



R.O.C.No.58364/2018/F1

P.Dis.152/2018
Dated: 28.08.2018

From

M.Jothiraman, B.Sc., M.L.,
Registrar (Judicial),
High Court,
Madras-104.

To

Sir,

Sub: High Court, Madras at Madurai Bench - Order in CRP(MD) (PD).Nos. 1480 & 1481/2018 and CMP(MD) Nos.6608 & 6607/2018 - Certain directions issued to the Registry - Submitted - Ordered to communicate the same to the entire Subordinate Judiciary and also to all the District Collectors - Communicated - Reg.

Ref: Order in CRP(MD) (PD).Nos. 1480 & 1481/2018 and CMP(MD) Nos.6608 & 6607/2018 on the file of High Court, Madras at Madurai Bench.

As directed, I am to forward herewith the Order in CRP(MD) (PD).Nos.1480 & 1481/2018 and CMP(MD) Nos.6608 & 6607/2018, for information and compliance.

Yours faithfully,


REGISTRAR (JUDICIAL)

To

1. All the Principal District Judges/District Judges in the State of Tamil Nadu. } with a request
2. The Principal Judge, City Civil Court, Chennai. } to communicate the enclosed order
3. The Chief Judge, Court of Small Causes, Chennai. } to all the courts under your
4. The District Judge-cum-Chief Judicial Magistrate, The Nilgiris. } control.
5. The Chief Judge, Puducherry. }
6. The Director, Tamil Nadu State Judicial Academy, R.A.Puram, Chennai-28.
7. All the District Collectors in the State of Tamil Nadu.
8. The Court Manager, High Court, Madras (with a request to communicate the circular to all the Court Managers in Tamil Nadu and Puducherry through e-mode.)
9. The Section Officer, "F" section, Madurai Bench.
10. The Record Keeper, A.D.Records, High Court, Madras & Madurai.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.07.2018
CORAM



THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PO) Nos. 1480 and 1481 of 2018

and

CMP (MD) Nos. 6608 and 6607 of 2018

- F
58364
1. The State of Tamil Nadu,
Rep. by District Collector,
Collectorate, Thanthonimalai,
Karur Taluk & District.
 2. Tahsildar,
Taluk Office, Mannangalam Taluk,
Karur District.
 3. The Assistant Engineer,
River Conservation (Cauvery River),
Public Works Department,
North Pradakshnam Road,
Karur.

.. Petitioners/Respondents/Defendants
in both the CRPs

vs.

1. S. Venkatachalam
2. S. Vivekanandan
3. S. Rathinakumar
4. R. Gopu
5. K. Muthusamy
6. T. Neelambal
7. A. Ramasamy Gounder
8. S. M. Malalyappan
9. S. M. Palaniappan
10. R. Gopalan
11. R. Sudha
12. M. Kumar
13. M. Ramasamy
14. T. Rajendran

.. Respondents /Petitioners/Plaintiffs
in both the CRPs

PRAYER in CRP (MD) No. 1480 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the entire records relating to suit proceedings in O.S.No.956 of 2017 on the file of the learned Subordinate Judge, Karur and strike off the same.

"C" 0800682

PRAYER in CRP (MD) No. 1481 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Interim order dated 09.03.2018 passed in I.A.No.1244 of 2017 in O.S.No.956 of 2017 on the file of the learned Subordinate Judge, Karur.

(In both the CRPs)

For Petitioners : Mr. Aayiram K. Selvakumar
Additional Government Pleader

For Respondents : Mr. M. Bindran (for R13)

COMMON ORDER

The State Government has come forward with this civil revision petition to strike of the plaint filed by respondents herein seeking the relief of permanent injunction restraining the state from interfering with their possession. According to the petitioners the subject matter of the land in dispute is classified as Kattalai Vaikal and a portion of the same has been encroached by Respondents/Plaintiffs. The Petitioner herein have initiated proceedings, by giving notice for removal of encroachment under the provisions of The Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, in pursuant to the direction of the Hon'ble Division Bench of this Court made in W.P.No.12178 of 2012 filed by one M. Mahendran. This Court directed to complete the said excise within period of three months. Accordingly notice was issued under Section 4 of The Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975.

