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C.R.P.(MD)No.2635 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 27/03/2024

Date of Pronounced : 20/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.2635 of 2023

and

CMP (MD) No.13748 of 2023

Annadurai : Petitioner/4th Defendant

Vs.

1.Santhanakrishnan : 1st Respondent/Plaintiff

2.Senthilkumar

3.viji

4.Amutha

5.Uma Maheswari

6.The Assistant Executive Engineer,
Tamil Nadu Electricity Board (TNEB),
Maruthupandiar Nagar,
Sivagangai Town,
Sivagangai District.

: Respondents 2 to 6/
Defendants 1,2,3,5 & 6

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to strike of the impugned plaint in OS No.301 of 2023 on the file of the Sub Court, Sivagangai.

For Petitioner : Mr.P.M.Vishnuvarthanan

For 1st Respondent : Mr.K.Navaneetharaja

For R2 to R6 : No appearance



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O R D E R

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This civil revision petition has been filed seeking to strike off the plaint in OS No.301 of 2023 on the file of the Sub Court, Sivagangai.

2.The facts in brief:-

Suit in OS No.301 of 2023 was filed by the first respondent herein as plaintiff seeking the relief of partition, permanent injunction against the 6th defendant and for costs. The petitioner, who is arrayed as 4th defendant in the suit, filed a petition under Article 227 of the Constitution of India to strike off the plaint, so far as the 3rd defendant is concerned.

3.The facts narrated in the plaint:-

The plaintiff and the defendants 1 to 5 are brothers and sisters. The suit property originally belonged to their father namely Ramachandran. It is a joint family property. He died in the year 2018. So, the property devolved jointly upon the plaintiff and the defendants 1 and 2. Now they are in joint possession. In the 1st item, which measuring about 5-3/4 cents, the plaintiff put up a house and residing there. The 1st item of the property is a vacant site. The plaintiff's wife is running a Oil Mill in the 1st item. Now the plaintiff understand that the



defendants without his knowledge taking steps to encumber the property. Hence, the suit.

4.The suit is posted before the trial court. At that time, this petition has been filed directly seeking rejection of the plaint with the following grounds:-

The revision petition filed a suit in OS No.66 of 2012 on the file of the Sub Court, Sivagangai against the plaintiff and others seeking the relief declaration and permanent injunction in respect of the 1st item of the property. In that suit, the settlement deed executed in favour of this petitioner was upheld. The suit was decreed by the Sub Court, Sivagangai, by decree and judgment, dated 26/08/2015. Against which, AS No.24 of 2015 was filed before the Appellate Court namely District Court, Sivagangai. That also came to be dismissed by judgment and decree, dated 22/12/2016. Against which, SA(MD)No.200 of 2017 was filed. That also came to be dismissed by judgment and decree, dated 24/04/2017. Suppressing all those earlier litigations and finality or conclusion, the suit is filed. On that account, the suit is liable to struck off.

5.Heard both sides.



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6.A preliminary objection was raised by the learned counsel appearing for the first respondent as to the maintainability of the revision without approaching the trial court by filing proper application under Order 7 Rule 11 CPC. In support of his contention, he would rely upon the judgment of the Hon'ble Supreme Court reported in ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others [(2021) 9 SCC 99]*** on the point that plaint cannot be rejected on the plea of *res-judicata*. Only the plaint averments must be taken into consideration while considering the rejection of plea, but not the defence to be taken by other side.

7.Per contra, the learned counsel appearing for the petitioner would submit that it is a clear case of abuse of process of court; when exceptional ground is available, he is well within his right to approach this court directly under Article 227 of the Constitution of India.

8.No doubt that the point of *re-judicata* cannot be a matter for consideration while entertaining the petition under Order 7 Rule 11 CPC. But here, the question to be considered is whether it is re-litigation when there is suppression of earlier litigation in the plaint will



amount to abuse of process of court. So, this point must be addressed by the trial court, leaving the point of re-judicata.

9.In the connected matter namely in CRP(MD)No.610 of 2022, the following discussion is made with reference to the development of law on that aspect namely the preliminary objection that was made by the respondents herein, which may be extracted hereunder;-

"6.Pending further process, this revision is filed under Article 227 of the Constitution of India to strike off the plaint on the ground that it is a clear case of res-judicata since there is a clear abuse of process of court without approaching the trial court under Order 7 Rule 11 CPC, this petition is maintainable.

