



C.R.P.(MD)No.268 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
23.06.2025	14.07.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.R.P. (MD) NO. 1193 OF 2025

1. Thirugnanasambandhar Adheena Madam

Madurai, rep. By its Madathipathi

Sri. La. Sri Hariharar Gnanasambanda

Desika Paramacharya

2. Mr. Jeganathan

Manager

Thirugnanasambandhar Adheena Madam

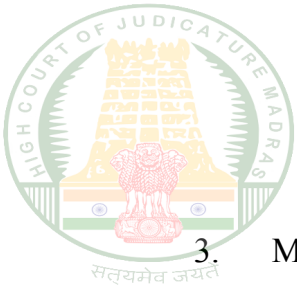
Madurai.

.. Petitioner

- Vs -

1. Mr.Ramakrishnan

2. Mrs.Parvathavarthini



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3. Mr.Divyaprabu

4. Mrs.Rajeswari

5. Venkatajalapathy

6. Mrs.Nivetha

7. Mr. R.Arun

.. Respondents

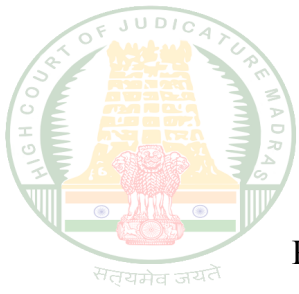
For Petitioner : Mr. V.Ragavachari, SC, for
Mr. M.Venkatakrishnan

For Respondents : Mr. Mohammed Haneef for
Mr.D. Venkatesh for R-7
No Appearance for RR-1 to 6

ORDER

Through the present civil revision, the petitioner seeks the indulgence of this Court to strike off the plaint presented by the respondents herein/plaintiffs therein in O.S. No.37 of 2024, before the Principal District Judge, Dindigul, is an abuse of process of the court and as being barred under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short 'the Act').

2. The brief facts necessary for the disposal of this revision petition are as under :-



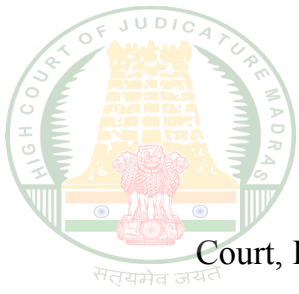
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Respondents 1 to 6 herein, who are the plaintiffs 1 to 6 in the suit, claim their right over the disputed property through their predecessor-in-title, viz., Vellaichamy Gounder @ Chinathambi Gounder, the lessee, under a registered sale deed dated 28.5.1908.

3. It is the case of respondents 1 to 6 in the aforesaid suit that the said property was, to a large extent, a vacant land to an extent of 2250 sq.ft., which belonged to the 1st petitioner herein with a dilapidated mud structure, which was leased out to the said Vellaichamy Gounder through Registered Document No. 310/1908 dated 28.5.1908 at a yearly rent of Rs.15/-. It is the further averment in the plaint that right was granted to the lessee to remove the dilapidated structure and put up pucca construction at his cost. On the basis of the said lease deed and encroaching upon the adjacent land, the said Vellaichamy Gounder put up construction and the said buildings were assessed to tax and he along with his family members were enjoying the same.

4. It is the further averment of the respondents 1 to 6 that upon the death of the said Vellaichamy Gounder, his only son, Ramalinga Gounder, who was the legal heir, inherited the property and was enjoying the same, but, however, without paying the lease amount to the 1st petitioner herein. Since the lease amount was not paid, the 1st petitioner herein filed a suit in O.S. No.2 of 1969 before the Sub



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Court, Dindigul, which, after, trial, was dismissed vide judgment dated 25.8.1971.

Against the said judgment and decree, the 1st petitioner filed appeal in A.S. No.96 of 1972 on the file of the Addl. District Judge, Madurai, which was allowed on 11.7.1979 setting aside the order of dismissal passed by the trial court.

5. Pending the appeal, the said Ramalinga Gounder died leaving behind his legal heirs and the said legal heirs were enjoying all the properties of Ramalinga Gounder in addition to the suit schedule properties as their own properties. Thereafter, upon the judgment and decree being passed in A.S. No.96/1972, the legal heirs of Ramalinga Gounder filed S.A. No.1555/1979 before this Court. It is the further averment of respondents 1 to 6 that pending the second appeal before this Court, on the basis of the assurance given by the then authorised person of the 1st petitioner that no hindrance will be caused to the peaceful possession and enjoyment of the suit schedule properties by the legal heirs of the said Ramalinga Gounder, the appellants in the second appeal left the second appeal to be dismissed for non-prosecution.

6. It is the further averment of respondents 1 to 6 that the 1st petitioner did not take any steps to realise the arrears of rent from the lessees and did not take any steps to evict the lessees from the suit schedule property, which clearly shows that the 1st petitioner accepted that the suit schedule properties were in the legal



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possession and enjoyment of the lessees. Pending the issue, some of the legal heirs of Ramalinga Gounder, viz., the wife and one of the son died and their legal heirs were enjoying the suit schedule properties and, accordingly, respondents 1 to 6 are in possession and enjoyment of the suit schedule properties. Since the suit schedule properties were in continuous possession and peaceful enjoyment of respondents 1 to 6 and their predecessors-in-title, without any hindrance and, thereby, respondents 1 to 6 have perfected title to the said property by adverse possession. Respondents 1 to 6 further aver that they have got prescriptive title and have been enjoyed as the own properties of respondents 1 to 6 for period beyond the prescribed period of limitation and, therefore, claim of title by the 1st petitioner herein is barred by limitation.

7. It is the further averment of respondents 1 to 6 in the suit that based on their possession and enjoyment over the suit schedule property on the basis of the prescriptive title, vide Document No.306/2001, respondents 1 to 6 created a rental lease in respect of the 7th defendant for a period of 99 years and handed over the suit schedule property to the 7th defendant and that the 7th defendant having been in possession and enjoyment of the suit schedule property since the year 2001, had perfected right to enjoy the property adverse to the interest and possession of the 1st petitioner herein/1st defendant in the suit as his lessor, viz., respondents 1 to 6 were enjoying the prescriptive title to the property prior to the said period and the



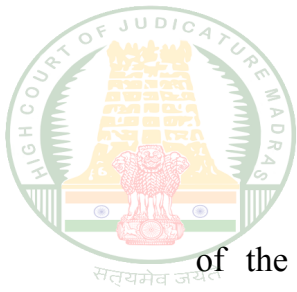
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1st petitioner had lost its right and title over the suit schedule property by virtue of the bar under the Limitation Act.

8. It is the further averment of the respondents that the construction in the suit schedule property is under the tenancy of the 7th defendant and that all the statutory duties and levies with regard to tax is being paid by the 7th defendant and the electricity bill is also being paid by the 7th defendant and is also paying the water tax to the Palani Municipality and that the 7th defendant is maintaining the entire suit schedule property including receipt of rents.

9. It is the further averment of the respondents that one of the tenant, viz., Kannaiah, who was a tenant under respondents 1 to 6 had filed RCOP No.7/2012 with regard to the person to whom the rent should be paid and as there was dispute with regard to the payment of rent sought permission of the authority to deposit the rent to the credit of the said petition, which petition was dismissed by the Rent Control Court, which also establishes the right of the 7th defendant over the suit schedule property.