2. Challenging the same the respondents herein had filed batch of writ petitions in W.P.Nos.21075 to 21086 of 2017 with a prayer for mandamus restraining these petitioners from dispossessing the respondents without following due process of law. This Hon'ble Division Bench of this Court was pleased to disposed the writ petition on 15.07.2017 directing the respondents herein to submit their representation within 10 days and further directing the petitioners to consider the representation to be submitted by them and pass a reasoned speaking order within a period of three months thereafter. Till the final order is passed the possession of respondents shall not be disturbed.

3. It is the case of the petitioners that the respondents have not given any representation in pursuant to the above proceedings but they have filed the suit for permanent injunction in O.S.No.956 of 2017 on the file of the learned Sub Court, Karur, suppressing the writ proceedings and order passed therein and obtained ex-parte order of status quo. The jurisdiction of civil court is barred under Section 15 of The Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, [herein after shortly called as Act] as such the suit itself is not maintainable but suppressing the

writ proceedings and by abusing the process of Court the Civil Suit has been filed and thus prayed for strike of the plaint.

4.I heard Mr.Aayiram K.Selvakumar, learned Additional Government Pleader for the petitioners and Mr.M.Bindran, learned counsel for the 13th respondent in both the CRPs and perused the entire materials available on record.

5.The learned counsel for the petitioners heavily relied upon Section 15 of the Act and submitted that suit filed by the Respondent is the clear case of abuse of process of law and by suppressing the writ proceedings and obtained the order of status quo, which is against the order of Division Bench of this Hon'ble Court and thus the plaint is liable to strike off.

6.The learned counsel for the Respondents is not in a position to say anything in respect of the suppression of writ proceeding, however submitted that the suit could be maintained as the property is the Natham Land and it is the ancestral property belong to them and thus prayed to dismiss the petition.

7.This Court has perused the plaint and the type set of papers. The Perusal of the order passed in W.P.No.12178 of 2012 and 21075 of 2017 etc. confirms the submission of petitioner herein, that the suit for permanent injunction in O.S.No.956 of 2017 on the file of the learned Sub Court, Karur, was filed suppressing the writ proceedings and order passed therein and obtained ex-parte order of status quo. Nothing about the writ proceedings mentioned in the plaint and it confirms that the process of law is abused by the respondents, by obtaining the interim order of status Quo. The Respondents have not even given any survey number for the suit property and the description of property alleged to be belong to them has also not mentioned specifically. It further confirms the conduct of respondents and their attempt to circumvent direction issued by this Court, mentioned supra. There is no explanation forthcoming from the respondents, who are the plaintiffs in the suit. Therefore this court concludes that the plaint is an outcome of abusing the process of court and law and also suffers for suppression of earlier proceedings adjudicated before this Hon'ble Court. On the sole ground the plaint is liable to thrown away from court with exemplary costs for abusing the process of court.

8.In Sub-Continental Equities Limited -versus- R.V.D. Remeiah; Tamil Nadu Mercantile Bank Limited, Rep. Through its Chairman, and others case reported in 2016 (4) CTC 353 the Division Bench of this Hon'ble Court has strike off the suit by imposing cost of Rs.1,00,000/- for filing the suit suppressing the writ proceedings and obtaining orders. The Hon'ble Division Bench has considered the scope of suppression of proceedings extensively, after discussing various judgments of the Hon'ble Supreme Court and this Hon'ble Court. The relevant paragraph from the above judgment is extracted hereunder:-

