



WEB COPY

CRP. No.4799 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:14.07.2025

Pronounced on: 01.08.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. PD. No.4799 of 2023
and CMP. No.28495 of 2023**

C.Srinivasan

Petitioner

Vs

- 1.K.Pachiyappan
- 2.C.Mayilsamy
- 3.M.Sakthivel
- 4.M.Govindaraj
- 5.P.Krishnan
- 6.K.Subramani
- 7.A.Periyasamy
- 8.M.Karuppannan
- 9.P.Subramani
- 10.Ramakka
- 11.Goopalliyamma
- 12.G.Raja
- 13.G.Manjula
- 14.Minor Shankar Raj
Rep. by his Father G.Raja
- 15.Minor.Hemavarshini
Rep. by his father G.Raja
- 16.Minor Deeksha
Rep. by his mother G.Manjula
- 17.Minor Sarantej
Rep. by his mother G.Manjula
- 18.C.Govindaraj

Respondents



PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S. No.309 of 2022 on the file of the learned Principal Subordinate Judge, Hosur.

For Petitioner : Mr.S.Parthasarathy,
Senior Counsel for
Mr.P.Dinesh Kumar

For Respondents : Mr.M.Venkatesh,
for Mr.R.Jayaprakash for R1
No Appearance for R2 to 5, 7, 9 to 18
R6 & R8 -Died

ORDER

The revision petitioner seeks to strike off plaint in O.S.No.309 of 2022 on the file of the learned Principal Subordinate Judge, Hosur.

2. I have heard Mr.S.Parthasarathy, learned Senior Counsel for Mr.P.Dinesh Kumar and Mr.M.Venkatesh for Mr.R.Jayaprakash, learned counsel for the first respondent/plaintiff.

3.Mr.S.Parthasarathy, learned Senior Counsel would state that the suit is a sheer and gross abuse of process and in this regard, he would invite my attention to the reliefs that have been sought for in the plaint.



Referring to the judgment and decree in O.S.No.101 of 2018 in favour of

the second defendant passed on 04.09.2019 on the file of the Principal

District Judge, Krishnagiri.

WEB COPY

“01) To Declare the Plaintiff Title over the suit Schedule property in favour of the Plaintiff.

02) To Direct the Defendant No:-2 to Deliver the possession of the Suit Scheduled Property to the Plaintiff.

03). To Declare the Sale Deed No:-1375/2018 Dated 25.01.2018 in favour of the Defendant No:-1 executed by the Defendant as “Cancel” and it was Registered before Sub Registration Office, Hosur.

04) To Declare the Sale Deed No:-3045/1992 Dated 13.07.1992 in favour of the Defendant No:-4 executed by the Defendant No:-3 as “Null and Void” and it was Registered before Sub Registration Office, Hosur.

05) To Declare the Sale Deed No:-4854/2004 Dated 26.08.2004 in favour of the Defendant No:-5 executed by the Defendant No:-6 as “Null and Void” and it was Registered before Sub Registration Office, Hosur.

06) To Declare the G.P.A. No:- 819/2003 Dated 12.12.2003 in favour of the Defendant No:- 6 executed by the Defendant No:-4 as “Null and Void” it was Registered before Sub Registration Office, Hosur.

07) To Declare the Sale Deed No:-8438/2013 Dated 10.06.2013 in favour of the Defendant No:-7 executed by the Defendant No:-5 as Null and Void and it was Registered before Sub Registration Office, Hosur.

08) To Declare the Sale Deed No:- 1669/2014 Dated 04.02.2014 in favour of the Defendant No:-8 executed by the Defendant No:-7 as “ Null and Void” and it was Registered before Sub Registration Office, Hosur.

09) To Declare the G.P.A. No:- 8727/2015 Dated 02-06-2015 in favour of the Defendant No:-17 executed by the Defendant No:-8 to 16 as “Null and Void” and it was Registered before Sub Registration Office, Hosur.



WEB COPY

CRP. No.4799 of 2023



10) To Declare the Sale Deed No:- 9466/2015 Dated 12.06.2015 in favour of the Defendant No:-18 executed by the Defendant No:-17 as "Null and Void" and it was Registered before Sub Registration Office, Hosur.

11) To Declare the Sale Deed No:- 8328/2020 Dated 03.08.2020 in favour of the Defendant No:-2 executed by the Defendant No:-18 as "Null and Void" and it was Registered before Sub Registration Office, Hosur.