7.Before going into the factual aspect in this matter, the first question is to be decided is whether a petition in the form of Revision under Article 227 of the Constitution of India will lie directly for rejection of plaint before this Court



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without invoking the jurisdiction of the trial Court under Order 7 Rule 11 of Civil Procedure Code.

8.This question remains the matter for consideration from the inception of Indian High Courts Act, which is also known as Charter Act, 1861 and has evolved and again through various developments in the form of Legislative enactments and judicial pronouncement. Still the issue goes on. Let us briefly survey the development of law on this point, as has been elaborately discussed by the Allahabad High Court in the case of **Ram Roop v. Biswa Nath** reported in **AIR 1958 All. 456**, had traced the origin as mentioned about the Indian High Courts Act, 1861. Later, came the Civil Procedure Code, 1877, wherein the revision powers were conferred upon the High Courts, that too restricted only in certain circumstances. One, when the Subordinate Court exercise the jurisdiction not vested in it or failed to exercise the jurisdiction.



9.Later came the new Act namely the Code of Civil Procedure, 1908. When the Original Act namely Civil Procedure Code of 1908, there was no provision in Section 115 of Civil Procedure Code. Later the Government of India Act, 1915, was enacted. Section 107 conferred power of Superintendents to the High Courts.

10.The question whether the power of Superintendents will include the power of judicial Superintendents also involved and finally now confirmed that it includes the judicial Superintendents also.

11.Again another problem arose when specific provision under Section 115 of the Civil Procedure Code is available, whether the power under Article 227 of the Constitution of India can be invoked also become the process of evolution. So it was answered by Two Judges Bench of the Honourable Supreme Court in the case of **Surya Dev Rai vs. Ram Chander Rai & Ors**, reported in **AIR 2003 SC 3044** that in spite of amendment by the Amendment Act 46/1999 w.e.f. 01.07.2002, Section 115 of C.P.C.



will not affect the jurisdiction conferred upon the High Court under Article 226 and 227 of the Constitution of India. And this was clarified by Honourable Three Judges Bench of the Honourable Supreme Court in the case of **Radhey Shyam and Ors. Vs. Chhabi Nath and Ors.** reported in **MANU/SC/0200/2015**. Paragraph No.22 of the Judgment can be extracted for better appreciation.

"22.The Bench in **Surya Dev Rai** also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said judgment distinction in the two articles has been noted. In view thereof, observation that scope of Article 226 and 227 was obliterated was not correct as rightly observed by the referring Bench in Para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 Code of Civil Procedure by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including **Waryam Singh and Anr. vs. Amarnath**



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and Anr., MANU/SC/0121/1954; AIR 1954 SC 215 ; 1954 SCR 565, **Ouseph Mathai vs. M. Abdul Khadir** MANU/SC/0718/2001 : 2002(1) SCC 319, **Shalini Shyam Shetty vs. Rajendra Shankar Patil** MANU/SC/508/2010: 2010 (8) SCC 329 and **Sameer Suresh Gupta vs. Rahul Kumar Agarwal** MANU/SC/0555/2013 : 2013 (9) SCC 374. In *Shalini Shyam Shetty*, this Court observed :

"64.However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65.We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.



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66.We may also observe that in some High Courts there is a tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* and in view of the recent amendment to Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding the High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.

67.As a result of frequent interference by the Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, the Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest courts of justice within their



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jurisdiction will adhere to them strictly." (emphasis added)"

12.Now it has been clarified that the power of Superintendents under Article 227 of the Constitution of India has not extended or expanded the power. Under what circumstances Article 227 of the Constitution of India can be invoked has already been settled, which requires no repetition.

13.Now this case is on the one line of the issue where some orders passed by the trial Court.

14.Another line of petitions are with reference to the striking off plaint like the present one directly to the High Court invoking Article 227 of the Constitution of India without proper application under Order 7 Rule 11 of C.P.C. before the concerned trial Court and this also become the process of evolution.



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15. In some cases such a power was exercised directly and matters were dealt by the High Courts. But, again this was not approved by the Supreme Court. The power under Article 227 of the Constitution of India in a like manner was decided by the Honourable Supreme Court in the case of **Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil**, reported in **2011 (1) CTC 854 (SC)**. Wherein, it has been held as follows:

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(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.

....

(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, exercise of this power, act as a court of appeal over the orders of the court or



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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.

...

(e). According to the ratio in Waryam Singh V. 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.

.....

(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.

...

(o). An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."

16.Perhaps Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil was followed in Radhey Shyam and Ors. Vs. Chhabi Nath and Ors. referred above.



