



C.R.P(MD)No.2304 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.01.2025

Pronounced on : 17.02.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.2304 of 2024

and

C.M.P(MD)No.13044 of 2024

K.Chinnaraj @ Palanisamy Gounder (Died)

1.Vijayasekaran

2.Chinnadurai

3.Ravindran

4.Venkitusamy

Cause title is amended vide
Court order dated 19.09.2024

... Petitioners / Defendants

Vs

1.K.Velusamy Gounder (Died)

2.Kokilathammal

... Respondents / LR's of Plaintiffs

PRAYER : This Civil Revision petition is filed under Article 227 of Constitution of India to call for the records relating to the judgment and decree dated 23.07.1996 in O.S.No.949/1989 on the file of District Munsif, Palani and set aside the same.



C.R.P(MD)No.2304 of 2024

WEB COPY

For Petitioner : Mr.R..Suriya Narayanan
For R2 : Mr.V.S.Kishore Kumar

ORDER

This Civil Revision petition is filed to call for the records relating to the judgment and decree dated 23.07.1996 in O.S.No.949/1989 on the file of District Munsif, Palani and set aside the same.

2. The facts in brief is that the suit in O.S.No.949/1986 was filed by the deceased first respondent herein namely K.Velusamy Gounder against the deceased Chinnaraj, seeking the relief of partition and separate possession of his 1/5th share, mesne profit etc. The 2 to 5 defendants in the suit, namely petitioners 1 to 4 herein who were brought on record but they did not appear before the trial Court. His Advocate reported no instructions. By setting them as ex parte, decree was passed as prayed for with costs by judgment and decree dated 23.07.1996. Thereafter, there was no appeal or any application filed by the defendants, the revision petitioner herein to set aside the *ex parte* decree and judgment.



C.R.P(MD)No.2304 of 2024

WEB COPY

3. Now, challenging the legality of the judgment and decree, this revision is directly filed stating that the mandatory provisions under Order 20 Rule 5 r/w Section 2(9) CPC was not followed by the trial Court while deciding the issue. In fact, the defendants appeared, filed the written statement. So the trial Court ought to have framed proper issues. ; On that account, the judgment itself is a nullity.

4. Apart from that the factual ground is that the plaintiff filed the claim for partition on the basis of the judgment and decree dated 18.01.1943 in O.S.No.11 of 1942 on the file of the Subordinate Court, Palani. But wherein, the sale deed of the defendants' predecessor was held to be invalid. Later in A.S.No.98 of 1943, was modified which was confirmed in S.A.No.1734 of 1944. Suppressing the material facts, the suit is filed, on the basis of the alleged settlement deed dated 13.01.1961. Since mandatory provisions and procedure were not properly followed, the decree itself is a nullity which is amenable to the jurisdiction under Article 227 of the Constitution of India.

5. Heard both sides.



C.R.P(MD)No.2304 of 2024

6. As mentioned in the preamble portion, the main ground is that mandatory provisions were not followed by the trial Court at the time of passing the decree. Reading of the judgment also does indicate that no reference was made with regard to the documents produced by the plaintiff to find out whether the claim is properly established. In a one line finding it is stated that the claim of the plaintiff was established.

7. Learned counsel for the revision petitioner would rely upon a number of judgments on this point.

i) ***Balraj Taneja and another Vs Sunil Madan and another*** reported in ***(1999) 8 SCC 396***

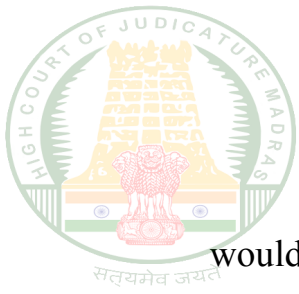
ii) ***Meenakshi Sundaram Textiles Vs Valliammal Textiles*** reported in ***2011 SCC Online Mad 355***

iii) ***N.Maheswari Vs Mariappan and others*** reported in ***2012 SCC Online Mad 3676***

iv) ***G.Selvam and others Vs Kasthuri and others*** reported in ***2015 3 LW 705***

v) ***Stella Vs Francis*** reported in ***2019 5 LW 161***

vi) ***Ayyasamy Vs Shanmugam*** - CRP.No.2672 of 2019

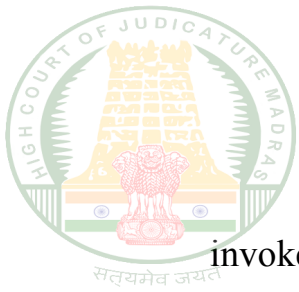


C.R.P(MD)No.2304 of 2024

would contend that a petition under Article 227 of Constitution of India will lie in view of the glaring illegality in the judgment.