10. It is the further averment of the respondents that patta in respect of the suit schedule property has been issued in the names of respondents 1 to 6 and the petition against cancellation of the said patta filed by the 2nd petitioner on behalf



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of the 1st petitioner before the appropriate authority is pending. To cause difficulty and hindrance to the peaceful possession and enjoyment of the 7th defendant as a tenant under respondents 1 to 6, the 1st petitioner had come to the suit schedule property and sought to take forceful action to subvert the enjoyment of the respondents, which has resulted in the filing of the suit in O.S. No.37/2024.

11. On the aforementioned facts, the respondents herein/plaintiffs have sought for a decree -

- i) To declare that the plaintiffs 1 to 6 are the absolute owners of the items 1 and 2 of the suit schedule properties;*
- ii) Consequential injunction restraining the defendants, their men and agents from interfering with the plaintiffs' exclusive possession of the suit properties;*
- iii) To declare that the 7th defendant is entitled to enjoy the item 1 and 2 of the suit schedule properties as a lawful tenant under lease deed dated 14.2.2001 for 99 years;*
- iv) For costs ; and*
- v) For such or other reliefs as this Hon'ble Court may think necessary on the facts and circumstances of the case.*

12. The presentation of the suit and cognizance thereof leading to the numbering of the suit in O.S. No.37/2024 is sought to be put in issue in the present



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revision on behalf of the 1st petitioner seeking to strike off the pleadings in the suit.

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13. Learned senior counsel appearing for the petitioner, espousing the cause of the petitioner, in his usual vehemence and inimitable style submitted that the possession of respondents 1 to 6 is only as “Tenants at Sufferance” who continue to be in possession of the property after extinction of lawful title on the basis of a valid and binding decree passed by the competent civil court, which has been confirmed by this Court in the appeal and, therefore, respondents 1 to 6 or for that matter, the 7th respondent is not entitled to claim prescriptive title against the 1st petitioner.

14. It is the further submission of the learned senior counsel that the petitioner is a “Math” as per Section 6 (13) and a “Religious Institution” as defined u/s 6 (18) of the Act. Any person, including the respondents herein, who are in possession of the suit properties of the religious institutions after the expiry or termination or cancellation of the lease without approval of the competent authority are encroachers as per Explanation to Section 78 of the Act and it is the jurisdictional Joint Commissioner, who is the competent authority to deal with the issues pertaining to removal of the encroachment and the civil court has no jurisdiction to entertain and decide any suit.



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WEB COPY 15. It is the further submission of the learned senior counsel that in respect of lease of property belonging to a religious institution covered under the Act beyond a period of 5 years, concurrence/approval of the Joint Commissioner u/s 109 of the Act is mandatory. Only to protect the properties belonging to the religious institutions, Section 109 of the Act, was amended through Tamil Nadu Act 28 of 2003, which provided for protecting the properties of the religious institutions from being lost by adverse possession on account of the limitation prescribed under the Limitation Act and, therefore, the present suit by the respondents claiming prescriptive title against the 1st petitioner is not maintainable. The present suit is nothing but a veiled and clever attempt by the respondents to prolong the illegal and unlawful occupation of the suit properties.

16. It is the further submission of the learned senior counsel that the trial court failed to adhere to the well settled principle of law and ought to have rejected the plaint at the threshold, as it is vexatious and shows illusory cause of action and erroneously numbered the suit and, therefore, the present revision has been filed to strike off the pleadings in the plaint.

17. In support of the aforesaid submissions, learned senior counsel placed reliance on the following decisions :-



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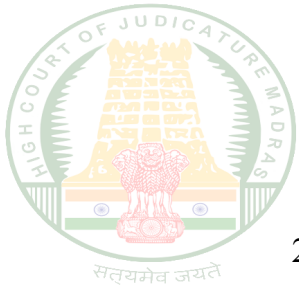


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- i) *M/s.V.N.R. Homes Pvt. Ltd. Rep. By its Whole Time Director – Vs – Sky City Owners Association & Ors. (C.R.P. (PD) No.1491/2024 – Dated 5.11.2024);*
- ii) *M/s.Tripower enterprises (Pvt.) Ltd. – Vs – Selvam Arudoss & Ors. (C.R.P. No.2481 of 2023 – Dated 4.12.2024);*
- iii) *Pradeep Kumar & anr. – Vs – Orappam Village Peoples Development Welfare Association & Ors. (C.R.P. No.2963 of 2024 – Dated 7.2.2025); and*
- iv) *Mother Superior, Amali Girl's Higher Secondary School – Vs – The Commissioner, HR & CE Department (W.P. (MD) Nos.14889/2013, etc. – Dated 4.12.2023)*

18. Per contra, learned counsel appearing for the 7th respondent, at the outset, while placing on the decision of the Apex Court in ***K.Valarmathi & Ors. – Vs – Kumaresan (2025 INSC 606 – Dated 29.04.2025)***, submitted that the supervisory jurisdiction/power of the High Court under Article 227 of the Constitution cannot be utilised to reject/strike off the plaint as the said procedure cannot be utilised to bypass the jurisdiction of the trial court and, therefore, applying the said ratio, the present revision is not maintainable.

19. It is the further submission of the learned counsel that when an alternate remedy to reject the plaint is available under Order VII Rule 11 of the Code of Civil Procedure (for short 'CPC'), bypassing the said remedy and approaching this Court under Article 227 of the Constitution renders the revision not maintainable.



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20. It is the further submission of the learned counsel that the genealogy submitted by the revision petitioners does not reflect the correct picture, while the genealogy submitted by the 7th respondent along reflects the correct position with regard to the legal representatives of the Late Ramalinga Gounder.

21. It is the further submission of the learned counsel that from 12.02.2001, the 7th respondent has been in possession and enjoyment of the suit property in O.S. No.37/2024 and all the statutory records/receipts stands in the name of the 7th respondent and that for the past 24 years, no objection has been taken by the revision petitioners with regard to the said possession. The town survey land register also stands in the name of the legal representatives of Ramalinga Gounder and the 1st petitioner having not taken any action for a long time will attract acquiescence in law.

22. It is the further submission of the learned counsel that one of the tenant under the respondents filed RCOP No.7/2012 seeking relief with regard to deposit of rent in which the 1st petitioner did not record its appearance despite receipt of summons and the 1st petitioner was set ex parte. Further, it is submitted that in I.A. No.74/2024 filed in the present O.S. No.37/2024 seeking injunction, the 1st petitioner did not file any counter and the 2nd petitioner also did not appear and

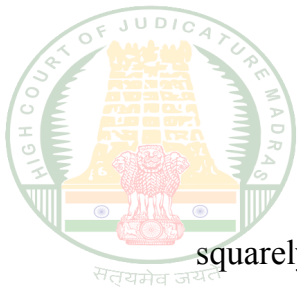


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they were set ex parte. This clearly shows that the petitioners have not been diligent in prosecuting the matters.

23. It is the further submission of the learned counsel that the inaction on the part of the revision petitioners with respect to the lease, which was given in favour of the 7th respondent by respondents 1 to 6, as early as in the year 2001, clearly shows that the petitioners were silent and did not act on the said lease deed. Coupled with the fact that inspite of the rent control proceedings, no action having been taken by the petitioners, it clearly establishes that the petitioners have not been diligent and, therefore, the claim of the respondents with regard to perfection of right and title by adverse possession stands established.

24. It is the further submission of the learned counsel that the decisions relied on by the petitioners would not stand attracted to the case, as the HR & CE authorities are not parties to the suit in O.S. No.37/2024 and the Act alone cannot be the basis to decide the merits of the suit. Inspite of the second appeal in S.A. No.1555/1979 having dismissed for default as early as on 9.8.1984, no steps were taken by the 1st petitioner to repossess the properties and the 7th respondent has been in possession and enjoyment of the property since 2001 and for the past 41 years from the date of dismissal of the second appeal to the filing of the suit, the 1st petitioner having not taken any action, the said inaction is manifest and it



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squarely attracts the theory of law of acquiescence, which will flow to the benefit of the 7th respondent.

25. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on, on behalf of the respective parties.

26. The issues that arise for consideration in the present revision are :-

- i) *Whether the revision petition is maintainable when relief of alternative remedy is available under Order VII Rule 11 CPC.*
- ii) *Whether the High Court can reject/strike off a plaint under Article 227 of the Constitution in exercise of its supervisory jurisdiction.*
- iii) *Whether the alleged lease and the plea of adverse possession and prescriptive title could be maintained by the respondents.*
- iv) *Whether the present suit laid by the respondents herein is an abuse of process of court and bereft of cause of action.*

ISSUE NO. 1

Whether the revision petition is maintainable when relief of alternative remedy is available under Order VII Rule 11 CPC.



WEB COPY 27. The core issue, viz., the first issue, revolves around the maintainability of a revision under Article 227 when there exists an alternative remedy under Order VI Rule 16 and Order VII Rule 11 CPC before the trial court. Placing reliance on the decision of the Apex Court in *Valarmathi's case* it is submitted that the procedure provided under the Civil Procedure Court should not be short-circuited, thereby, curtailing the power of the trial court to go ahead with the trial. For better appreciation, the relevant portion of the decision is quoted hereunder :-

“10. Civil Procedure Code is a self-contained Code and Order VII Rule 11 therein enumerates the circumstances in which the trial court may reject a plaint. Such rejection amounts to a deemed decree which is appealable before the High Court under Section 96 of the Code. This statutory scheme cannot be upended by invoking supervisory jurisdiction of the High Court under Article 227 to entertain a prayer for rejection of plaint.

11. In the present case, High Court has supervened the provisions of the Code when it rejected the plaint on the ground it was barred by law. In doing so, the High Court not only substituted itself as the court of first instance but also rendered nugatory a valuable right to appeal available to the appellant had the issue been adjudicated by the trial court in the first place.”

28. The aforesaid decision arises out of an order passed in relation to the power under Order VII Rule 11 CPC, which deals with rejection of a plaint, wherein the Apex Court held that the High Court should not usurp the power of

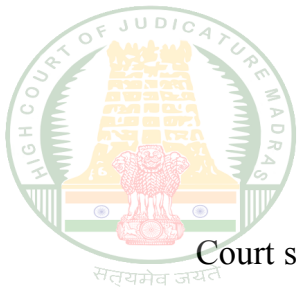


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the trial court, moreso, when an appellate remedy is available against the said judgment passed by the trial court. However, the present revision is filed praying to strike off the pleadings in the suit, which was not the subject matter in *Valarmathi's case*. This Court is not only conscious of its powers, but also the usurpation of the original jurisdiction of the civil court, when a revision is entertained for rejection of plaint or for striking off the pleadings by invoking Order VI Rule 16 or Order VII Rule 11 CPC. However, is the power of the High Court totally barred from exercising its supervisory jurisdiction under Article 227 of the Constitution is the issue that is predominantly to be looked at by this Court.

29. It is the accepted ratio that the supervisory jurisdiction of the High Court under Article 227 of the Constitution is not curtailed merely on the ground that it is the revisionary jurisdiction of this Court and, therefore, the High Court ought not to exercise its power where a remedy is available in appeal against a decree passed in a suit. This Court could very well exercise its power if it finds that the trial court has exceeded its jurisdiction or that if it finds that the proceedings are nothing but an abuse of process or law or one without cause of action and in such circumstances, the hands of this Court is not tied down merely because it is exercising revisionary jurisdiction.

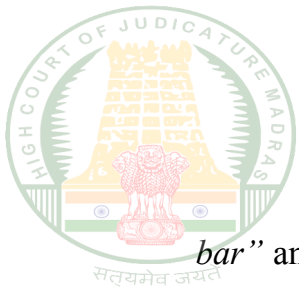
30. Normally, while exercising powers under Article 227 of the Constitution for striking down the pleadings, exercise of such powers by the High



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Court should be slow and unless abuse of process of law is apparent on the face of the proceedings, the Court shall not endeavour to strike off the pleadings. Further, when an alternative remedy is available, exercise of extraordinary jurisdiction has been prone to divergent views, both for and against such exercise. However, it is to be noted that the invocation of the said extraordinary and supervisory jurisdiction under Article 227 in specific circumstances merely on account of the Court sitting under revisional jurisdiction cannot act as a bar to entertainment of such plea. Suffice to add, that it would invariably depend on the facts and circumstances of each case and to codify situations in which such extraordinary power can be exercised would be an act in futility, as the Court could not visualise all the scenarios, which would arise in the plethora of cases that comes before it. Therefore, what is to be seen by the Court while exercising its extraordinary and supervisory jurisdiction is that the ingredients which would attract the provisions of Order VI Rule 16 or Order VII Rule 11 CPC stands fulfilled in the case before it, which would alone be the determinative factor in the court proceeding to exercise the said power.

31. Therefore, it could safely be concluded that there is never a total bar on the exercise of extraordinary power under the revisional jurisdiction under Article 227 of the Constitution as the Supreme Court in ***Virudhunagar Hindu Nadargal Dharma Paribala Sabai & Ors. – Vs – Tuticorin Educational Society & Ors.*** (***AIR OnLine 2019 SC 2691***) has only taken a view in relation to “a mere total



bar” and has not held that there exists a total bar for maintaining a revision under

Article 227 of the Constitution. Therefore, it is up to the Court, which deals with the matter to decide whether the revision under Article 227 could be proceeded with, inspite of the alternative remedy available.

32. In this regard, a detailed discussion on the exercise of the supervisory jurisdiction of this Court under Article 227 has been made in the decision in *V.N.R.Homes case (supra)*, wherein V.Lakshmi Narayanan, J., has made a detailed analysis, including the application of the decision of the Supreme Court and held as under:-

“15. It is beyond cavil that this Court has the power under Article 227 of the Constitution of India to keep the Courts subordinate to it within their bounds. In case a Court exceeds its jurisdiction or if it finds that the proceedings are in the nature of an abuse of process of law or are totally bereft of cause of action, this Court always retains jurisdiction to strike off the plaint, if it suffers from the aforesaid vices. The principle of pushing a party to an alternate remedy is a self imposed restriction and it need not be applied across the board. It is neither a strait jacket formula nor is the power under Article 227 a procrustean bed to knock off the legs or the head, if they do not fit the bed.

16. If I were to come to a conclusion that the suit is an abuse or is totally bereft of the cause of action, I certainly retain the jurisdiction to strike off the plaint. In fact in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai, the Supreme

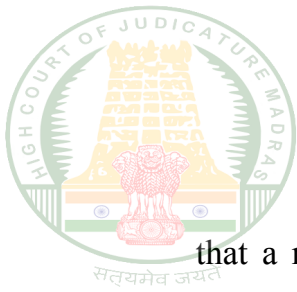


Court had taken a view that “a mere total bar”, it did not hold that there exist a total bar for maintaining a revision under Article 227 of the Constitution of India. I also have to see the facts of the aforesaid case, which lead to laid down the dictum.