14. Moreover, the Plaintiff approached the Court either

suppressing or pretending ignorance of the Order passed by this Court in W.P. Nos. 12543 of 2013, etc. He cannot plead ignorance of the fact that Annual General Body Meetings as well as the conduct of election were sought to be done pursuant to the Order of this Court dated 26.11.2015. In fact, the 1st Respondent/Plaintiff himself has annexed the Notice dated 21.12.2015 regarding Annual General Body Meetings of the Bank on 29.1.2016. When the Notice dated 26.11.2015 has been filed as Document No.5 in the Suit, the Plaintiff should have made necessary pleading about the Notice and its contents. Lack of pleading with regard to contents of Notice should be deliberate with mala fide motive to procure Order fraudulently. A perusal of the said Notice dated 21.12.2015 filed as Plaint Document No.5 before the Trial Court, would reveal that the 2nd Respondent-Bank made a reference about the Orders passed by this Court on 26.11.2015. The First Paragraph of the said Notice is extracted as follows:

NOTICE is hereby given that the 88th to 93rd Annual General Meetings (AGMs) pertaining to years 2010 to 2015, respectively, of the members of Tamil Nadu Mercantile Bank Limited will be held on Friday, the 29th January, 2016 from 10.00 a.m. onwards at Manickam Mahal, 1/1A, Tiruchendur Road, Thoothukudi-628 003 to transact the business mentioned in the Notices convening the said AGMs. The AGMs are being convened pursuant to an Order passed by the Hon'ble High Court of Madras on November 26, 2015 vacating an earlier Order of the said Court staying conduct of AGMs in a Writ Petition No. 11159 of 2011 filed by a shareholder.

15. If really, the 1st Respondent/Plaintiff was not aware of the proceedings in W.P. No.11159 of 2011, he should have approached this Court for a suitable direction or could have filed Appeal against the said Order. It is seen that the First Respondent in the guise of filing O.S. No.36 of 2016 before the Sub-Court, Vellore, in fact he ventured to challenge the hierarchy of the judiciary and the power of the highest Court of the State. This practice has to be deprecated and prevented, failing which dangerous consequences of over reaching the higher Court's Order in inevitable creating chaos in the Justice Delivery System. By getting Orders from the Sub-Court, the Plaintiff/1st Respondent only attempted to overreach the Order passed by this Court. It is nothing but abuse of process of the Court. Therefore, the Plaint in O.S. No.36 of 2016 itself is liable to struck off.

16. As rightly pointed out by the learned Counsel for the Petitioner, the allegations made in Paragraph Nos.8, 9 & 10 of the Plaint are repetition of Paragraph Nos.5 & 6 of the Affidavit filed in support of W.P. No. 12543 of 2013. Therefore, this Court cannot brush aside the contention of the learned Counsel for the Civil Revision Petitioner that the 1st

Respondent/Plaintiff has been set up by the Petitioner in W.P. No.12543 of 2013, namely, Mr. P.S.P.K. Maragatharaja Pandian, who failed to obtain favourable orders from this Court. Approaching the Civil Court to overcome the Orders passed by this Court is a fraudulent act. The parties are expected to approach the Court with clean hands. If any of the parties abuse the forum, the said proceedings are liable to be struck off as held by the Honourable Supreme Court in K.K. Modi v. K.N. Modi and others, 1998 (3) SCC 573. The Honourable Apex Court, in the said Judgment, held that Relitigation is an abuse of process of Court and Paragraph 44 of the said Judgment is usefully extracted as follows:

44. One of the examples cited as an abuse of process of the Court is relitigation. It is an abuse of process of the Court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitiation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the 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 the 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 the Court's 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.

17. This Court, in Suguna Poultry Farm Limited and others v. Arul Mariamman Textiles Limited and others, 2004 (4) CTC 197 and in Aruvipuram Dharma Paripalan Yogam and others v. K. Karunakaran, 2012 (1) MWN (Civil) 187: 2012 (1) LW 252, held that, 'under Article 227, a Suit can be struck off to prevent abuse of process of law, to prevent miscarriage of justice, grave injustice and to establish both administrative and judicial powers of the High Court.' The above Judgments have been decided following the Judgment of the Honourable Supreme Court in Surya Dev Rai v. Ram Chander Rai and others, 2003 (4) CTC 176 (SC): 2003 (6) SCC 675.

