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C.R.P.No.1119 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No. 1119 of 2025

1. P.Sivanantham

2. S.Preetha

...Petitioners

Vs.

1. Vijayakumar

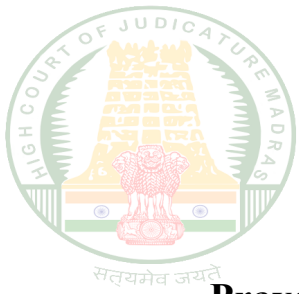
2. V.Bhanumathi

3. The Authorized Officer / Chief Manager Tamil Nadu Mercantile Bank,
R.S.Puram Branch
Coimbatore District.

4. The District Collector,
Coimbatore District.

5. The Joint – I SRO,
Coimbatore
Coimbatore District.

...Respondents



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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint filed in OS.No.39 of 2025 on the file of the III Additional District Court, Coimbatore and Divisionary Jurisdiction of this Court.

For Petitioner : Mr. V.Manohar
For Mr. I.Arokiasamy

For Respondents : M/s. K.Aswini Devi
4 & 5 Additional Government Pleader.

ORDER

This Revision has been filed to strike off the plaint in OS.No.39 of 2025 on the file of the III Additional District Court, Coimbatore. The facts required for disposing of the revision are as follows.

2. The respondents 1 and 2 herein had filed the suit to declare sale deed dated 04.08.2023 executed by the plaintiff in favour of the 2nd defendant with regard to the suit schedule property as null and void and not valid in the eye of law and for recovery of possession as also



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injunction against defendants from alienating or encumbering the suit property.

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3. The plaintiffs' case is that they had purchased the property under a registered sale deed dated 20.04.2011 and have been in absolute possession and enjoyment of the same. The 1st respondent / 1st plaintiff is running a jewelery business and the 2nd respondent / 2nd plaintiff is his wife. On 30.05.2020 the plaintiffs had executed a mortgage deed by deposit of title deeds in favour of the 3rd defendant for a loan of Rs.6,40,00,000/- borrowed by them in respect of the suit property as well as other property.

4. It is the further case of the plaintiffs that due to the on set of the COVID pandemic the business had run into doldrums and as a consequence the loan was classified as a non performing asset. The 3rd defendant thereafter initiated proceedings under the SARFAESI Act. On 06.03.2023, a demand notice was issued by the 3rd respondent and on 11.05.2023 possession notice was also issued.



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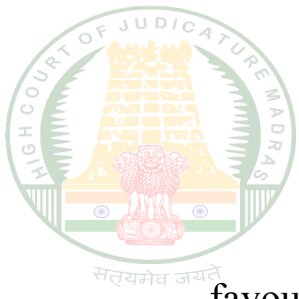
5. On 08.06.2023 the 3rd defendant issued an auction sale notice fixing the reserve price of the suit property at Rs.6,81,00,000/-. Thereafter, the 1st plaintiff had filed proceedings under Section 17 of the Act challenging the auction sale. By reason of this auction sale the plaintiff's property came to be attached by the Bank. Meanwhile, one Madhukar an auditor had approached the 1st plaintiff stating that he could arrange to sell the suit property for a sum of Rs.8,50,00,000/-. The plaintiffs were totally taken in by the assurance of the said Madhukar. Between 26.07.2023 till 02.08.2023 the 1st defendant had made a bank transfer of Rs.3,50,00,000/-.

6. The plaintiffs would submit that on 02.08.2023 they had managed to settle the dues of the bank and also obtained a registered discharge receipt on the very same day registered as Doc.No.5730 of 2023 in which the 3rd petitioner acknowledged the receipt of a sum of Rs.7,00,00,000/-. Meanwhile on account of the pressure that was exerted by the defendant the plaintiff without receiving the balance



amount of Rs.5,00,00,000/- proceeded to execute and register a sale deed in favour of the defendants 1 and 2.

7. Thereafter, the plaintiffs had vacated the tenants and arranged vacant possession of the building except the 3rd, 4th and 5th floors, where the plaintiffs' residence and their daughters clinic and residence was functioning. Between 01.11.2013 to 14.12.2013 the plaintiffs 1 and 2 kept insisting upon the payment of balance of Rs.5,00,00,000/- for which there is no response. Thereafter since the attempt was made to throw them out of the premises complaints were lodged with the Police station on 14.12.2023, 26.12.2023 and 12.03.2024. Since no action was taken, the plaintiffs filed WP.No.6953 of 2024 for declaring the sale deed executed in favour of the defendants 1 and 2 as invalid. This Writ Petition was dismissed by orders of this Court dated 19.03.2024 directing the petitioner to approach the Civil Court. Thereafter, the present suit has been filed.



8. The plaintiffs had set out the reasons as to why the sale deed in favour of the defendants was null and void as follows:

(a) Even as per the 3rd defendant Bank's assessment the value of the property was over a sum of Rs.9,00,00,000/-. The certified valuer appointed by the 3rd defendant bank corroborates the property's value at around Rs.6,80,43,000/-.

(b) The 1st and 2nd defendants had made the 1st and 2nd plaintiffs to execute the sale deed with a promise to repay the balance sum of Rs.5,00,00,000/-.

(c) A representation dated 18.02.2024 to cancel sale deed and to take action against defendants 1 and 2 was kept pending.

(d) Without paying the balance sum of Rs.5,00,00,000/- the plaintiffs have been ousted from the property.