17. The matter went up before the Supreme Court, on account of the fact, a learned single Judge of this Court interfered with an order of the Trial Court when a civil miscellaneous appeal under Order XLIII Rule 1 of the Code of Civil Procedure was pending before the appellate Court. It was under those circumstances, the Supreme Court took a view that when one party has already availed the remedy available under the Code of Civil Procedure, this Court should not normally interfere with the said order and ought to have delegated the civil revision petitioner to pursue the remedy of the appeal that he had preferred. In any event, as pointed out above, the Court did not say there is absolute prohibition of the Court to entertain the revision under Article 227. I should add here that my brother Justice Mr.D.Bharatha Chakravarthy, after a detailed analysis of all the previous case laws, has held that if compelling reason exists considering the urgency or if relegating the parties to the Trial Court, the Trial Court would result in injustice, this Court can exercise the power to strike off the plaint. See, N.Periyasamy v. Mohamed Bilaldeem and others, C.R.P.(MD)No.671 of 2022, dated 23.08.2024.”

(Emphasis Supplied)

33. From the above discussion as also the decision of the coordinate Bench of this Court, which has placed reliance on other decisions on this issue, it is clear



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that a revision petition is maintainable before this Court as the bar spelt under Article 227 is not a total bar and further the availability of an alternative remedy does not oust the jurisdiction of this Court to entertain a revision under Article 227 of the Constitution. **Therefore, issue No.1 is answered accordingly.**

ISSUE NO.2

Whether the High Court can reject/strike off a plaint under Article 227 of the Constitution in exercise of its supervisory jurisdiction.

34. The next issue that falls for consideration is with regard to rejection of plaint under Order VII Rule 11 CPC and striking off the pleadings under Order VI Rule 16 CPC under Article 227 of the Constitution.

35. The Code of Civil Procedure provides for striking off the pleadings under Order VI Rule 16 and for rejection of plaint under Order VII Rule 11. For appreciation of the issue at hand, the said provisions are quoted hereunder :-

“Order VI Rule 16

16. Striking out pleadings

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading—

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(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 the Court.

Order VII Rule 11



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11. Rejection of plaint

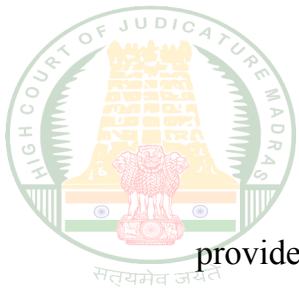
The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of rule 9;*

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

36. From the provisions, as it is couched, it is clear that Order VI Rule 16 and Order VII Rule 11 CPC clearly envisage two different set of circumstances in which the plaint/pleadings can be struck off/rejected.

37. Striking out the pleadings provided under Order VI Rule 16 CPC



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provides three scenarios in which the Court could exercise its power to strike out the pleadings, viz., (i) *where unnecessary, scandalous, frivolous and vexatious pleadings are made;* (ii) *where the pleadings tend to prejudice, embarrass or delay the fair trial of the suit;* or (iii) *where it is an abuse of process of Court.*

38. Rejection of Complaint under Order VII Rule 11 CPC provides six scenarios in which the Court could exercise its power of rejection, viz., (i) *where it does not disclose a cause of action;* (ii) *where relief claimed is undervalued and the plaintiff does not correct the valuation within the time stipulated by the court;* (iii) *where the relief claimed is properly valued, but complaint written upon an insufficiently stamped paper and the plaintiff fails to supply the requisite stamp within the time stipulated by the Court;* (iv) *suit appears to be barred by law from the statements made in the complaint;* (v) *where it is not filed in duplicate;* and (vi) *where the plaintiff fails to comply with the provisions of Rule 9.*

39. In the present revision, this Court is concerned with the application of Order VI Rule 16, which relates to striking off of pleadings. The purposive application of Order VII Rule 11 and Order VI Rule 16 has been succinctly dealt with by the Apex Court in ***Madiraju Venkata Ramana Raju – Vs – Peddireddigari Ramachandra Reddy & Ors. (C.A. No.9446 – 9468/2016 – Dated 21.03.2018)***, wherein the Apex Court held thus :-

“11. Ordinarily, an application for rejection of election



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petition in limine, purportedly under Order VII Rule 11 for non-disclosure of cause of action, ought to proceed at the threshold. For, it has to be considered only on the basis of institutional defects in the election petition in reference to the grounds specified in clauses (a) to (f) of Rule 11. Indeed, non-disclosure of cause of action is covered by clause (a) therein. Concededly, Order VII of the CPC generally deals with the institution of a plaint. It delineates the requirements regarding the particulars to be contained in the plaint, relief to be specifically stated, for relief to be founded on separate grounds, procedure on admitting plaint, and includes return of plaint. The rejection of plaint follows the procedure on admitting plaint or even before admitting the same, if the court on presentation of the plaint is of the view that the same does not fulfill the statutory and institutional requirements referred to in clauses (a) to (f) of Rule 11. The power bestowed in the court in terms of Rule 11 may also be exercised by the court on a formal application moved by the defendant after being served with the summons to appear before the Court. Be that as it may, the application under Order VII Rule 11 deserves consideration at the threshold.

12. On the other hand, the application for striking out pleadings in terms of Order VI Rule 16 may be resorted to by the defendant(s)/respondent(s) at any stage of the proceedings, as is predicated in the said provision. The pleading(s) can be struck off by the Court on grounds specified in clauses (a) to (c) of Rule 16.

13. Indeed, if the defendant moves two separate applications at the same time, as in this case, it would be open to the court in a given case to consider both the applications together or independent of each other. If the court decides to hear the



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application under Order VII Rule 11 in the first instance, the court would be obliged to consider the plaint as filed as a whole. But if the court decides to proceed with the application under Order VI Rule 16 for striking out the pleadings before consideration of the application under Order VII Rule 11 for rejection of the plaint, on allowing the former application after striking out the relevant pleadings then the court must consider the remainder pleadings of the plaint in reference to the postulates of Order VII Rule 11, for determining whether the plaint (after striking out pleadings) deserves to be rejected in limine.

14. In the present case, the High Court has presumably adopted the latter course. It first proceeded to examine the application for striking out the pleadings in paragraphs 2 & 9 to 11 of the election petition being frivolous and vexatious and also because the same did not disclose any cause of action. And having accepted that prayer, it proceeded to reject the election petition on the ground that it did not disclose any cause of action. However, we find that the High Court has muddled the analysis of the pleadings. It merely focused on the pleadings in paragraphs 2 & 9 to 11 of the election petition. It is one thing to strike out the stated pleadings being frivolous and vexatious but then it does not follow that the rest of the pleadings which would still remain, were not sufficient to proceed with the trial or disclose any cause of action, whatsoever, for rejecting the plaint as a whole in limine or to hold that it did not warrant a trial. No such finding can be discerned from the judgment under appeal. Be that as it may, the High Court committed manifest error in striking out the pleadings in paragraphs 2 & 9 to 11 of the election petition, being frivolous and vexatious by considering the factual matrix



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noted therein as untenable on merit. For striking out the pleadings or for that matter, rejecting the plaint (election petition), the High Court is not expected to decide the merits of the controversy referred to in the election petition. We shall elaborate on this aspect a little later.”

(Emphasis Supplied)

40. From the above decision, it is abundantly clear that the Court could very well entertain the application under Order VI Rule 16 CPC first and, thereafter, embark on dealing with Order VII Rule 11 CPC, based on the portions of the pleadings that have been struck out to find out whether the balance portion of the pleadings clearly spell out the cause of action. Therefore, there is no embargo for first determining whether a portion of the pleadings needs to be struck off or the whole of the pleadings needs to be struck off, before the applicability and attraction of Order VII Rule 11 CPC could be looked into.