18. In view of the above, it is very clear that to overreach the Order of this Court, in spite of having knowledge about the Order passed by this Court dated 26.11.2015 in W.P. No. 12543 of 2013, which has also been informed to the 1st Respondent/Plaintiff, as per the Notice dated 21.12.2015

regarding conduct of Annual General Body Meetings of the Bank on 29.1.2016, the 1st Respondent/Plaintiff, with unclean hands, fraudulently, obtained an Order of Interim Injunction from the Trial Court. The 1st Respondent did not approach the Court with bona fide intention and it is only to overreach the Order Passed by this Court, that too, without any cause of action, he has filed the Suit before Sub-Court at Vellore. Therefore, the Interim Order passed by the Trial Court dated 25.1.2016 and extended subsequently is liable to set aside. Likewise, the plaint in O.S. No.36 of 2016 has to be struck off for lack of cause of action and also for want of jurisdiction.

19. It is also disheartening to note that the learned Sub-Judge, without even verifying as to whether the Suit is maintainable or not, mechanically, passed an Interim Order under Order 39, Rules 1 & 2, C.P.C. He ought to have examined all the documents very meticulously before granting Interim Injunction. If the learned Judge had looked into the Notice dated 21.12.2015 regarding conduct of Annual General Body Meetings on 29.1.2016, Document No.5 in the Plaint, he would not have granted Interim Injunction. The Hon'ble Supreme Court in A. Shamugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, 2012 (2) MWN (Civil) 535 (SC): 2012 (6) SCC 430, insisted about the finding out truth from the pleading and documents. Para-24 of the Judgment reads as follows:

'Entire journey of a Judge is to discern the truth:

24. The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system. This Court in Dalip Singh v. State of U.P. observed that: (SCC p. 116, Para 1). Truth constituted an integral part of the justice delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell the truth in the Courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system.

20. Even otherwise, it is elementary rather rudimentary to look into the cause of action for the maintainability of the Suit. No such attempt seems to have been made by the learned Sub-Judge and therefore, this Court, by Order dated 10.2.2016, directed the Registry to put up the matter on the Administrative Side for taking note of the manner in which the said Suit has been entertained and Interim Injunction has been granted and extended. The Order of the highest Court of the State cannot be overreached by an Order passed by a Subordinate Court, that too, at the instance of a person, who has tried to misuse and abuse the process of law. Even the numbering of the Suit should not have been done by the officials of the Subordinate Judiciary and thus, there is every reason to

suspect malpractice in the numbering of the Suit. Therefore, the learned District Judge concerned is directed to take appropriate action against the person, who passed the Suit and numbered it as O.S. No.36 of 2016 on the file of Sub-Court, Vellore within 16 weeks and file a Report.

21. As stated above, the 1st Respondent/Plaintiff has abused and misused the judicial forum and obtained an Interim Order from the Sub-Court to overreach the Order passed by this Court, which cannot be allowed. There should be a strong message sent to persons, who try to act smart to circumvent this Court's Order by approaching the Lower Court. This is not the only case in which the order of the highest Court of the State or even Supreme Court is sought to be overreached by approaching the Subordinate Judiciary. Such practice should be checked and deprecated failing which the Justice Delivery System would be shaken and there would not be any finality to any litigation. Moreover, the Indian psychology is inclined towards prolonging a litigation, unable to accept defeat at the hands of the other side. The Honourable Supreme Court in Rakesh Kumar Goel and others v. U.P. State Industrial Development Corporation and others, 2010 AIR SCW 4050, held that Court is not for manipulators, speculators and land grabbers and litigation in the Court is not like buying a lottery ticket. Paragraph No. 41 of the said Judgment is extracted as follows:

41. But this case certainly calls for exemplary costs to the Appellants. We wish to make it absolutely clear that this Court is not for manipulators, speculators and land grabbers. The litigation in this Court is not like buying a lottery ticket that, if luck favours, might bring a windfall (even though illegitimate) but would cost no more than the expenses of litigation. That is not the way of this Court. We, accordingly, impose cost of Rs.2 lakhs on each of the two Appellants. The amount of cost must be paid to the Supreme Court Legal Aid Committee within 12 weeks from today. In case receipts showing payment of the Cost is not filed within the time as directed, the amounts of Cost shall be realised from the Appellants as fine under the provisions of the Code of Criminal Procedure.