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17.By referring to this judgment the Co-ordinate Bench of this Court in a Judgment in the case of **T.K.Chithran V. C.Samsari @ Chithran and Ors.** reported in **2015(3) CTC 485**, after relying upon the Shalini Shyam Shetty's case, observed as follows:

"13. From the above decision, it is clear that power under Article 227 of the Constitution of India has to be exercised sparingly and only in appropriate cases, where judicial conscience of this Court dictates it to act lest a gross failure of justice would occasion. This Court in exercise of power under Article 227 of the Constitution of India having supervisory jurisdiction will not convert itself into an appellate Court and appreciate or evaluate the facts by itself and draw inference. In my considered view, the remedy open to the petitioner is to move the same Court where the suits are filed under Order 7 Rule 11 of the Code of Civil Procedure and make out the applicability of the ingredients of the said Rule. Without doing so, the petitioners cannot be permitted to rush to this Court."

18.Now, we will also go further to the judgment of the Honourable Supreme Court



made in the case of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society & Ors.** in **Civil Appeal No.7764 of 2019.** The Honourable Supreme Court by relying upon the judgment of the Honourable Supreme Court in the case of **A.Venkatasubbiah Naidu Vs. S.Chellappan & Ors.**, made the following observation:

"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 1 (2000) 7 SCC 695 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 CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in



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*Surya Dev Rai vs. Ram Chander Rai*², pointed out in *Radhey Shyam Vs. Chhabi Nath*³ that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and 2 (2003) 6 SCC 675 3 (2015) 5 SCC 423 prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

19. So, this observation throws much light upon the issue now. No more interpretation by this Court is required except making further observation of judgment of this Co-ordinate Bench of this Court in the case of **M.Kishanlal and another Vs. K.Pushpavalli @ Elizabeth Pushpavalli and others** made in **C.R.P. (PD) .No.1512 of**



2021 dated 05.01.2022, the following observation has been made in paragraph No.3.

"3. The Hon'ble Supreme Court as well as this Court have repeatedly held that Order VII Rule 11 of the Code of Civil Procedure is not exhaustive and a plaint can be rejected on grounds other than the ones enumerated Order VII Rule 11 also. The Hon'ble Supreme Court in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others v. Tuticorin Educational Society and Others, reported in (2019) 9 SCC 538, has held that the High Court will refrain from exercising jurisdiction under Article 227 of the Constitution of India, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, when a remedy under the code of Civil Procedure is available to the party approaching the High Court. I am therefore of the considered opinion that this is not a fit case to exercise jurisdiction under Article 227 of the Constitution of India."

20. So this lines of judgments are against invoking the Article 227 of the Constitution of India directly when alternative remedy is available.



21. Another line of judgments are also available quiet opposite to this. We can also briefly survey those judgments to keep the record and discussion complete. **Azhar Hussain V. Rajiv Gandhi, 1986 (Supp) SCC 315**, wherein, it has been held that when the pleadings shows that clear abuse of the process of the law, causing embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law.

22. Further in **K.K.Modi Vs. K.N.Modi, 1998 (3) SCC 573; Lakshmi V. Prasanna Mani, 2011 (2) MWN (Civil) 363; Ranipet Municipality rep. by its Commissioner and Special Officer, Ranipet V. M.Shamsheerkhan, 1998 (1) CTC 66; Tamil Nadu Handloom Weavers'Co-operative Society Vs. S.R.Ejaz., rep. by his Power Agent, Muralidhar T. Balani, 2009 (5) CTC 710**; has held that revision can be directly filed when there is case of abuse of process of the law and re-litigation.



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23.Further in **Maria Soosai and another Vs. Esakkiammal**, reported in **1999 (1) LW 227**, the following observation is made.

"The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

"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."

24.But, now as mentioned above, that position was clarified by the Honourable Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society & Ors.** holding the field now when alternative and



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efficacious remedy is available it is nothing but proper on the part of the High Court to direct the revision petitioner to approach the trial Court by filing proper petition under Order 7 Rule 11 of CPC."

10.The further development of this aspect is discussed by this court in CRP(MD)No.610 of 2022 and concluded that approaching this court directly under Article 227 of the Constitution of India may not be proper. So liberty is granted to the petitioner to file appropriate application under Order 7 Rule 11 CPC before the trial court itself.

11.With the above said liberty, this civil revision petition is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

20/06/2024

Index:Yes/No
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To,

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1.The Sub Court,
Sivagangai.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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