12) To Declare the Decree and Judgment in O.S. No:- 101/2018 in favour of the Defendant No:-2 passed on 04.09.2019 by Hon'ble Principal District Judge Court, Krishnagiri as "Null and Void".

13. Granting permanent injunction against the Defendant No:-1 to 18 and their men and servants and others claiming under them restraining them from thereby not to alienate the suit schedule property in favour of third parties in the suit schedule property.

14. Granting the cost of the suit."

the learned Senior Counsel would contend that such a declaration cannot be sought for before the Sub Court, since the decree passed has been passed by a Superior Court viz., the Principal District Court, Krishnagiri and the only remedy open would have been to challenge the judgment and decree passed in O.S.No.101 of 2018 by preferring an appeal. The learned Senior Counsel would further state that the said suit in O.S.No.111 of 2018 was contested by the purchaser from the plaintiff and he did not choose to prefer any Appeal against the said judgment and hence, the said judgment and decree is binding on the plaintiff.



WEB COPY

5. Further, the learned Senior Counsel would contend that once the relief of declaration regarding challenging the decree in O.S.No.101 of 2018 becomes unavailable to the plaintiff, then all the consequential reliefs would automatically fall to the ground and the various declarations that have been sought for, to nullify sale deeds and powers of attorney would not even be open to challenge.

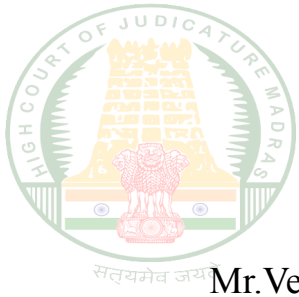
6. The learned Senior Counsel would also place reliance on the decision of the Hon'ble Supreme Court and this Court in:

(i) *Raghwendra Sharan Singh vs Ram Prasanna Singh (dead) by legal representatives*, reported in (2020) 16 SCC 601;

(ii) *Sivakumar and Ors vs Dayalan and Ors*, reported in MANU/TN/4982/2024; and

(iii) *A.Kaleur Rahman and 9 others vs P.Kannan and 4 others*, reported in 2019 (2) MWN (Civil) 689.

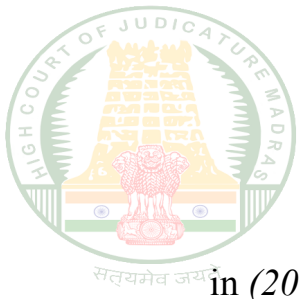
The learned Senior Counsel therefore prays for the revision being allowed and the plaint to be struck off.



WEB COPY

7. Per contra, the learned counsel for the first respondent, Mr.Venkatesh would state that the case of the plaintiff is that the property was sold to the first defendant on 25.01.2018 and the transaction was only an intended mortgage. The contention of the plaintiff is that in respect of a loan transaction, the plaintiff is only obligated to repay the amounts borrowed and the plaintiff was under the impression that he had executed only a mortgage deed and not a sale deed and only after he came to know that fraud has been played upon him and several transactions have taken place in the interregnum period, the suit has been filed, for not only the reliefs of declaration regarding sale deeds and general powers of attorney, but also to declare the plaintiff's title over the suit property and for recovery of possession. In so far as the decree in O.S.No.101 of 2018, the learned counsel would state that the plaintiff was not a party to the said suit and therefore, the decree would not bind him.

8. The learned counsel for the first respondent has relied on the following decisions:



WEB COPY

- (i) *A.Venkatasubbiah Naidu vs S.Chellappan and others*, reported in (2000) 7 SCC 695;
- (ii) *Shalini Shyam Shetty and another vs Rajendra Shankar Patil*, reported in (2010) 8 SCC 329;
- (iii) *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others vs Tuticorin Educational Society and others*, reported in (2019) 9 SCC 538;
- (iv) *K.Valarmathi and others vs Kumaresan*, reported in 2025 SCC Online SC 985.

9. I have carefully considered the submissions advanced by the learned Senior Counsel for the revision petitioner and learned counsel for the first respondent.

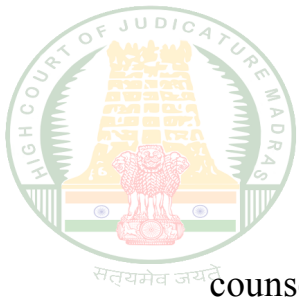
10. As already seen, the first respondent has filed the suit seeking various reliefs including relief of declaring his title and for recovery of possession. Further reliefs of declaration, attacking various registered documents are also sought for. A relief to declare judgment and decree in O.S.No.101 of 2018 dated 04.09.2019 as null and void has also been



prayed for. Reliefs of permanent injunction to restrain further alienation of the property is also sought for.