22. The Hon'ble Apex Court in A. Shamugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, 2012 (6) SCC 430, castigated dishonest and unscrupulous litigants, who have no place in law of Courts. Para 43.2 is extracted as follows:

'Every litigant is expected to state truth before the Law Court whether it is pleadings, Affidavits or evidence. Dishonest and unscrupulous litigants have no place in law Courts.'

23. Similarly, the Honourable Supreme Court in the Judgment rendered in State of Uttaranchal v. Balwant Singh Chauhal and

others, 2010 (3) SCC 409, also held that exemplary Costs can be awarded.

24. Though the Counsel are expected to safeguard the interest of their client, they cannot identify themselves with their client, that too, to obstruct the justice delivery system from doing justice. This is evident from filing of O.S. No.36 of 2016 before the Sub-Court, Vellore, without any jurisdiction. Place of practice of the Counsel seems to be the criteria or cause of action. The duty of the Counsel as an Officer of the Court to see as to whether cause of action arises or not and accordingly advise the party to file the proceedings before proper forum. Lawyers are officers of Court and they have got three responsibilities, the first one is to the party, the second to the Court and the third is to the society. Nowadays, it has become a routine for the Counsel to safeguard only the interests of their client by hook or by crook, leaving the other important duties, namely, to the Court as well as to the society, in the lurch. The need of the hour is change in the mindset and in the attitude of Counsel, without which the justice delivery system would not be able to render justice in an effective manner. It is only to express this Court's anguish and displeasure, the above observations are with regard to the situation prevailing as on date.

25. Therefore, this Court holds that:

(a) O.S. No.36 of 2016 on the file of Sub-Court, Vellore has been fraudulently filed without any cause of action at Vellore to overreach the Order passed by this Court dated 26.11.2015.

(b) The Suit is not maintainable for lack of jurisdiction and is liable to be struck off.

(c) Learned Judge without even applying his mind meticulously and analysing the pleadings and documents, passed the interim orders contrary to law, without examination as to whether the Suit is maintainable before Sub-Court, Vellore or as to whether the Plaintiff is entitled to Interim Order as prayed for and the said Order is liable to be erased.

(d) The attempt of the Petitioner, without properly making pleadings with regard to the Order dated 26.11.2015 passed by this Court even though it is reflected in the Notice dated 26.12.2015 issued by the Bank (filed as Document No. 5), to file the Suit is deliberate to obtain an Interim Order.

(e) Filing of Suit and getting Interim Order from the Sub-Court to overreach the Order passed by the highest Court of the State is abuse of process of law by playing fraud and hence, the Suit is struck off invoking Article 227 of the Constitution of India.

(f) Lawyers are Officers of the Court and they should

analyze the facts and documents properly and file the case so that truth can be found out by the Courts and for the sack of parties, incomplete, wrong and misleading allegations, should not be made and complete facts should be pleaded, without any suppression. Whereas in this case, deliberately the direction given by this Court has been suppressed in the pleadings, which has been obviously prepared by the learned Counsel for the Plaintiff before the Trial Court.

(g) This Court finds the impugned proceedings are abuse of process of law. Therefore, the Suit filed in O.S. No.36 of 2016 on the file of the Sub-Court, Vellore, is struck off and the Order dated 25.1.2016 made in I.A. No. 53 of 2016 and extended subsequently in the above Suit is erased for abusing and misusing the Judicial Forum (h) To overreach the Court's Order exemplary Costs of Rs.1,00,000 (Rupees one lakh only) is awarded against the Petitioner to be paid to Tamil Nadu State Legal Services Authority, Chennai within two weeks from the date of the receipt of a copy of the Order.

