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CRP No. 1879 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-03-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**CRP No. 1879 of 2022
and CMP No. 9574 of 2022**

Nisha Agrawal

..Petitioner(s)

Vs

1. E.S.Ramakrishna
2. E.S.Giribabu
3. Meenakshi
4. Sujatha

..Respondent(s)

Prayer: This petition to strike off the Complaint filed in OS No.163 of 2022 on the file of the XXIV Assistant City Civil Court at Chennai and allow the Civil Revision Petition.

For Petitioner(s): Mr.AR. Karthik Lakshmanan

For Respondent(s): Mr.E.Prabhu (R1 & R2)
No appearance (R3 & R4)

ORDER

This Civil Revision Petition has been filed to strike off the Complaint filed in OS No.163 of 2022 on the file of the XXIV Assistant City Civil Court at Chennai and allow the Civil Revision Petition.

2. The learned counsel for the petitioner would submit that the respondents 1 and 2 herein had instituted a suit seeking to declare the sale deed



registered and executed in favour of the fourth respondent and the petitioner herein as illegal, sham, nominal, null and void and not binding on them. He would submit that one Mr.E.Kumarasamy had died without any issues leaving behind a Will dated 09.07.1996 whereby life interest was created in favour of the third respondent and after her life time, the respondents 1 and 2 to absolutely bequeath the same. On the strength of the Will, the respondents 1 and 2 had instituted the suit. He would submit that the suit is clearly barred by law. As the said Will without being probated by a competent Court cannot be used to establish the rights as claimed by them. The said suit being without a cause of action is liable to be struck down and hence, the petitioner had filed the present revision seeking to strike off the plaint.

3. The learned counsel appearing for the petitioner further relied upon the judgment of the Hon'ble Apex Court in the judgment reported in **1998 3 SCC 573** to contend that this Court has ample power to stop proceedings summarily to prevent the time of public and the Court from being wasted. He would submit that in the facts of the present case, without the Will being probated the respondents 1 and 2 do not have any right to institute a suit for declaration. Hence, he seeks indulgence of this Court.

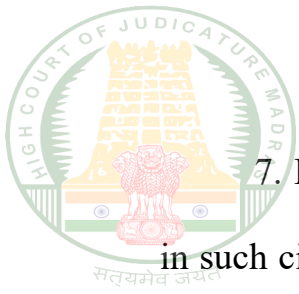
4. Countering his arguments, Mr.E.Prabhu, learned counsel appearing on behalf of the respondents 1 and 2 would submit that the petitioner has a remedy



by taking out an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint on the very same ground that he had raised in the present Revision. Without exhausting the remedy available to him, he had approached this Court by filing the present Revision. He would submit that the suit is not barred by the provisions of any law. He would further submit that if the suit is struck off in the present proceedings, the respondent/ plaintiff would lose his valuable right of appeal available under Section 96 of CPC and in that context, he had relied upon the judgment of the Hon'ble Apex Court reported in **2026 SCC OnLine SC 143**. Hence, he seeks to dismiss the revision.

5. I have considered the submission of either side and have also gone through the materials available on record.

6. The grounds on which the present Petition had been filed seeking to strike off the plaint is that there is no cause of action that is available to the respondents 1 and 2 to institute the suit as the Will basis on which they claim title to the property has not been probated by them. Hence, without probating the Will, the suit is barred by the provisions of Section 213 of the Indian Succession Act, as a legatee right accrues only if the said Will is probated or Letters of Administration is granted with respect to the said Will.



7. It is true that without probating a Will, a suit cannot be instituted But, in such circumstances, whether this Court in exercise of its power under Article 227 of the Constitution of India can strike out plaint is the issue that has to be decided in the present case. The Hon'ble Apex Court in the judgment relied upon by the learned counsel for the respondent which is reported in **2026 SCC OnLine SC 143** had categorically held that the High Courts should not only discourage but desist from exercising jurisdiction under Article 227 of the Constitution of India when in respect of a challenge for which separate distinct and specific remedy is available under the statute concern, and that the availability of an alternate remedy viz., Order VII Rule 11 of the Code of Civil Procedure should be treated as a complete and a near total bar on the High Court to venture to invoke and exercise its power available except where under exercise of supervisory jurisdiction it becomes absolutely necessary to exercise its power.

8. For better appreciation, the relevant paragraphs are extracted hereunder:-

“7. When the powers under Article 227 of the Constitution are of supervisory nature and when the aforestated settled dictum of law is that the High Court does not act as a court of appeal or a court of error, it would logically follow that the powers under Article 227 would not be exercised



when the non-exercise of such powers does not result into miscarriage of justice or deprivation of remedy in law to a party.