41. The above view has also been followed by a learned single Judge of this Court, who had occasion to deal with the manner and the circumstances in which strike off/rejection of plaint has to be resorted to. In ***A.Kaleur Rahman – Vs – P.Kannan (C.R.P. (PD) Nos.3500 & 3501/2018, etc. – Dated 03.07.2019)***, this Court has held as under :-

“62. The above Civil Revision Petitions have been filed invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India to strike of the



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various plaint detailed herein above. It is under the provision of the Code of Civil Procedure that parties can ask for: (a) Striking of pleading and (b) Rejection of plaint. Order VI Rule 16 of the Code of Civil Procedure deals with the former, namely, striking of the pleadings and Order VII Rule 11 of the Code of Civil Procedure with the latter. Order VI Rule 16 deals with striking of portions of pleadings which includes both the plaint as well as the written statement. The circumstances under which a pleading can be struck off has been encapsulated there and the provision reads as follows:

"16. Striking out pleadings:

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(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 the Court]"

63. The Provisions of Order VII Rule 11 of the Code of Civil Procedure deals with the rejection of the plaint in toto and the circumstances under which a plaint can be rejected is contained therein and reads as follows:

"11. Rejection of plaint The plaint shall be rejected in the following cases :-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to



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do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law ;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp- papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

64. Therefore from a reading of the above provisions it is evident that under the provisions of Order VI Rule 16 portions of the pleadings, be it a plaint or the written statement, can be struck off by the Court provided the circumstances contemplated therein is in existence. The High Court exercising its Jurisdiction under Article 227 of the Constitution of India is also empowered to strike out the pleadings while exercising its supervisory jurisdiction. However while exercising the said jurisdiction the Courts have to exercise utmost restrain and be circumspect and it is only where the continuance of the pleading would be a travesty of justice or



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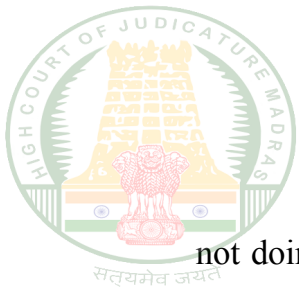
by refusing to interfere it would result in prolonging the lis then the Higher Court should venture to consider striking off the pleading or rejecting the plaint.

65. The provisions of Order VII Rule 11 of the Code of Civil Procedure can also be invoked by the High Court exercising its Supervisory jurisdiction where, prima facie, a reading of the plaint would reveal that there is no cause of action or that the suit is barred by any law. With the March of law and the increase in several frivolous and vexatious litigation additional grounds by way of judicial pronouncements have been added to strike off/reject plaint. They are:

- a) On the ground of relitigation.*
- b) Abuse of process of law; and*
- c) Fraud.*

The Honourable Supreme Court in the Judgement reported in AIR 1977 SC 2421 – [T.Arivanandam Vs. T.V.Satyapal](#), had opened the avenue for judicial interefence in these cases. This was once again reiterated in the judgement reported in AIR 1998 SC 1297 - K.K.Modi Vs. K.N.Modi.”

42. From the aforesaid decisions, it clearly transpires that the supervisory jurisdiction of this Court could very well be invoked for striking off either in full or a part of the plaint or the written statement as provided in Order VI Rule 16 CPC. The only caveat is that the High Court, while exercising such a supervisory jurisdiction should exercise utmost restraint and should be very much circumspect in so doing and such striking off/rejection should be done only when it is found that the continuance of the pleading would be nothing but a travesty of justice and



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not doing so would only lead to prolonging the issue further. In such a backdrop of the legal provision, it is clear that there is no embargo for this Court to strike off/reject the plaint or written statement in respect of the situations, which have been spelt out in Order VI Rule 16 and Order VII Rule 11 CPC by invoking its supervisory jurisdiction under Article 227 of the Constitution. **Therefore, issue No.2 is ordered accordingly.**

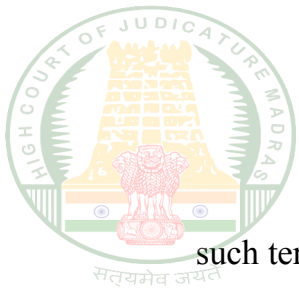
ISSUE NO.3 & 4

Whether the alleged lease and the plea of adverse possession and prescriptive title could be maintained by the respondents.

Whether the present suit laid by the respondents herein is an abuse of process and bereft of cause of action.

43. As both the aforesaid issues are intrinsically interconnected, they are taken up together for consideration. To answer these issues, it is necessary to advert to the relevant facts, both from the pleadings of the respondents in the present suit as also the documents, which are binding in nature, factual and also throw light on the manner in which this revision is to be looked at.

44. There is no dispute with the fact that a perpetual lease deed was entered into on 28.5.1908 between the petitioner and one Vellaichamy Gounder @ Chinnathambi Gounder, who is the predecessor of the respondents 1 to 6 herein on

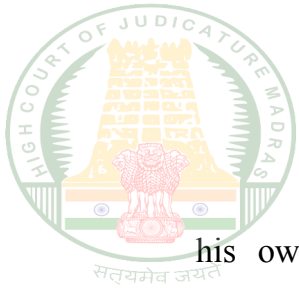


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such terms as has been agreed in the said lease deed. One of the conditions therein relate to payment of a lease rent of Rs.15/- per year and for the performance of charitable activities, which are beneficial for the temple, which includes demolition of the present structure and erection of new structures for the purpose of devotees coming to the temple. In essence, the deed provided for doing activities for the benefit of the temple and also the devotees coming to the temple.

45. The lease deed further provides that in the event of the lessee or his legal heirs not adhering or following the conditions spelt out in the lease deed, including remitting the rent at the proper time, the lessees will lose their leasehold rights to the property and all the buildings put up on the said property will revert back to the petitioner. From the aforesaid recitals in the lease deed, it could safely be concluded that a provision is made for deemed termination in case the conditions spelt out therein are not complied with.

46. Respondents 1 to 6, who are the successors-in-title of Vellaichamy Gounder @ Chinnathambi Gounder, are not disputing the veracity and the conditions spelt out in the lease deed. In fact, a careful perusal of the present suit in O.S. No.37/2024, which is the subject matter of the present *lis*, clearly reveals that the plaintiffs in the said suit have taken a categorical stand that Ramalinga Gounder, the legal heir of Vellaichamy Gounder @ Chinnathambi Gounder did not pay the lease rent to the petitioner and was, in fact, enjoying the suit property as



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his own property. Therefore, even earlier in point of time to the present respondents, there is a clear infraction of the lease conditions by the predecessors of respondents 1 to 6. In fact, respondents 1 to 6 are also not claiming that they are paying rent to the petitioner. From the above, it could safely be concluded that lease rents have not been paid, but there is no clarity as to the date from which the said rents have not been paid. From the above pleadings of the respondents, it is clear that in view of the conditions prescribed in the lease deed that failure to pay the lease rent would terminate the lease and the property will revert back to the petitioner along with all the improvements done on the property, the safe conclusion that could be drawn is that the lease deed stood terminated by means of the deeming provision.

