778 of 2013 and this Court has issued a direction that no action shall be taken without following due process of law, that the defendants have submitted all the relevant documents showing that there



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is no pathway between S.No.2/3B2B2 and S.No.3/3, that Uyyangondan sub-channel is running with a breadth of 3 mts and 200 mts length in the middle of the respective properties, that the plaintiffs who did not claim any pathway for several years, seems to have executed a power deed in favour of one Stephen, who is doing real estate business, that he is trying to occupy certain portion to make a pathway to reach S.No.3/3, that since there is a channel on the south, a public pathway cannot lie to link S.No.2/3B2B2 and S.No.3/3 without any permission from the competent authorities, that they came to know that the authorities have visited the dispute land in the third week of November 2022, but he was not informed and no notice was issued to him, that there is a chance of mutation in the revenue records in respect of Uyyangondan sub-channel at the instance of the private respondents, that the plaintiffs have filed the above suit only to threaten the defendants 1 and 2 and to grab their properties and that therefore, this Court has to nip it in the bud.

5. Before entering into other factual aspects, as already pointed out, the revision petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India. Any defendant can seek rejection of plaint on showing any of the grounds as contemplated under



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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 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 plaint 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 plaint could be struck off only in the rarest cases when



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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.

7. The learned Counsel for the revision petitioners would contend that there is no evidence that the alleged pathway was gifted to the local body through any registered document and the third respondent cannot claim any right over the property unless there is a registered deed of gift of pathway, that though the layout was approved in the year 1972, no sub-division was taken place to the alleged plaint pathway, that the existing pathway is to reach the owners of the concerned plots not beyond the southern boundary of the layout plan, that the four boundaries have not specified any road on the northern side to reach Thanjavur road, that the respondents have alternate pathway to reach the main road, that no one can claim easement right on others property, when there is



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alternative pathway for their convenient and that the present suit without cancelling the documents registered in the year 1972 and 2005 is not maintainable.

8. Considering the above, this Court is at loss to understand as to on what ground the revision petitioners have sought to strike off the plaint. The aspects now canvassed by the revision petitioners' side are only factual aspects and the same are matter for trial. The plaintiffs by alleging that the suit pathway is a public pathway, has claimed the reliefs of declaration and permanent injunction and for mandatory injunction for removal of the alleged encroachments made in that pathway. If the revision petitioners / defendants 1 and 2 are aggrieved by the case of the plaintiffs, they are at liberty to raise their defence through the written statement and to prove the same at the trial that there is no pathway as alleged by the plaintiffs. The revision petitioners have themselves produced the copy of the legal notice sent by them to the Commissioner, City Corporation, Trichirappalli and the Joint Commissioner, Ariyamangalam Division, Trichirappalli informing them about the pendency of the suit in O.S.No.375 of 2022, on the file of the Subordinate Court, Trichirappalli and directing them not take any action



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till the disposal of the suit in O.S.No.375 of 2022. It is also not in dispute that the second revision petitioner/second defendant has filed a writ petition in W.P.No.20778 of 2013 seeking a writ of Mandamus forbearing the Commissioner, City Corporation, Trichirappalli and the Assistant Commissioner, Ariyamangalam Division, Trichirappalli from taking any steps without due process of law on the notice dated 09.12.2013 issued by the first plaintiff in respect of the land in S.No. 2/3B2B2 in Varaganeri Village, Trichy Taluk. A Division Bench of this Court, by taking note of the submissions of the Counsel for the respondents 1 and 2 therein that they have not received any representation from the petitioner, directed the petitioner to submit a representation to the respondents 1 and 2 and the concerned respondent was directed to dispose of the same within a period of 8 weeks from the date of receipt of such representation and till such time, no action should be taken without following due process of law. They have also further observed that any person who shall be aggrieved by such proceedings taken by the authorities should also be heard.

9. The revision petitioners, after sending letters and notices to the Corporation authorities directing them not to take any action till the



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disposal of the suit, they have filed the present application to strike off the plaint.

10. The revision petitioners have nowhere whispered that the plaintiffs have abused the process of law and Court by filing the suit. Since the striking of the plaint is sought for, without raising any ground whatsoever, the same is legally not maintainable. 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 Civil Revision Petition is liable to be dismissed with costs.

11. In the result, the Civil Revision Petition is dismissed with costs of Rs.5,000/- payable to the Legal Services Authority, attached to this Bench, within a period of 15 days from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is also dismissed.



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12. Post the matter after four weeks for reporting compliance.

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NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

1. The Sub Court, Tiruchirappalli

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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