



C.R.P. (MD) No. 2569 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2024

CORAM

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

C.R.P. (MD) No. 2569 of 2023

J.Murugan

... Revision Petitioner/Petitioner/
Second Defendant

-vs-

Bakiyam

... Respondent/Respondent/
Plaintiff

PRAYER:- Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decreetal order of the Principal Sub Judge, Kumbakonam dated 27.07.2023 passed in I.A. No. 252 of 2022 in O.S. No. 111 of 2022 by allowing this Civil Revision Petition.

For Petitioner : Mr. K.S.Duraipandian

For Respondent : Mr. M.S.Jeyakarthish

ORDER

This Civil Revision Petition arises out of the order dated 27.07.2023 in I.A. No. 252 of 2022 in O.S. No. 111 of 2022 on the file of the Principal Sub-Court, Kumbakonam Court (hereinafter referred to as 'the Trial Court' for short).



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2. An earlier suit in O.S. No. 489 of 2015 has been filed before the Principal District Munsif Court, Kumbakonam by one Mohan, through his Power of Attorney Jeyakumar against Bakkiyam, Ilangovan, Annapattu seeking for permanent injunction in respect of the property in Survey Nos. 21 and 22/1, Paruthikkudi Revenue Village, Thiruvidadaimaruthur, Thajavur District and it has been subsequently transferred to the District Munsif Court, Thiruvidadaimaruthur and has been renumbered as O.S. No. 471 of 2019, which is pending and it is informed that recording of evidence has been completed in that suit as on date.

3. The said Bakkiyam has subsequently filed the present suit in O.S. No. 111 of 2022 before the Trial Court seeking to declare certain documents produced by the said Mohan in the earlier suit in O.S. No. 479 of 2019 before the Principal District Munsif Court, Kumbakonam, as null and void, and the application filed by one Murugan in I.A. No. 252 of 2022 under Rule 11(d) of Order VII of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC' for short) to reject the plaint in that suit has been dismissed by order dated 27.07.2023, which has been assailed in this Civil Revision Petition.



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4. On a perusal of the impugned order passed by the Trial Court, it is evident that it has rightly come to the conclusion that a plaint could be rejected under Rule 11(d) of Order VII of the CPC only when the suit appears from the statement in the plaint to be barred by any law, and it has not been demonstrated that the said requirement has been satisfied in this case.

5. 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



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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 restraint 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.



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- (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.
- (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.



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- (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*.



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- (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 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 due regard to the aforesaid legal position, there does not appear to be any infirmity in the impugned order warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution.

6. At the same time, it is evident that the subject-matter of the suit in O.S. No. 111 of 2022 before the Trial Court and the earlier suit in O.S. No. 479 of



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2019 before the Principal District Munsif Court, Kumbakonam, are so inextricably connected with each other that the grant of the relief claimed in one suit has to necessarily result in denial of the relief in the other, meaning thereby that there may be possibility of conflicting decrees coming into existence if they are tried separately. In other words, there is substantial identity of the parties in the two suits *viz-a-viz* the issues arising for decision, which are complimentary to each other requiring avoidance of duplication of oral and documentary evidence for ensuring convenience to the contesting parties, apart from saving precious judicial time. In such circumstances, it is expedient for the ends of justice that the two suits have to be heard and tried together in the same court, and failure in to do so may result in gross injustice to the parties leading to legal complications.

7. Viewed from that perspective, this Court, in exercise of *suo motu* powers conferred by Section 24 of the CPC, transfers the suit in O.S. No. 471 of 2019 from the District Munsif Court, Thiruvudaimaruthur to the file of the Principal Sub-Court, Kumbakonam, to be consolidated for the purpose of trial along with the present suit in O.S. No. 111 of 2022 on the file of the same Court. As a consequence, it has become necessary to issue the following directions to the Trial Court:-



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- (i) the evidence already recorded in O.S. No. 471 of 2019 before the District Munsif Court, Thiruvudaimaruthur shall be adopted as evidence in the suit in O.S. No. 111 of 2022 also;
- (ii) the documents produced by the parties along with the respective pleadings in O.S. No. 111 of 2022 shall be marked as exhibits, if they are otherwise admissible in evidence, through witnesses, who may be examined for proving the same in accordance with law;
- (iii) it would be incumbent upon the Trial Court to permit all parties to examine their respective witnesses, in addition to re-calling of witnesses already examined by the parties before the District Munsif Court, Thiruvudamaruthur for further examination-in-chief and cross-examination, if required;
- (iv) after completing the trial of the suits following the prescribed procedure, the Trial Court shall afford full opportunity to all parties for making their respective submissions and pass a reasoned judgment in both suits on merits and in accordance with law;
- (v) it shall be ensured that there is atleast one effective hearing every week showing progress of the cases; and
- (vi) the Trial Court shall send quarterly reports of compliance to the Registrar (Judicial) of this Court till both cases are finally disposed.



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In the result, the Civil Revision Petition is disposed on the aforesaid

terms. No costs.

01.04.2024

pal/PKN

Index : Yes

Note: Issue order copy by 12.04.2024.

To

1. The Principal Sub-Court,
Kumbakonam.
2. The District Munsif Court,
Thiruvidadaimaruthur.

Copy to

1. The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.
2. J.Murugan,
S/o. Jeyakumar,
Vepathur North Agaraharam,
Thiruvitaimaruthur Taluk,
Thanjavur District.
3. Bakiyam,
D/o. Arokiyam,
Mela Theru,
Ammanpettai Village,
Thiruvitaimaruthur Taluk,
Thanjavur District.



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P.D. AUDIKESAVALU, J.

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