47. However, regardless of the deeming termination, as provided in the lease deed, as the lease rent was not paid to the petitioner for the suit schedule property, O.S. No.2/1969 was filed by the petitioner herein praying for a declaration of title with of the petitioner to the property, which, initially, was dismissed vide order dated 25.8.1971 by the Sub Court, Dindigul. Aggrieved by the same, the petitioner herein filed appeal in A.S. No.96/1972 before the Addl. District Court, Madurai, which was allowed setting aside the judgment and decree passed in O.S. No.2/1969, vide judgment and decree dated 11.7.1979. Aggrieved by the said judgment and decree, which went in favour of the petitioner herein, the predecessors of respondents 1 to 6 preferred S.A. No.1555/1979. However,

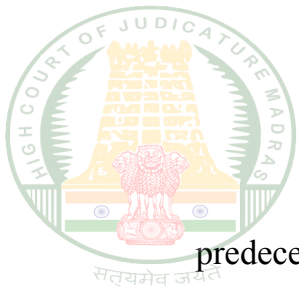


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curiously, the said second appeal was not pursued by the predecessors of respondents 1 to 6 and, thereby, this Court, vide judgment and decree dated 9.8.1984 dismissed the appeal for default.

48. Therefore, in view of the dismissal of S.A. No.1555/1979 dated 9.8.1984, the judgment and decree passed in A.S. No.96/1972 by the Addl. District Court, Madurai, attained finality and the title to the suit schedule property stood established in the name of the petitioner herein. It is to be noted that the plea of adverse possession was not taken by the predecessors of respondents 1 to 6 and no material evidencing such a plea has been placed before this Court. In fact, except for the decree in A.S. No.96/1972, the judgment containing the reasoning has not been tabled by either side.

49. The said stand taken by respondents in the present suit cannot be countenanced for reasons more than one. Firstly, the predecessors of respondents 1 to 6 did not think it fit to contest the second appeal, which was filed against the judgment and decree passed in A.S. No.96/1972, wherein the title to the property was declared in favour of the petitioner herein. Secondly, it is not the plea of respondents 1 to 6 in the present suit that the predecessors of respondents 1 to 6 as well as respondents are paying the lease rent regularly and, therefore, the petitioners herein are bound by the lease deed and there is no deemed termination of the lease deed. Thirdly, it is not the case of respondents 1 to 6 or their



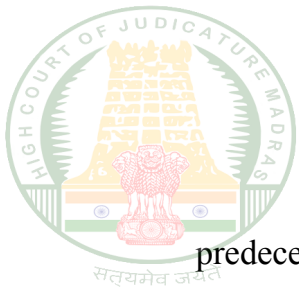
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predecessors that they had taken the plea of adverse possession, which has not been considered. From the above, it is evident that till the present suit had come to be filed there was no plea of adverse possession taken either by the respondents 1 to 6 or their predecessors.

50. The curious stand taken by the respondents herein in the present suit is that the administration of the Math promised that the legal heirs of Ramalinga Gounder may enjoy the disputed property, which belongs to the Math and that the Math will not cause any hindrance to the peaceful occupation and enjoyment of the property, which alone was the reason for the predecessors of respondents 1 to 6 in allowing the second appeal to be dismissed for default. For the respondents to take such a stand, there should be some materials, which forms the basis of such an inference so as to enable the predecessors of respondents 1 to 6 to allow the second appeal to be dismissed for default. Except for making bald pleadings in the plaint, there is no material evidencing such an averment.

51. In the light of the aforesaid factual position, this Court is bound to look at the present suit to determine the cause of auction and to find out its genuineness or whether the suit is an abuse of process of court.

52. The facts, as tabulated above, relating to the non-payment of rent, filing of the suit leading to the dismissal of the second appeal for default filed by the



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predecessors of respondents 1 to 6 culminating in the affirmation of the judgment and decree passed in A.S. No.96/1972 declaring the title in favour of the petitioner herein are matters borne out by record. Therefore, the right and title of the petitioner to the suit schedule property attained finality as early as in the year 1984 through the judgment in the second appeal, which confirmed the decree passed in A.S. No.96/1972.

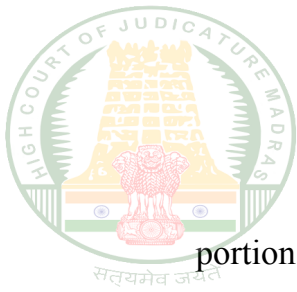
53. In the backdrop of the aforestated facts, the present suit has been filed by the respondents claiming prescriptive title by adverse possession and moreso, the 7th respondent also claims so on the basis of the lease deed, which is alleged to have been entered into with respondents 1 to 6 through a registered lease deed in document No.306/2001 on 12.02.2001.

54. As already aforestated, there is no material evidencing the plea of adverse possession by respondents 1 to 6 or their predecessors in the earlier suit, which went in favour of the petitioner herein. For the first time, in the present suit, the plea of prescriptive title by adverse possession is taken by respondents 1 to 6. However, other than filing the suit, respondents 1 to 6 have not turned up before this Court to contest this revision and it is only the alleged lessee, viz., the 7th respondent, who is alleged to have taken the suit schedule property on lease from respondents 1 to 6, who has appeared before this Court to contest the



55. It is the settled ratio that lessee under respondents 1 to 6 cannot have a better right than respondents 1 to 6, who are the alleged lessees under the petitioner. When the plea of adverse possession has not been taken at the earliest point of time by the predecessors of respondents 1 to 6, that too in the year 1969, when the suit was filed for the first time by the petitioner herein claiming declaration of title in its name, the 7th respondent, who claims himself to be a lessee under respondents 1 to 6, claims his right and prescriptive title to the suit property by adverse possession in the year 2001, when even in the year 1984, the title to the suit property had attained finality vesting it with the petitioner.

56. The claim of the 7th respondent is premised on the patta issued in favour of respondents 1 to 6 and the statutory dues with regard to electricity bills, municipal tax, etc., that stands in the name of the respondents and which are being paid by them. However, it is to be pointed out that it is the settled position of law that patta standing in the name of the respondents will not confer title to the property on the respondents. In fact, in the case of **Church of South India – Vs – State of Tamil Nadu & Ors. (W.P. No.30229/2004 –Dated 31.07.2019)**, placing reliance on the decisions of the Apex Court with regard to entries in the revenue records, this Court held that patta will not confer title to a property. The relevant



portion of the said decision is as under :-

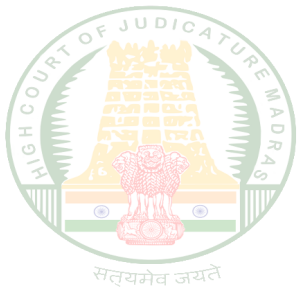
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“47. This Court as well as the Hon'ble Apex Court has repeatedly held in several judgments that the revenue records do not confer any title and the revenue records and document of title are only possessory rights. The relevant decisions are as follows:

(i) The decision of the Hon'ble Apex Court reported in **(2016) 12 SCC 235 (Prem Nath Khanna and others Vs. Narinder Nath Kapoor)**, the relevant portion of which reads as follows:

“20. In addition to the abovementioned reason, the contention advanced by the learned counsel appearing on behalf of the respondents that the appellants failed to get the mutation of entries of the suit land incorporated in record shows that there was no intention on their part to act upon the contents of the two sale deeds, cannot be accepted as mere mutation of entries does not confer title upon the deceased Respondent 1 in the immovable property. **In Sawarni v. Inder Kaur (1996) 6 SCC 223**, this Court held as under:

“7. ... Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment.”