(e) There was no necessity for the plaintiffs to sell the property worth Rs.9 Crores for a meager sum of



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Rs.3,50,00,000/-.

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9. The daughter of plaintiffs 1 and 2 had given a complaint to the Police since the properties situate in the first floor in which she was in occupation had been forcibly removed. However, she did not get the desired help from the Police as they were hand in glove with the defendants 1 and 2. Therefore she filed WP.No.8138 of 2024. The same was disposed of with a direction to the daughter of plaintiffs 1 and 2 to cooperate in enquiry and it has to be completed within 2 weeks. However, no enquiry has been conducted.

10. In the meantime the 1st defendant had filed a suit for bare injunction on the file of the District and Sessions Court, Salem in OS.No.147 of 2024 seeking compensation for the alleged slander of plaintiffs 1 and 2. Therefore, the plaintiffs have come forward with a suit in question.

11. The defendants 1 and 2 on entering appearance have come



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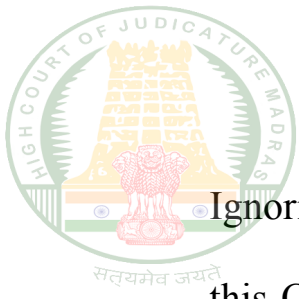
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forward to file this revision to strike of the plaint. The grounds upon which the plaint is sought to be struck off is on the ground that it lacks cause of action, non joinder of necessary parties and was made only for protract proceedings.

12. The defendants would further submit that the plaintiffs have not sought for relief of cancellation of deed. The defendants would further submit that they have paid entire sale consideration which has been endorsed in the sale deed and has got it registered and handed over possession of the property. There is nothing to prove that the parties had agreed to purchase the property for a sum of Rs.8,50,00,000/-.

13. Heard the learned counsels and perused the records.

14. The revision before this Court is to strike off the plaint. The CPC contemplates rejection of the plaint under the provisions of Order VII Rule 11. This application has to be moved before the Trial Court.



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Ignoring this remedy the petitioners / defendants 1 and 2 have rushed to this Court invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

15. The other provisions which contemplates striking off the plaint is under Order VI Rule 16 of the CPC, where the proceedings could be struck off or amended provided such pleadings are (a) Unnecessary, scandalous, frivolous or vexatious, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or (c) which is otherwise an abuse of the process of Court. Therefore, in order to seek to strike off the plaint the petitioner has to prove an abuse of process of Court.

16. Under the provisions of Order VII Rule 11 CPC, rejection can be for the reasons set out in Clause 11 (a) to (f). The grounds on which the petitioner has now approached this Court is that it is a vexatious litigation and that unnecessary parties are added as parties to the suit. There is no explanation as to why they have been included in the suit.



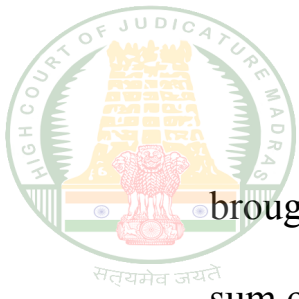
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The petitioners contention is that having received the entire sale consideration and having signed on the dotted lines plaintiffs / respondents 1 to 2 cannot maintain the suit for cancellation of the deed.

17. This Court while considering the application for striking off the plaint has to only take into account the pleadings that has been set out in the plaint. In order to attract the provisions of Article 227 of the Constitution of India to strike off the plaint the petitioners are bound to show in clear terms the abuse of process of Court that has been indulged by the plaintiffs. Such a ground has not been made in the instant case.

18. On the contrary the plaintiffs have given sufficient reasons as to why the sale deed executed by them in favour of the defendants 1 and 2 should be set aside. The plaintiffs would submit that the property was offered as a security for a loan of Rs.6,40,00,000/- that was borrowed by the plaintiffs but from the 3rd defendant bank. The 3rd defendant bank exercising its rights under the SARFAESI Act had



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brought the property to auction sale by quoting the reserve price as a sum of Rs.6,81,00,000/-.

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19. Further, the 1st and 2nd respondents have paid a sum of Rs.7,00,00,000/- to the 3rd defendant bank and obtained discharge certificate. In such a backdrop the agreement to sell the property for just a sum of Rs.3,50,00,000/- gives raise to a semblance of a doubt.

20. The plaintiffs / respondents 1 and 2 have also elaborately narrated the facts surrounding the borrowal, the agreement that they had actually intended to enter the and the sale consideration for which they intended to sell the property. The respondents 1 and 2 are bound to prove their case. However, a reading of the plaint as a whole gives raise not only to cause of action but also sets the Court thinking about the sale consideration in respect of the property.

21. The Hon'ble Supreme Court in a Judgement reported in **1998**



(3) **SCC 573 – K.K.Modi Vs. K.N.Modi and others**, had observed that

Order VI Rule 16 CPC can be invoked by the Court at any stage of the proceedings to strike out any pleading which is an abuse of process of Court.

22. The Hon'ble Supreme Court has further observed 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 the 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



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

23. In the case on hand, the plaintiffs have set out the basis on which they seek to cancel the sale deed executed by them.

24. The civil revision petition is dismissed. No costs.

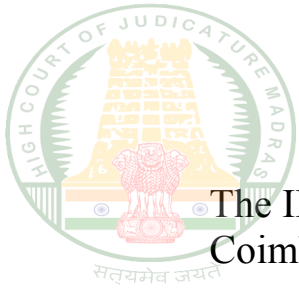
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The III Additional District Court,
Coimbatore.

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