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7.1. It is to be conceived as one of the prohibited area for exercising Article 227 powers where, in respect of the grievance for which party has remedy in law, these powers are surely to be invoked. The principle is therefore to be emphasized that the exercise of supervisory jurisdiction under Article 227 of the Constitution has to be treated as an exceptional resort when an alternative efficacious civil remedy by way of appeal or revision or any other, like Order VII Rule 11, CPC in the present case, is available to the party for the redressal of the grievance.

7.2. The proposition that the availability of alternative remedy shall be legitimately construed to displace the exercise of Constitutional jurisdiction by the High Court, is true not only for the purpose of exercising powers under Article 226 of the Constitution but also for the purpose of invoking Article 227 of the Constitution.

7.3. In the garb of exercising supervisory jurisdiction under Article 227 of the Constitution, the High Court is not expected to engulf the specific statutory remedy or provision in law and, thus, become a supervisor over the court below or the tribunal, as the



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case may be. It would be a legally wise exercise of discretion for the High Court to adopt and adhere to such self-imposed discipline and to insist that the aggrieved party should take recourse to such alternative remedy or statutory provision available in law, especially, for the case falling in category indicated in *Virudhunagar*⁶ (supra) where remedy available in the CPC for the cases falling under category/other law also, where such specific statutory remedy is available, the dictum laid down herein is true to grant extent.

7.4. As stated above, embargo in this regard would have to be construed as near total when provision is available in CPC. It is held, therefore, that once the specific provision under Order VII Rule 11 of the CPC, is available, the High Court cannot exercise powers under Article 227 to reject or strike off the plaint. For such relief, the specific provision under Order VII Rule 11, CPC, will have to be resorted to, on the grounds mentioned in the said provision.

8. In adopting such approach, the High Court would be giving due regard to the legislative intent. When the legislature has enacted specific remedial provision to be taken recourse to by the person aggrieved to challenge the orders and decisions of the



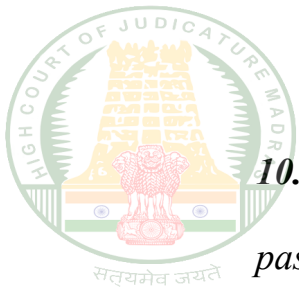
court to seek redress in law accordingly that remedy alone will have to be sought for.

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9. From the aforesaid discussion, it would logically follow that the High Court would not only discourage but desist from exercising jurisdiction under Article 227 of the Constitution in respect of a challenge for which a separate, distinct, and specific remedy or statutory provision is available under the statute concerned. Availability of an alternative civil remedy and/or under the CPC shall be treated as complete and near total bar on the High Court to venture to invoke and exercise its power available under Article 227 of the Constitution, except where exercise of supervisory jurisdiction becomes absolutely necessary.

10. For all the aforesaid reasons and discussions, this court is of the view that High Court committed a manifest error in exercising its powers under Article 227 of the Constitution to strike down the plaint. It ought to have asked the defendant to take recourse to, in accordance with law, when specific provisions available in the Civil Procedure Code, 1908 in the nature of Order VII Rule

11. The impugned judgment and order of the High Court, therefore, deserves to be set aside.



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10.1. As a result, the judgment and order dated 03.06.2025 passed by the High Court of Madras in CRP No. 3197 of 2024 and CMP No. 17106 of 2024 striking off the plaint of Original Suit No. 93 of 2020 before the Court of District Munsif, Tambaram, is hereby set aside.”

9. The judgment relied upon by the learned counsel for the petitioner reported in **1998 5 SCC 573** had only as an obiter observed that the Court has power to stop proceedings summarily to prevent time of public and Court time being wasted. A further reading of the said judgment would also indicate that such power was only to be exercised when the proceedings have been initiated by way of a re-litigation and not at the first instance. The Court on the facts of the said case had also permitted the suit to be proceed by giving a finding to the limited extent in respect of a relief, which was not governed by the alternative proceedings viz., arbitration proceedings. Hence, the judgment relied upon by the learned counsel for the petitioner cannot be applied to the facts of the present case.

10. For the foregoing reasons, this Court, without entering upon the merits of the grounds raised in this Civil Revision Petition, is of the view that the petitioner could very well exercise its claim by invoking the provisions of Order VII Rule 11 Code of Civil Procedure and when the same is made, the trial Court



shall also consider the merits of the said application and decide the same in accordance with law.

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11. In view of the reasoning given above, the Revision Petition stands disposed with a direction to the plaintiff and the petitioner to take out an application under Order VII Rule 11 of Code of Civil Procedure within a period of two weeks and the Court below is directed to dispose of the same within a period of three(3) months thereafter.

12. In view of the stay granted by this Court, the learned trial Court is also requested not to proceed with the trial, if the application is filed within a period of two(2) weeks till the disposal of the said application within the time frame given by this Court. The parties are directed to co-operate with the Court. Consequently, connected Miscellaneous Petition(s) is(are) closed. No order as to costs.

11-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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