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21. In **Guru Amarjit Singh v. Rattan Chand** ((1993) 4 SCC 349), this Court held that the entries in jamabandi are not proof of title in respect of an immovable property. In **Jattu Ram v. Hakam Singh** ((1993) 4 SCC 403), this Court observed that entries made by patwari in official record are only for the purpose of records and do not by itself prove the correctness of the same nor can statutory presumption be drawn on the same, particularly, in the absence of corroborative evidence. The respondent cannot claim to have acquired title over the suit property by pleading adverse possession only in the absence of the name of the appellants in the revenue records. In **Kishan Singh v. Arvind Kumar** ((1994) 6 SCC 591) and **P.T.Munichikanna Reddy v. Revamma** ((2007) 6 SCC 59), this Court held that in cases where the possession was initially permissive, the burden lies heavily on that person alleging adverse possession to prove that the possession has become adverse. Mere possession for long time does not convert permissive possession into adverse possession.” A perusal of the above decision makes it clear un-doubtedly the entries in the record, the patta is not a title. The petitioner's claim based on the patta is also un-sustainable one.”

(Emphasis Supplied)

57. In the light of the aforestated legal position, there could be no semblance of doubt that mere payment of bills which reflect the names of the respondents would not cloth any title on the respondents. Therefore, the



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contention of the respondents that the statutory dues are being paid by them and patta stands in the name of the respondents will not suffice to confer title on respondents 1 to 6 so as to enable them to execute a lease deed in favour of the 7th respondent. Therefore, the contention advanced in this regard does not merit acceptance and also will not establish any cause of action for the respondents to maintain the suit.

58. The further case in the present suit by the respondents is predicated upon the plea of limitation, wherein it is claimed that no steps were taken by the petitioner herein after the judgment and decree in S.A. No.1555/1979 for taking possession of the suit schedule property from respondents 1 to 6, who were enjoying the said property till the same was given on lease to the 7th respondent in the year 2001. It is further claimed that thereafter, the 7th respondent has been in continuous possession and occupation and has perfected his right to adverse possession and, therefore, there exists a bar for the petitioner to take steps on the possessory right of the 7th respondent as it stands extinguished in view of the period of limitation prescribed under the Limitation Act.

59. It is relevant to advert to the decision of this Court in ***Arulmighu Kolavizhi Amman Temple – Vs – R.Shanmugham (2008 (3) MLJ 732)***, wherein this Court on the plea of prescription and adverse possession held that it cannot be



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set up against a religious institution when the property had vested in a person after

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30.09.1951. Even for pending suits, provisions of Section 109 will apply and, therefore a suit for possession filed by the temple is maintainable and the plea of adverse possession was negatived.

60. As stated above, there is no material to infer that the plea of adverse possession was taken earlier by the predecessors of respondents 1 to 6. Without admitting, even if such a plea had been taken, that would be of no avail as after 30.09.1951, properties belonging to religious institution cannot be claimed under the plea of adverse possession, as the suit itself was filed only in the year 1969. Only to safeguard the interests of the properties belonging to religious institutions, Section 109 of the Hindu Religious and Charitable Endowments Act was amended in the year 2003 in and by which the provisions of the Limitation Act, 1963, was held as not applicable in respect of any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property.

61. When the predecessors to respondents 1 to 6 and even respondents 1 to 6 could not claim any right over the said property by making claiming prescriptive title by adverse possession, more particularly after 30.09.1951, the 7th respondent, who is an alleged subsequent lessee under respondents 1 to 6, cannot claim



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prescriptive title over the suit schedule property on the plea of adverse possession, as the 7th respondent would not have a better right than his lessor, but his plea of limitation would have to fail in view of the amendment to Section 109 of the HR & CE Act.

62. Further, it is also trite to refer to the decision in ***Subramaniam – Vs – Sri Devanathaswami Devasthanam (2007 (3) MLJ 85)***, wherein it has been held that the title to the property having been proved to vest with the temple therein, who was the absolute owner of the suit property, the plea of the defendants therein, who alleged to have derived title to the property by way of adverse possession, was negated by taking recourse to Section 109 of the Tamil Nadu Hindu Religious & Charitable Endowments Act and it was held that the temple therein was entitled to protection u/s109 of the Hindu Religious and Charitable Endowments Act. In the present case as well, the title to the suit schedule property has been held to be with the petitioner, as early as in the year 1979, which had attained finality by the dismissal of the second appeal in the year 1984, and the respondents having not raised the plea of adverse possession, nor could they raise it after 30.9.1951, the 7th respondent, being the alleged subsequent lessee under respondents 1 to 6, can at best stand in the legs of respondents 1 to 6 and does not have separate legs to stand as his right, if at all and if there be, flows only from respondents 1 to 6 and not otherwise.



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WEB COPY 63. Vide the judgment and decree in A.S. No.96/1972 the title to the property having been declared to be with the petitioner, definitely the authority under the Hindu Religious & Charitable Endowments Act would be the authority, who could, after the enactment of the said Act, could grant permission for leasing out the property belonging to a religious institution. Section 34 of the Hindu Religious and Charitable Endowments Act clearly prohibits alienation of immovable trust property, by way of exchange, sale or mortgage and any lease for a term exceeding five years which has been given to a religious institution, shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.

64. In the present case, on and from the date of enactment of the Hindu Religious and Charitable Endowments Act, without the permission of the Commissioner, the suit schedule property could not be leased out and the lease granted to the predecessors of respondents 1 to 6 stood extinguished on non-payment of rent, as provided under the registered lease deed and by deeming termination, the lease deed stood terminated and the title to the property having been confirmed with the petitioner by the judicial forum, which has since attained finality, the 7th respondent cannot claim any right over the property by virtue of any lease deed alleged to have been entered with respondents 1 to 6 for a term of



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99 years on 14.2.2001 without the approval/permission of the Joint Commissioner

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as such an alienation is impermissible u/s 34 of the HR & CE Act.

65. When the lease with respondents stood terminated on account of the recitals in the lease deed due to non-payment of rent and the title to the property stood vested with the petitioner by the judgment and decree of the appellate court, which has not been contested before this Court and the same having attained finality, respondents 1 to 6 could at best be termed only to be encroachers and cannot claim the status of tenant, as they, according to their own recital in the present suit, have not paid the rent, the right course for the petitioner is to invoke Section 78 of the HR & CE Act for a direction from the appropriate authority for eviction of the encroachers, viz., the respondents.

66. The sequence of events that have been tabulated reveals that only to create further encumbrances, respondents 1 to 6, have entered into a lease deed for 99 years with the 7th respondent, after suffering a judgment and decree as early as in the year 1984. They filed second appeal and allowed it to be dismissed for default. However, while the present suit is filed, an ingenious attempt has been made on the part of the person, who had drafted the suit, to create an impression as if the authorities of the petitioner, after filing of the second appeal, had allowed the predecessors of respondents 1 to 6 to enjoy the suit schedule property and that it



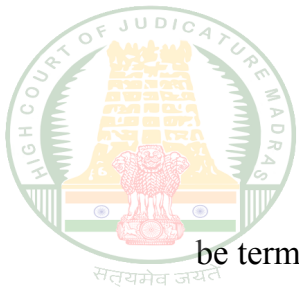
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had been promised by them that they will not create any hindrance for the peaceful possession and enjoyment of the property, which led the predecessors of respondents 1 to 6 to allow the appeal to be dismissed for default. If really, the respondents had any case on merits, or even otherwise, on the plea of adverse possession at that point of time, no prudent person would have allowed the second appeal to be dismissed for default.

67. Having allowed the second appeal to be dismissed for default, allowed the issue with regard to title to attain finality and the title stood confirmed in the name of the petitioner ever since the order dated 9.8.1984, respondents 1 to 6 and, thereafter, the 7th respondent could only be held to be encroachers on the suit schedule property and any lease between respondents 1 to 6 and the 7th respondent cannot be construed to be a lease deed, but it is only an attempt to usurp the property of the religious institution by clandestine means.