WEB COPY

11. It is the primordial contention of the revision petitioner that unless the plaintiff succeeds in setting aside the judgment and decree in O.S.No. 101 of 2018, none of the other reliefs can be claimed by him. In this regard, Mr.S.Parthasarathy, learned Senior Counsel would state that the suit has been filed before Sub Court challenging the judgment and decree of the District Court as null and void and therefore it is the contention of the revision petitioner that the said relief is not maintainable before a Subordinate Court and without challenging the decree in a manner known to law, by filing an Appeal therefrom, the suit cannot be maintained. Once the relief of declaration regarding decree in O.S.No.101 of 2018 not being binding on the plaintiff becomes unavailable to the plaintiff, then, the question of seeking any other relief that has been claimed in the suit does not arise. Therefore the plaint is sought to be struck off by invoking the powers under Article 227 of the Constitution of India.



WEB COPY

12. Coming to the decisions that have been relied on by the learned counsel on either side, in ***Sivakumar's case*** (referred herein supra), this Court held that re-agitation of same issue is not permissible and the High Court in exercise of power under Article 227 of the Constitution of India is entitled to nip the litigation in the bud. In the facts of the said case, this Court found that plaintiff would require the learned District Munsif Court to sit on Appeal over the judgment and decree of the learned Subordinate Court and that such a reversal of hierarchical structure is impermissible and therefore, proceeded to strike off the plaint invoking power under Article 227 of the Constitution of India.

13. In ***Raghavendra Sharan Singh's case*** (referred herein supra), the Hon'ble Supreme Court held that for 22 long years the plaintiff never claimed any right in the property and also did not challenge the gift deed and in such circumstances found that the plaint was clearly barred by limitation and therefore the plaint was rejected.

14. In ***A.Kaleur Rahman's case*** (referred herein supra), this Court finding that in so far as the reliefs sought for, there was a clear bar under



the Electricity Act, 2003, proceeded to strike off the plaint invoking power under Article 227 of the Constitution of India.

WEB COPY

15. In *A.Venkatasubbiah Naidu's case* (referred herein supra), the Hon'ble Supreme Court held that when party had alternate remedies, though no hurdle can be put against exercise of constitutional powers of the High Court, yet held that the High Court should have directed the party to avail the alternate remedies, before resorting to a constitutional remedy.

16. In *Shalini Shyam Shetty's case* (referred herein supra) the Hon'ble Supreme Court frowned upon High Courts, in a routine manner, entertaining petitions under Article 227 of Constitution of India, where property rights and disputes between private individuals are involved.

17. In *Virudhunagar's case* as well as *K.Valarmathi's case* (referred herein supra) the Hon'ble Supreme Court again reiterated the principle that the power of the High Court to interfere under Article 226 and 227 has to be very sparingly exercised and especially when there is

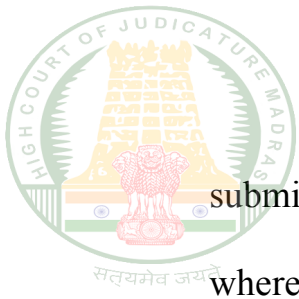


an alternate remedy available, then, the High Court should not interfere.

WEB COPY

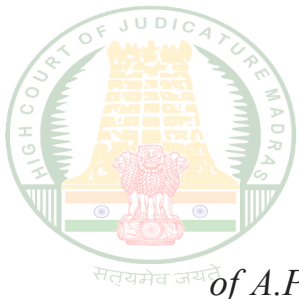
18. In the facts of the present case, as rightly contended by Mr.S.Parthasarathy, learned Senior Counsel, if the relief of declaration that the judgment in O.S.No.101 of 2018 is null and void becomes unavailable or cannot be granted, then the other reliefs would only be consequential and would also not be available to the plaintiff. No doubt, the judgment and decree in O.S.No. 101 of 2018 was rendered by the learned Additional District Judge, Krishnagiri. However, it is to be noticed that the plaintiff was not a party to the said suit and therefore, it is the contention of the plaintiff that the said judgment and decree will not bind the plaintiff and it is open to the plaintiff to challenge the same in a manner known to law, even if it required the challenge to be made before the Sub Court.