(i) The copy of the Order is directed to be sent to the Tahsildar, Vellore to recover Rs.1,00,000 (one lakh only) from the First Respondent/Plaintiff by selling his Bank shares or one of the properties of the First Respondent/Plaintiff within four weeks from the date of non-compliance of the Order passed by this Court, by the 1st Respondent/Plaintiff and to pay the amount to Tamil Nadu State Legal Services Authority, Chennai and to file a Report before this Court.

26. Therefore, while allowing the Civil Revision Petitions by setting aside the Interim Order passed in I.A. No.53 of 2016 as well as striking off the Plaint in O.S. No.36 of 2016, this Court imposes a sum of Rs.1 lakh (one lakh) as Costs on the 1st Respondent/Plaintiff, to be paid by him, to Tamil Nadu State Legal Services Authority, Chennai."

9. The Present case is a similar one of suppression of writ proceedings and prolonged the process by getting ex-parte order of injunction. Therefore, this Court inclined to impose of Rs.50,000/- as costs on the respondents/plaintiffs. But, the learned counsel for the respondents/plaintiffs had made representation before this Court that the suit schedule of property in the suit is absolutely their personal property. Therefore, he has not mentioned in respect of writ proceedings in the plaint. But, this Court is not inclined to accept the arguments advanced by the learned counsel for the respondents/ plaintiffs, but on consideration, this Court is not inclined to impose the cost.

10. Apart from that, as rightly submitted by the learned counsel for the petitioners, the jurisdiction of civil court is barred under Section 15 of The Tamil Nadu Public Premises Act, 1975, which reads as follows:-

"15. Bar of Jurisdiction. - No court shall have jurisdiction

to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) of that section or the costs awarded to the Government or the corporate authority under sub-section (5) of Section 9 or any portion of such rent, damages or costs."

11. Like the Tamil Nadu Public Premises Act, 1975, the other Act under the Tamil Nadu Land Encroachment Act, 1905 also barred the Jurisdiction of Civil Court as per Section 14 of the Act, which reads as follows:

"14. Bar of Jurisdiction of Courts.- Notwithstanding anything contained in any law, for the time being in force, no order passed or proceeding taken by any officer of authority or the State Government under this Act, shall be called in question in any court, in any suit or application and no injunction shall be granted by any court in respect of any action taken or to be taken by such officer or authority or the State Government in pursuance of any powers. So conferred by or under this Act."

12. Therefore, it made clear as per the above two Acts, there is a specific bar to entertain the suit by the civil court in respect of eviction of any unauthorized occupants. The plain reading of Section 15 of the Tamil Nadu Public Premises Act, 1975 and Section 14 of the Tamil Nadu Land Encroachment Act, 1905 tells very clear that there is express bar of civil court jurisdiction, hence the suit for permanent injunction is barred under law.

13. The averments in the plaint read that the petitioners have started to measure the property, without any basis and without issuing any notice under the Land Encroachment Act. As stated supra the writ proceedings on the same subject have been suppressed and therefore the plaintiffs have come to the court with unclean hands. It is to be noted the suit is not one for declaration of title but for permanent injunction alone. When the reading of plaint clearly exposes that the proceedings were initiated to measure the property for removal of encroachment the Trial Court should be very careful and vigilant in entertaining the suit.

14. The material on the record confirms that the proceedings for removal of encroachment were initiated as the Hon'ble Division Bench of this Court has directed to remove the encroachment, after giving notice and following due process of law, within the time framed.

15. The perusal of Sections 4 and 5 of the Act clearly explains about the issuance of show cause notice specifying the grounds of eviction and decide the nature of occupation by considering the objection from any person in occupation or claiming interest and passing order after considering the objection. It is useful to extract Section 4 and 5 of the Act, 1975, which reads as

follows:-

4. Issue of notice to show cause against order of eviction. - If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and that they should be "evicted, the estate officer shall issue, in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, to show cause, if any against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the estate officer knows or has reason to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

5. Eviction of unauthorised occupants. - (1) If, after considering the cause, if any shown by any person in pursuance of a notice under section 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply

with the order of eviction under sub-section (1), the estate officer or any other officer duly authorised by the estate officer in this behalf may evict that person from, and take possession of, the public premises and may, for that purpose, use such force as may be necessary."