8. Per contra, learned counsel for the respondent would submit that the third revision petitioner herein namely Ravindran filed a petition to set aside the ex parte preliminary decree passed against his father in the main suit. He did not succeed. Another attempt was made in the final decree proceedings in I.A.No.308/2007. Ravindran filed a petition in I.A.No.217 of 2013 to scrap the Commissioner report. It was dismissed by order dated 08.09.2016. Against which Ravindran filed CRP(MD)No. 2160 of 2016. By order dated 06.09.2018, while dismissing the revision, this Court directed the final decree Court to pass the final decree within a period of four weeks from the date of receipt of a copy of the order. Now we are in 2025. What happened to the direction and the final decree proceedings is not known.

9. The revision petitioner has not even stated anything about his filing a petition to set aside the *ex parte*, failure in CRP(MD)No.2160 of 2016, against the order passed in I.A.No.217 of 2013. When a party

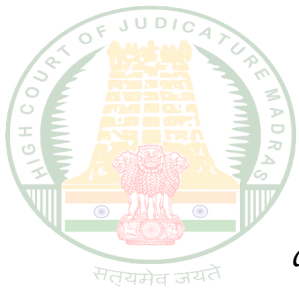


C.R.P(MD)No.2304 of 2024

invokes the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India, he ought to be clean handed. Suppression of fact will amount to clear contempt of Court and abuse of the process of Court also. The reason for me to make such a comment is that the law underwent a change, on the point on which this revision is preferred. In the judgment of the Hon'ble Supreme Court in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs Tuticorin Educational Society and others***, reported in ***(2019) 9 Supreme Court Cases 538***, it has been clearly stated that when alternative and efficacious remedy is available than that must be resorted to first, wherein the following observation is made.

10. Now here in this case, that remedy was availed by the revision petitioner but failed. The he ought to have taken the matter further. Without taking the matter further, invoking Article 227 of the Constitution of India, as mentioned above will clearly amount to abuse of the process of Court.

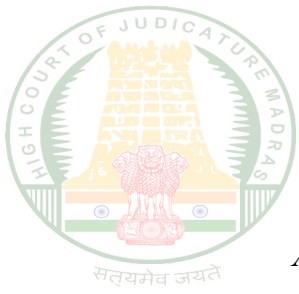
"12.But Courts should always bear in mind a distinction between (i) cases where such alternative remedy is



WEB COPY

available before civil Courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and / or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil Courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which respondents 1 and 2 invoked the jurisdiction of the High Court. This is why, a 3-member Bench of this Court, while overruling the decision in Surya Dev Rai V. Ram Chander Rai, pointed out in Radhey Shyam V. Chhabi Nath that "orders of civil Court stand on different footing from the orders of authorities or tribunals or courts other than judicial/civil Courts".

13. Therefore, wherever the proceedings are under the Code of Civil Procedure and the forum is the civil Court, the availability of a remedy under the C.P.C, will deter the High Court, not merely as a measure of self-imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under



C.R.P(MD)No.2304 of 2024

WEB COPY

Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself."

11. Moreover, practice of invoking Article 227 of Constitution of India, after exhausting the remedy under Order 9 Rule 13 of CPC, is highly deprecated in number of judgments. So the ground on which this petition is filed is completely a misconstrued one, which cannot be taken into account at all. A chance was already available to the revision petitioner while filing the CRP(MD)No.2160 of 2016, to raise the point. Even at that time, no such plea was raised that the judgment itself is a nullity in view of the non compliance of mandatory provisions. Having failed in all those attempts, now this petition is filed. As mentioned above is a clear abuse of process of Court.

12. Accordingly, this Civil Revision Petition stands dismissed with costs. Consequently, connected miscellaneous petition stands closed.

17-02-2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
pnn

8 / 10



C.R.P(MD)No.2304 of 2024

WEB COPY

To

- 1.The District Munsif, Palani.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P(MD)No.2304 of 2024

G.ILANGO VAN, J.

pnn

**C.R.P(MD)No.2304 of 2024
and
C.M.P(MD)No.13044 of 2024**

17.02.2025