19. On the contrary, it is the contention of Mr.S.Parthasarathy, learned Senior Counsel that the purchaser of the plaintiff was a party to said suit in O.S.No.101 of 2018 and therefore, the plaintiff is also bound by the said decision. Unfortunately, I am unable to countenance the



submissions advanced by the learned Senior Counsel. If it was a case where the predecessor in interest or the vendor of the plaintiff was a party to O.S.No.101 of 2018, then it can be certainly state that the plaintiff would be bound by the said judgment and decree. However, the reverse will not apply. Merely because the purchaser from the plaintiff was a party to O.S.No. 101 of 2018, the judgment and decree in the said suit cannot apply backwards to bind the plaintiff.

20. As regards the challenge to the decree of the District Court, before the Sub-Court, it is not impermissible in the light of the Plaintiff claiming that the decree was obtained by playing fraud and behind his back. As early as in *Arunachalam Chetty v. Sabapathy Chetty*, reported in *AIR 1918 Mad 711*, a Division Bench of our High Court, after discussing the entire gamut of case law on the point, right from Privy Council, held that a District Munsif had jurisdiction to try a suit seeking a relief of declaration to set aside a decree of a District Judge, when fraud has been pleaded or alleged in the plaint.



21. Decades later, In *A.V.Papayya Sastry and others v. Government*

of *A.P. and others*, reported in (2007) 4 SCC 221, the Hon'ble Supreme

WEB COPY

Court held that if a judgment and decree is obtained by playing fraud, then it is non-est and a nullity and can be challenged before any Court, at any time, in appeal, revision, writ or even collateral proceedings. Therefore, law is fairly and consistently well settled that a decree which is a nullity can be challenged before a Subordinate Court too, when fraud is pleaded as there is no express or implied bar for the same. Any court, subordinate or superior, can pass a decree of a declaration in this regard, if it is proved that fraud has been played. In the present case also, the suit has been filed alleging fraud and therefore, it cannot be contended that the suit before the Sub-Court, challenging the decree passed by the District Court is not maintainable. Of course, the burden would be very heavily on the Plaintiff's shoulders, but this itself, cannot be a ground to strike off the plaint, especially when admittedly the Plaintiff is not a party to the earlier decree, which is challenged in the present suit. Also, Plaintiff has additionally prayed for various other reliefs, including declaration of title and recovery of possession and all these can be adjudicated only after the parties lead oral and documentary evidence. It

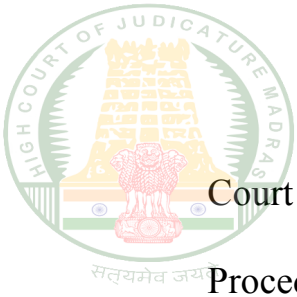


is certainly not a case where I can exercise powers under Article 227 of the Constitution of India and strike off the plaint.

WEB COPY

22. As held by this Court in *A.Kaleur Rahman's case* (referred herein supra), following various decisions of the Hon'ble Supreme Court that power under Article 227 is always available to this Court to strike off the plaint which is in exercise of supervisory jurisdiction and such exercise should be with utmost restraint and circumspect and only when the continuance of the pleading would be a travesty of justice. Applying the said ratio to the facts of the present case, I do not find that the plaint is liable to be struck off under Article 227.

23. With regard to the decision in *Sivakumar's case* (referred herein supra) holding that a Subordinate Court cannot sit on appeal over a Superior Court, in the said case, entitlement of a particular person to right over the property had already been settled by an earlier judgment of a Superior Court and in such circumstances, this Court held that the subsequent suit re-agitating the very same issue was not maintainable and the only course open was to challenge the judgment of the Superior



Court before the High Court under Section 100 of the Code of Civil Procedure.

WEB COPY

24. Therefore, I do not find the said decision also coming to the aid of the revision petitioner to compel me to strike off the plaint, exercising the supervisory and discretionary powers under Article 227 of the Constitution of India.

25. In fine, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

01.08.2025

rkp
Index : Yes
Internet : Yes

To:

The Principal Subordinate Judge, Hosur.



WEB COPY



CRP. No.4799 of 2023

P.B.BALAJI, J.,

rkp

Pre-delivery order in
CRP. PD. No.4799 of 2023
and CMP. No.28495 of 2023

01.08.2025