16.No Doubt the bar of jurisdiction of Civil Courts shall not apply to this court entertaining the lis, exercising the extraordinary jurisdiction, under Article 227 of the Constitution of India. It is seen that Act, 1975 provides a quick and summary remedy as regards eviction as well as collection of rental arrears as opposed to the dilatory civil remedy in the ordinary Civil Courts. The Act provides for all contingencies and it provides a quasi judicial authority and an appeal remedy also provided therein as against the order. The Act gives all the necessary powers to the authorities to conduct a fair enquiry and thus the Act is a complete code in itself. Therefore, Section 15 of the Act clearly ousts the jurisdiction of the Civil Court with respect to eviction as well as recovery of arrears of rent, license fee or damages due from a person in occupation of the public premises and also from unauthorized occupants. Considering the clear cut language employed in Section 15 of the Act and the intent and content, the jurisdiction of the Civil Court has been clearly ousted with respect to the public premises.

17.Dehors, specific bar of civil court's jurisdiction, the subordinate courts, exercising original jurisdiction to try the civil suit under Section 9 of C.P.C. are entertaining the plaint and also granting interim orders, like the present one. No doubt the civil courts shall entertain all civil suits but the same is subject to the bar under special law. It is settled law that the bar of jurisdiction of Civil Court may be implied by providing alternative mechanism before the Quasi Judicial authority and judicial forum. In that case the entertaining of Civil Suit by the Civil Court may depend upon the averments made in the plaint, regarding the invocation of jurisdiction of Civil Courts. However the same is subject to defence to be raised by the defendant, with regard to the jurisdiction, which can be decided preliminary.

18.But when there is an express bar of Civil Court jurisdiction, it is the duty of the court to verify the provision of law, containing the bar of jurisdiction and not to entertain the civil suit by quoting the relevant provision of law. In this regard it is useful to refer Section 9 and Order-7, Rule 11(d) of CPC, which reads as follows :-

"Section 9 - Court to try all Civil Suits unless barred: - The Court shall (Subject to the Provisions herein contained) have jurisdiction to try all suits of a Civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation:- (1) - A suit in which the right to property

or to an office is contested is a suit of a Civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

(Explanation:- (II)- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.)"

19. The very reading of the Section 9 clearly expose that the jurisdiction of Civil Court to entertain all civil suits is subject to a bar. Here, the nature of duty cast upon the Court under Section 9 is not to mechanically number the suit but to verify the relevant enactment of law, which governs the particular case, on the basis of averments made in the plaint. But the subordinate courts are entertaining the suits mechanically, as in the present case and later invoking the Order 7, Rule 11 at the instance of defendant to reject the plaint. The course being adopted by Trial Court, mentioned supra is not in accordance with Section 9 of CPC.

20. This Court has come across several cases for a direction to number the plaint, which were returned with an endorsement "How the suit is maintainable" without even mentioning the relevant provision which bars the jurisdiction. Though this Hon'ble Court has deprecated the returning of plaint, without mentioning the relevant provision it is still being followed, without understanding the difference between express and implied bar. In the case of express bar created under the special law, the civil court shall not entertain the suit but return the plaint quoting the specific provision, which bars the jurisdiction of civil court to entertain the suit. At any cost there shall not be any return of plaint or any petition, without stating the provision of law. In other words, the returning of plaint with the vague endorsement as "how the suit is maintainable" cannot be a return in consonance with law and the Trial Court shall refrain from returning the plaint with vague reason.

