

(2011) 03 MAD CK 0256

In the Madras High Court

Case No : C.R.P. (PD) No. 3925 of 2010 and M.P. No. 1 of 2010

Ferani Hotels (P) Ltd.

APPELLANT

Vs

Raj Trust, K. Raheja Development Corporation (KRDC) and
Raheja Hotels and Estates Pvt. Ltd.

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 03 MAD CK 0256

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : T.R. Rajagopalan and P.S. Raman, s, for the Appellant; T.V. Ramanujun and Nalini Chidambaram, Sr. Counsels for A.A. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The first Defendant in O.S. No. 1998 of 2010 on the file of the District Munsif, Coimbatore is the revision Petitioner.

2. The revision Petitioner invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India to strike off the

pleadings ion"s. No. 1998 of 2010 filed by the first Respondent.

3. The first Respondent filed the above suit for declaration that the sub-lease agreement dated 3.4.1992 is valid, subsisting and binding between

the parties, for a declaration that the revision Petitioner herein has illegally demolished the superstructure, for permanent injunction restraining the

revision Petitioner and the second Defendant from trespassing upon the suit property and illegally construct any building and for mandatory

injunction directing the revision Petitioner and the second Defendant to restore the illegally demolished superstructure.

4. It is the case of the first Respondent that he was the sub-tenant under the second Respondent/second Defendant and the revision Petitioner is the owner of the property and pursuant to the sub-lease agreement dated 3.4.1992, the first Respondent/Plaintiff was in continuous possession and enjoyment of the sub-leased property and there was an attempt to evict the main tenant and another sub-tenant by force and therefore, the main tenant viz., the second Respondent/second Defendant filed suit in O.S. No. 699 of 2009 on the file of the I Additional Sub Court, Coimbatore against the revision Petitioner and two others for injunction and Respondents 2 and 3 herein, who are Defendants 2 and 3 filed O.S. No. 747 of 2009 on the file of the II Additional Sub Court, Coimbatore for declaration, mandatory injunction and mandatory injunction and in the suit in O.S. No. 699 of 2009, the first Respondent herein was the third Defendant and as the first Respondent herein illegally demolished the building, the suit was filed by the first Respondent herein for the relief's stated above.

5. The plaint filed by the first Respondent is sought to be struck off by the revision Petitioner as it stated in the grounds that the first Respondent herein was the sub-tenant under the main tenant and the revision Petitioner through its advocate, terminated the tenancy of the second Respondent herein who was the main tenant and thereafter, the second Respondent and the first Respondent herein removed all their staff and belongings from the suit property by the end of February 2009 and fully vacated and abandoned the suit property and thereafter, the revision Petitioner came into possession of the suit property and the rights of the second Respondent/second Defendant and the first Respondent/Plaintiff stood extinguished and Respondents 2 and 3/Defendants 2 and 3 as well as the first Respondent/Plaintiff gave up their right in the suit property as recorded in order dated 17th January 2002 passed by Honorable Mr. Justice M.L. Pendse (Retd.) in the arbitration proceedings and O.S. No. 699 of 2009 was filed by the second Respondent for injunction wherein the first Respondent was the third Defendant and thereafter Respondents 2 and 3 filed another suit in O.S. No. 799 of 2009 against the revision Petitioner for declaration and injunction and being a party in O.S. No. 699 of 2009, the first Respondent is bound by the orders passed in that suit against the main tenant and therefore, the present suit filed by the first Respondent is an

abuse of process of law and therefore, it is liable to be struck off.

6. Mr. T.R. Rajagopalan, learned Senior Counsel and Mr. P.S. Raman, learned Advocate General vehemently argued that the suit filed by the first

Respondent is a clear abuse of process of law and reiterated the allegations made in the grounds submitted that having vacated the premises, the first

Respondent has no right to challenge the act of the revision Petitioner and the first Respondent was only a sub-tenant under the second Respondent

and he cannot claim any right independently and tenancy in respect of the second Respondent was terminated and therefore, the first Respondent

cannot claim possession and therefore, it is a clear abuse of process of law and therefore, the plaint is liable to be struck off.

7. On the other hand, Mr. T.V. Ramanujun, learned Senior Counsel and Mrs. Nalini Chidambaram, learned Senior Counsel appearing for the

Respondents submitted that the present revision filed under Article 227 of the Constitution of India is not maintainable and the suit filed by the first

Respondent cannot be termed as an abuse of process of law and if the first Respondent was the third Defendant in S. No. 699 of 2009 filed by

the second Respondent, he is also entitled to initiate independent action to protect his rights and admittedly, the first Respondent was the sub-

tenant recognized by the landlord and there is no prohibition in law for initiating separate action to safeguard his rights and therefore, the present

application is not maintainable.

8. The learned Senior Counsel further submitted that there are disputed questions of fact involved even according to the submissions made by the

learned Senior Counsel for the revision Petitioner and those allegations cannot be decided in a proceedings under Article 227 of the Constitution of

India and therefore, the present revision is not maintainable and if at all the revision Petitioner has got any grievance, they will have to file an

application before the court below for rejection of plaint.

