



C.R.P.(MD)No.2711 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2711 of 2023

and

C.M.P.(MD)Nos.14162 & 17283 of 2023

1.Abdul Ravoof

2.Sikkander Batcha

3.Nabisha

4.Irfana

5.Nowshiba

6.Kurshith Begam

7.Farida Begam

... Petitioners / Defendant Nos.1 to 4, 6 to 8

Vs.

1.Mohammed Ibrahim Dawood

... 1st Respondent /Plaintiff

2.Reshma

3.Julaiha Begam

... Respondents 2 & 3 / Defendants 5 & 9

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.87 of 2023 on the file of the Principal District Munsif Court, Kumbakonam and allow this civil revision petition.



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For Petitioners : Mr.G.Prabhu Rajadurai
for Mr.S.Sankar

For Respondent : Mr.V.Karthikeyan
for R1
: no appearance for R2 & R3

ORDER

Heard the learned counsel on either side.

2. The defendants in O.S.No.87 of 2023 on the file of the Principal District Munsif Court, Kumbakonam are the revision petitioners. This revision petition has been filed under Article 227 of the Constitution of India to strike off the suit itself.

3. The learned counsel for the petitioners reiterated all the contentions set out in the memorandum of grounds of revision and called upon this Court to grant relief as prayed for.

4. Per contra, the learned counsel appearing for the plaintiff/1st respondent submitted that this civil revision petition is not maintainable. He drew my attention to the decision of the Hon'ble Supreme Court reported in **2019 (5) CTC 696 (Virudhunagar Hindu Nadargal Dharma Paribhalana**



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Sabai Vs. Tuticorion Educational Society) and the order dated 05.01.2022 in

C.R.P.(PD)No.1512 of 221 (M.Kishanlal Vs. K.Pushpavalli) in support of his contention that the revision petitioners ought to avail remedy under Order 7 Rule 11 of C.P.C. He called upon this Court to dismiss the civil revision petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. The suit properties was purchased in the name of Ammaji Beevi / mother of the plaintiff. The petitioners 1 & 2 herein are the half brothers of the plaintiff. Their father P.A.Sheik Dawood had four wives. Ammaji Beevi was the first wife. Aysha Beevi / 4th wife of P.A.Sheik Dawood was the mother of the revision petitioners 1 & 2. According to the revision petitioners, after the demise of P.A.Sheik Dawood, there was a family partition. It was further pleaded by them that as per family arrangement, the suit property was settled by Ammaji Beevi in favour of Abdul Ravoof and Sikkander Batcha and Shajahan vide settlement deed dated 26.03.1990. The plaintiff however controverts this version projected by the revision petitioners. Be that as it may, O.S.No.74 of 2010 was filed before the Principal Sub Court, Kumbakonam by Ammaji Beevi



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through the present plaintiff herein as a power agent questioning the genuineness of the aforesaid settlement deed dated 26.03.1990. It appears that the said suit suffered dismissal for non prosecution and IA had been filed for restoring the same.

7. The question that calls for consideration is whether in these circumstances, the plaintiff can file one more suit in O.S.No.87 of 2023 for permanent injunction to restrain the revision petitioners herein from entering into the suit property and demolishing the super structure. The settlement deed dated 26.03.1990 is a registered document (Document No.296 of 1993). So long as the said settlement deed has not been set aside or nullified, it may not be open to the plaintiff to maintain the present suit in O.S.No.87 of 2023.

8. The learned counsel appearing for the revision petitioners also would point out that apart from these two suits, yet another suit in O.S.No.431 of 2017 has been filed before the Principal District Munsif Court, Kumbakonam for permanent injunction restraining the revision petitioners herein from alienating the suit property. No doubt, when statutory remedy under Order 7 Rule 11 of C.P.C is available, remedy under Article 227 of the Constitution of India to strike off the plaint is not available. But the case on hand does not strictly fall within the four corners of Order 7 Rule 11 of C.P.C.



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9. The case of the revision petitioners is that they are being vexed by filing of successive suits by the plaintiff. It is seen that the present plaintiff had already filed O.S.No.74 of 2010 on the file of the Principal Sub Court, Kumbakonam and O.S.No.431 of 2017 on the file of the Principal District Munsif Court, Kumbakonam and the third suit has now been instituted in O.S.No.87 of 2023. I have already held that the plaintiff herein must get his relief only in O.S.No.74 of 2010 on the file of the Principal Sub Court, Kumbakonam.

10. The present suit is clearly vexatious. Filing of vexatious suits should not be encouraged. In this view of the matter, I deem it fit and appropriate to invoke my jurisdiction under Article 227 of the Constitution of India. The learned counsel for the plaintiff would strongly urge that cause of action underlying the three suits are different. He relies on the decision reported in **2015 (5) SCC 223 (Rathnavathi Vs. Kavitha Ganashamdas) & 2015 (2) CTC 334 (Radhey Shyam Vs. Chhabi Nath)** in support of his contention that the present suit is not hit by order 2 Rule 2 of C.P.C. The learned counsel for the plaintiff may be technically right. But that is beside the point. The question is whether the plaintiff is entitled to vex the defendants by filing successive suits in respect of the same property. Nothing prevents the plaintiff from filing IA in



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O.S.No.74 of 2010 for the relief of permanent injunction that is now sought in
O.S.No.87 of 2023.

11. When a person can seek relief in one suit, permitting him to file multiple suits in respect of the same property can only be termed as vexatious. In this view of the matter, I grant relief in favour of the revision petitioners herein. I make it clear that the outcome of this civil revision petition will not have any bearing on the rights of the plaintiff. The impugned suit is struck off the file. The revision petitioners through their counsel inform this Court that they will not oppose the restoration of O.S.No.74 of 2010 on the file of the Principal Sub Court, Kumbakonam. If any restoration petition is filed, it shall be allowed. Even if there is any delay in filing an application, it shall be condoned.

12. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.09.2024

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

The Principal District Munsif Court, Kumbakonam.



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G.R.SWAMINATHAN, J.

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