



C.R.P(MD)No.2551 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.2551 of 2017
and
C.M.P(MD)No.11893 of 2017

A.Jeyaprakash

... Petitioner /
14th Defendant

Vs.

1.K.Soundaram

... 1st Respondent/
Plaintiff

2.The Commissioner,
O/o.Municipality,
Thondi Main Road,
Sivagangai Town,
Sivagangai District.

3.The Assistant Director,
Town Planning,
No.430, Gandhi Street,
Sivagangai Town,
Sivagangai District.

4.S.Marakathan

5.S.Ramalakshmi



C.R.P(MD)No.2551 of 2017

6.S.Meenakshi

7.S.Jeyakumar

8.S.Kasthuri

9.S.Jeyalakshmi

10.S.Chellamani

11.S.Rajalakshmi

12.S.Visalakshi

13.R.Pandivel

14.P.Muthuselvi

... Respondents 2 to 4/
Defendants 1 to 13

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.77 of 2017 on the file of the District Munsif Court, Sivagangai.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.K.Baalasundaram
Senior Counsel
for Ms.A.Devaki for R.1

ORDER

This Civil Revision Petition has been filed to strike off the plaint in O.S.No.77 of 2017 on the file of District Munsif Court, Sivagangai.



C.R.P(MD)No.2551 of 2017

2.The learned Senior Counsel appearing for the plaintiff / first respondent herein submits that such a prayer cannot be maintained before this Court. He relies on the decision reported in **(2019) 9 SCC 538 (Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others vs. Tuticorin Educational Society and Others)**. Paragraph 13 reads as follows:

“13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory Rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of Code of Civil Procedure, may have to be construed as a near total bar.....”

3.It is seen that one Maragatham Ammal and 5 others filed O.S.No. 228 of 1996 on the file of Principal District Munsif Court, Sivagangai against Soundaram and others seeking the relief of declaration, recovery



C.R.P(MD)No.2551 of 2017

of possession and mandatory injunction. The suit was dismissed on 23.07.1998. Aggrieved by the same, Maragatham Ammal and others filed A.S.No.150 of 1998 on the file of Principal District Munsif Court, Sivagangai. The decision of the trial Court was reversed and the first appeal was allowed by the judgment and decree dated 25.10.2000. Aggrieved by the same, Soundaram filed S.A.No.825 of 2001 before this Court. Vide judgment and decree dated 15.12.2010, the second appeal was dismissed and the decision of the first appellate Court was confirmed. Subsequently, the decree holders filed E.P.No.35 of 2011 and obtained delivery also. Subsequently, the property also changed hands. The revision petitioner herein is a subsequent purchaser. At this stage, Soundaram had filed O.S.No.77 of 2017 seeking declaration that the judgment and decree passed by the Principal District Munsif Court, Sivagangai on 23.07.1998 is not binding on her and for declaration that the sale deeds executed in respect of the suit schedule property are null and void.

4. Though the trial Court had dismissed O.S.No.228 of 1996, it was reversed by the first appellate Court and the suit eventually came to be



C.R.P(MD)No.2551 of 2017

decreed. Decree passed by the first appellate Court was also confirmed by the High Court in S.A.No.825 of 2001. When the issue had travelled right up to the High Court and attained finality, it was not open to the unsuccessful defendant to relitigate the issue once again. Virtually the first respondent herein is questioning the decree passed by the High Court in a suit instituted before the District Munsif Court, Sivagangai. This is unacceptable.

5.The revision petitioner herein cannot secure rejection of plaint under any of the circumstances set out in Order VII Rule 11 of CPC. Therefore, the revision petitioner has no other option to invoke the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

6.In this view of the matter, I hold that the case on hand falls outside the prohibitory sweep of the decision reported in **(2019) 9 SCC 538 (Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others vs. Tuticorin Educational Society and Others)**. The question that calls for consideration is whether a filing of suit in O.S.No.77 of



C.R.P(MD)No.2551 of 2017

2017 amounts to abuse of process of Court. Thereby warranting exercise of extraordinary jurisdiction of this Court. In ***K.K.Modi Vs K.N.Modi and Others's*** case (1998 (3) SCC 573), re-litigation was held to be an abuse of the process of the Court. Paragraph 44 reads as follows:

“44. One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of 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 court especially where the proceedings are absolutely 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 courts' 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



C.R.P(MD)No.2551 of 2017

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court should also be satisfied that there is no chance of the suit succeeding.”

In **2013 (1) LW 491 (N.Babu Vs S.Shanmugam & Others)**, it has been held as follows in paragraph 24:

“24. Further, though an alternative remedy is available to the revision petitioner, for striking off the suit under Order 21 Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of Court and when the facts are not controverted and admitted by the plaintiff/first respondent, the Court can exercise the extra ordinary jurisdiction of the Court under Article 227 of the Constitution of India and strike off the plaint and as a matter of fact, this Court and Honourable Supreme Court held that the right conferred under Article 227 must be exercised very sparingly and it is also settled law that when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of Article 227 of the Constitution of India.”

This position is also strengthened by the decisions reported in **2013 (6) CTC 809 (N.A.Chinnasamy and another Vs. S.Vellingirinathan)** and **1997 (2) LW 761 (Ranipet Municipality Commissioner etc, Vs M.Shamsheerkhan)**.



C.R.P(MD)No.2551 of 2017

7.I therefore hold that the filing of the suit amounts to abuse of process of the Court; the impugned suit is struck off on the file of the District Munsif Court, Sivagangai.

8.This Civil Revision Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

03.09.2024

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

The District Munsif Court,
Sivagangai.



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C.R.P(MD)No.2551 of 2017

G.R.SWAMINATHAN, J.

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C.R.P(MD)No.2551 of 2017

03.09.2024