68. In the backdrop of the aforesaid facts and circumstances, the pleadings in the present suit, which is put in issue and sought to be struck off by invoking Order VI Rule 16 deserves to be looked into.

69. It is to be pointed out, as stated above, the issue with regard to the title stood settled in the earlier round of litigation and the present litigation could only



be termed to be a re-litigation with a view to prolong the proceedings. Nowhere in the pleadings, the plaintiffs, viz., the respondents herein, have made a claim that the plea of adverse possession was taken by their predecessors. The respondents herein have not placed the judgment in the said suit to substantiate their claim. In this regard, it would be useful to refer to the decision of the Apex Court in ***K.K.Modi – Vs – K.N.Modi (1998 (3) SCC 573)***, wherein the Apex Court held that re-litigation is nothing but an abuse of process of Court. The relevant portion of the order is quoted hereunder :-

“41. Under Order 6 Rule 16, the Court may, at any state of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the CPC. (15th Edition, Volume II, page 1179 note 7) has stated that power under Clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder Courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of Court on the basis of what is stated in the plaint.

42. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case,



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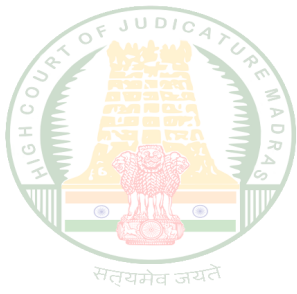


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summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation....The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant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

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

44. In the case of Greenhalgh v. Mallard, (1947) 2 AER 255 the court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court, held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same



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transaction before the court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexatious and an abuse of the process of court.”

(Emphasis Supplied)

70. In the present case, the predecessors of respondents 1 to 6 had litigated the issue in which the plea of adverse possession and prescriptive title were not taken in the earlier round of litigation and no records to substantiate the same have been filed. That being the case, respondents 1 to 6 are estopped from taking up the plea of adverse possession and prescriptive title in the present suit and the 7th respondent cannot follow suit with the same plea of adverse possession on the basis of an alleged lease deed entered into between the 7th respondent and respondents 1 to 6. Further, as stated above, when the plea of adverse possession was not taken by the predecessors of respondents 1 to 6, the 7th respondent does not have a better right than his lessor, viz., respondents 1 to 6 and, therefore, the present suit laid by the respondents is nothing but a clear abuse of process of court, which is aimed at prolonging and dragging on the litigation so as to frustrate the rightful ownership and title of the petitioner.

71. Applying the ratio laid down in *Modi case (supra)*, re-litigation by filing

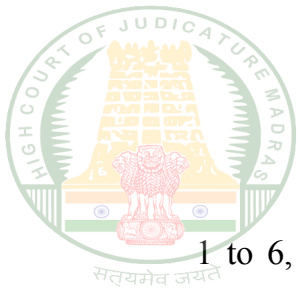


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the present suit by the respondents could only be held to be an abuse of process as there are no new materials or cause of action which could be derived at on the basis of the said materials and when the plea of adverse possession and prescriptive title not being available to the predecessors of respondents 1 to 6, by filing the present suit, neither respondents 1 to 6 nor the 7th respondent could take the plea of adverse possession and prescriptive title so as to maintain the suit.

72. In the absence of any clear and fresh cause of action, which has been spelt out in the pleadings in the present suit and the pleadings, taken as a whole, clearly establishes that it none else than a re-litigation, as held in *Modi's case (supra)*, where the case has been put in one way in the earlier litigation, the party cannot thereafter bring the same transaction before the court, to put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexatious and an abuse of the process of court. The facts in the present case clearly fall within the parameters spelt out in the said decision and, therefore, the ratio in *Modi case (supra)* would apply in all fours to the case on hand.

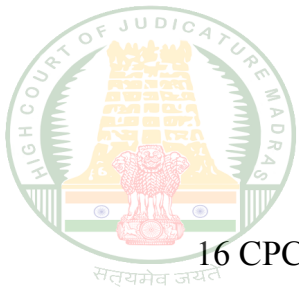
73. Further, the view of this Court is also strengthened by the fact that the alleged claim of adverse possession of the 7th respondent flows from respondents



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1 to 6, but curiously, respondents 1 to 6, who are alleged to have executed the lease deed dated 12.02.2001 in favour of the 7th respondent have not thought it fit to appear before this Court inspite of notice being served on them. This clearly shows that the present suit filed by the respondents is only a re-litigation spearheaded by the 7th respondent by stepping into the shoes of respondents 1 to 6, as the respondents 1 to 6 have only lent their names and the suit has been filed only with a view to frustrate the petitioner from extending the benefits of the judgment and decree obtained in A.S. No.96/1972 for charitable purpose by taking the plea of adverse possession.

74. As discussed above, the earlier round of litigation initiated by the petitioner herein leading to the judgment and decree in its favour and the plea as taken in the present suit by the respondents not having been taken in the written statement of defence in the earliest point of time, the respondents cannot take a plea by saying that it is a new cause of action, but is an act barred by *res judicata* and, therefore, the plaint at the behest of respondents deserves to be struck down as the action is frivolous, vexatious and an abuse of process of court. Therefore, the present suit by the respondents cannot be maintained and, as stated above, in the light of the above discussion, this Court very well invoke its extraordinary and supervisory jurisdiction under Article 227 of the Constitution of India under its revisionary jurisdiction and strike down the pleadings by invoking Order VI Rule



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16 CPC. Issue Nos.3 and 4 are answered accordingly.

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75. In view of the fact that the suit in O.S. No.37/2024 has been struck down by this Court, the representation dated 19.09.2022 filed by the petitioner before the Joint Commissioner, which was the subject matter of W.P. (MD) No. 22855/2024, wherein a direction was given to the official respondents therein to dispose of the said representation deserves to be considered in favour of the 1st petitioner.

76. For the reasons aforesaid, the civil revision petition stands allowed and the pleadings filed in the suit in O.S. No.37/2024 on the file of the Addl. District Judge, Palani is struck down and the suit stands dismissed as not maintainable. In view of the aforesaid order, this Court directs the Joint Commissioner, HR & CE Department, Dindigul, to take appropriate steps for evicting the 7th respondent from the suit schedule property, which was the subject matter of A.S. No.96/1972 before the Addl. District Judge, Madurai, and which belongs to the 1st petitioner in accordance with Section 78 of the HR & CE Act and complete the said exercise within a period of eight weeks from the date of receipt of a copy of this order.

77. Registry is directed to mark a copy of this order to the Joint Commissioner, HR & CE Department, Dindigul, so as to enable the said authority



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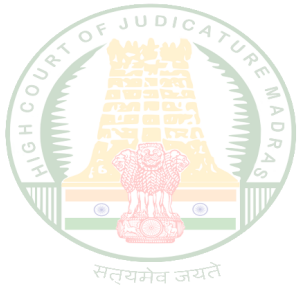
to comply with the directions of this Court as issued in the preceding paragraph,

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14.07.2025

Index : Yes / No

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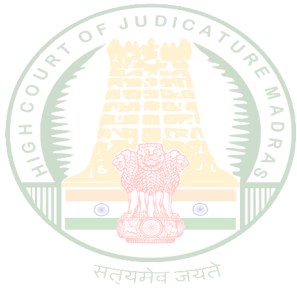
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To

1. The Addl. District Judge
Palani.

2. The Joint Commissioner
Hindu Religious & Charitable
Endowments Department
Dindigul, Dindigul District.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
C.R.P. (MD) NO. 1193 OF 2025**

Pronounced on

14.07.2025