9. Heard both the counsel. In the judgment reported in GANAPATHY SUBRAMANIAN v. S. RAMALINGAM & 23 OTHERS (2007 (3) LW

515), the power under Article 227 of the Constitution of India has been discussed and it is held as follows:

Article 227 of the Constitution of India confers on every High Court the power of superintendence over all Courts and Tribunals through out the

territory in relation to which it exercises jurisdiction excepting any Court or Tribunal constituted by or under any law relating to the armed forces.

Without prejudice to the generality of such power, the High Court has been conferred with certain specific power under clauses (2) and (3) of

Article 227 of the Constitution. It could be seen that the power of the superintendence so conferred on the High Court is administrative as well as

judicial and is capable of being invoked at the instance of any person aggrieved. The paramount consideration behind vesting such wide power of

superintendence in the High Court is to clear that path of justice. Such a power of superintendence is not subject to technicalities of procedure or

traditional fetters. That power so conferred cannot also be regarded as appeal or revisional jurisdiction and should not be exercised in the garb of

exercise of supervisory jurisdiction under Article 227 of the Constitution and hence, the Court has devised a self imposed rule and discipline on this

power. The supervisory jurisdiction can be refused to be exercised when an alternative efficacious remedy by way of defending the suit or filing an

appeal or revision is available to the person aggrieved. The Court shall have regard to the legislative policy formulated on experience and

expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away

from the appellate or revisional jurisdiction in the hope of accelerating conclusion of the proceedings and avoiding delay and procrastination which

is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision.

It is not denied that the powers conferred upon the High Court under Article 227 of the Constitution of India are extraordinary and discretionary

power as distinguished from ordinary statutory power. No doubt, Article 227 of the Constitution conferred a right of superintendence over all

Courts and Tribunals throughout the territories in relation to which it exercised jurisdiction, but no corresponding right is conferred upon the litigant

to invoke the jurisdiction as a matter of right. In fact, the power under Article 227 of the Constitution of India casts a duty upon the High Court to

keep the inferior Courts and tribunals within the limits of its authority and that they do not cross the limit ensuring the performance of their duties in

accordance with law conferring power with in the ambit of the enactment treating such Court and Tribunals. Only wrong decisions may not be a

ground for the exercise of jurisdiction under this article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.

...

29. Further, as held by the Honorable Supreme Court in the judgment reported in *Surya Dev Rai Vs. Ram Chander Rai and Others*, , that the

jurisdiction under Article 227 can be invoked when the subordinate court assumed the jurisdiction which it does not have or has failed to exercise a

jurisdiction which it does have or exercising the jurisdiction in a manner not permitted by law and failure of justice or grave injustice has occasioned

thereby.

10. Bearing in mind the principles laid down in the above judgment, we will have to see whether the plaint can be struck off. Admittedly, the

revision Petitioner was the tenant under the second Respondent and the property belonged to the revision Petitioner. It is also admitted that the

second Respondent filed O.S. No. 699 of 2009 for injunction and the second Respondent and third Respondent filed O.S. No. 749 of 2009 for

declaration and injunction and mandatory injunction and O.S. No. 699 of 2009 the first Respondent/Plaintiff was the third Defendant. In this

present suit, the first Respondent prayed for declaration that the sub-tenancy is valid and binding on the revision Petitioner and for declaration that

the building has been demolished illegally and for permanent injunction and mandatory injunction.

11. It was argued by the learned Senior Counsel for the revision Petitioner that the Respondents herein removed their articles and staff from the

suit property by the end of February 2009 and vacated the premises on receipt of termination notice issued to the second Respondent herein and

the Respondents also gave up their right in the suit property as recorded in the order dated 17th January 2002 in the arbitration proceedings. It is

further argued by the learned Senior Counsel that the second Respondent here in is disputing the termination of tenancy and also the allegation that

they have vacated the suit property.

12. Therefore, as rightly submitted by the learned Senior counsel for the Respondents these are questions of fact which have to be decided only by

the Trial Court after recording evidence and the same cannot be decided in a

proceeding under Article 227 of the Constitution of India. Though the first Respondent was third Defendant in O.S. No. 699 of 2009, that is not a bar to the first Respondent herein from initiating separate suit. Further, the first Respondent herein also cannot make any counterclaim in the earlier suit in O.S. No. 699 of 2009 inasmuch as the relief claimed by the first Respondent in the present suit is only against the revision Petitioner and the revision Petitioner was only the first Defendant in O.S. No. 699 of 2009 and therefore, it is not possible for the first Respondent herein to adjudicate all these rights in the suit already filed by the second Respondent. Therefore, having regard to the fact that the disputed questions of fact are involved, I am of the opinion that the same cannot be decided in a proceedings under Article 227 of the Constitution of India and hence, the present revision filed by the revision Petitioner is devoid of merits and he same is dismissed as such. No costs. The connected miscellaneous petition is also dismissed.