21. To say in other words, it is the duty of civil court to read the averments of the plaint and to find out from the averments regarding the applicability of relevant laws and to find out the specific bar if any under the provision of law. It is to be keeping in mind that the parties may or may not come with relevant particulars of applicability of provision of law, even the parties may collude and suppress the relevant provision of law to obtain the order for using the same as weapon to retain the illegality or project the illegal things. Therefore the Courts must be vigilant and have an open eye with relevant provision of law with respect to bar and jurisdiction. The Courts have also to keep in mind that they shall not have a fowing enquiry on the merits of the claim, at the time of numbering the suit, except to find out the maintainability of suit on considering the relevant provisions of law, which bars the civil court's jurisdiction.

22. In the present case the plaint averment discloses that there was an attempt to measure the property so as to find out the encroachment and the action was taken for removal of the encroachment. If the trial court read the plaint carefully and gone through the provisions of law mentioned supra it would not have entertained the suit and granted the interim order of status quo. But the Trial Court has mechanically entertained the suit de hors Section 15 of the Act. If the Trial Court has followed the statutory duty before numbering the plaint this type of error will not happen by giving premium on the persons coming to the court with unclean hands.

23. As stated supra, not only the present court but all the Subordinate Courts are committing the same mistake without verifying the relevant provision of law, which result in unnecessary burden on the courts in all level of having the pendency of civil cases at large. Therefore this Court feels that a direction to be given to all the Trial Courts to scrupulously follow the procedure before entertaining the suit.

24. In the result:

(a) The Civil Revision Petition in CRP(MD)No.1480 of 2018 is allowed;

(b) The Plaint in O.S.No.956 of 2017 on the file of the learned Sub Court, Karur is hereby strike off;

(c) The Registry is directed to circulate the copy of this order to all the Subordinate Courts and the Subordinate Courts are directed to strictly follow the procedure mentioned supra before entertaining the suit;

(d) The Petitioners are hereby directed not to proceed to take action for removal of encroachment of the respondents/plaintiffs for the period of 15 days based on the Notice issued under Form-III of Tamil Nadu Land Encroachment Act, 1905, from the date of receipt of copy of this order;

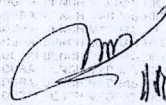
(e) Since the very plaint in O.S.No.956 of 2017 itself is strike off in C.R.P.No.1480 of 2018, no further order is necessary in C.R.P.(MD)No.1481 of 2018 which is filed challenging the interim order of injunction granted in the above suit in I.A.No.1244 of 2017 dated 09.03.2018 and accordingly, the CRP(MD)No.1481 of 2018 is closed. Consequently, connected miscellaneous petitions are closed;

(f) All the District Collectors in the State of Tamil Nadu are hereby directed to issue suitable directions to their Subordinate Officers to take appropriate steps for strike off the plaints wherever the cases already filed and pending are in which attracting the provisions under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 and Tamil Nadu Land Encroachment Act, 1905 within their respective Jurisdictional Courts without any delay;

(g) The Registry is directed to issue copy of this order to all the District Collectors in the State of Tamil Nadu for compliance of the order.

/True Copy/

Sd/-
Assistant Registrar (AS)


11/08-2018

Sub Assistant Registrar (CS-I)

To
The Subordinate Judge,
Karur.

Copy to:

1. The Registrar General,
High Court,
Chennai-600 104.
2. The Additional Registrar General,
Madurai Bench Of Madras High Court,
Madurai-625 023.
3. The Registrar(Judicial),
High Court,
Chennai-600 104.
4. The Registrar(Judicial),
Madurai Bench Of Madras High Court,
Madurai.
5. The Section Officer,
F Section,
High Court,
Chennai-600 104.

(To Circulate This Order Copy to All The Respective Subordinate Court and District Collectors)

6. The Section Officer,
F Section,
Madurai Bench Of Madras High Court,
Madurai - 625 023.

(Copy to All the Respective Subordinate Court and Collectors)

VSV

DS/SKN-RSK/SAR-1 :11.08.2018: 15P/8

C.R.P. (MD) (PD) Nos. 1480 and 1481 of 2018
and

CMP (MD) Nos. 6608 and 6607 of 2018
24.07.2018

"C 0800636