



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P.[MD]No. 17 of 2019

and C.M.P. (MD) Nos. 72 & 73 of 2019

M. Pattu

: Petitioner/Defendant

-Vs-

S. Maduraiveeran

: Respondent/Plaintiff

**PRAYER:** Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S. No.211 of 2016, on the file of the Subordinate Court, Thuraiyur.

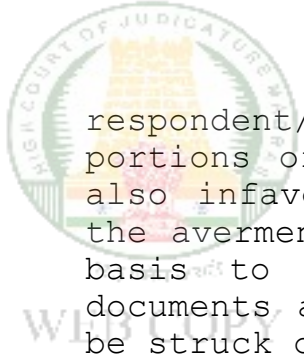
For Petitioner : Mr.S.Sitharthan

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**ORDER**

This Civil Revision Petition has been filed to strike off the plaint filed by the plaintiff in O.S. No.211 of 2016, before the Subordinate Court, Thuraiyur.

2. When the matter is taken up for admission, the learned counsel for the petitioner submitted that the petitioner/defendant has filed a petition for various claims including the suit mentioned properties, under the Protection of Women from Domestic Violence Act, 2005. He further submitted that the proceedings were held between herself and the respondent/plaintiff, before the Additional Mahila Court (Judicial Magistrate level), regarding the earlier suit between the respondent and herself. He further submitted that the respondent/plaintiff has filed a suit in O.S. No. 211 of 2016, by alleging in the plaint that the suit properties mentioned in the plaint were purchased by him, in the name of his wife who is the petitioner herein, as a benami transaction, but the same was not proved with documentary evidence, at the time of filing of the plaint, as well as, at the time of deposing evidence and further alleged in the plaint that the respondent/plaintiff had paid the entire money for purchasing i.e., sale consideration, regarding the suit properties and there is no recitals in the sale deed as very much revealed the fact that the same has been purchased by the



respondent/plaintiff. He further submitted that the particular portions of the recitals in the cross examination of the P.W.1 is also infavour of the petitioner herein. He further submitted that the averments in the plaint do not disclose clear right or material basis to sue and cause of action not supported by mandatory documents and the plaint filed in O.S. No.211 of 2016 is liable to be struck off.

3. To prove his contention, the learned counsel for the petitioner relied upon the following Judgments :-

- 1. 2012 (8) Supreme Court Cases 706, Church of Christ Chritable Trust and Educational Chairable Society represented by its Chairman /Vs/ Ponnamman Educational Trust represented by its Chairperson/Managing Trustee.**
- 2. 2016(1) MWN (Civil) 280, Kuppusamy Vs. Karuppa Padayachi.**
- 3. 2018 (2) MWN (Civil) 236, S. Kanakaraj /Vs/ S. Ramalingam.**

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The grievance of the petitioner is that the evidence on the side of the plaintiff is about to complete and it is now the petitioner herein as defendant has to depose before the Trial Court. The further grievance of the petitioner is that the respondent herein will have to prove his case that the suit properties were purchased by the respondent herein/plaintiff only.

6. Considering the facts and circumstances of the case, the right over the suit properties will have to be decided during the trial only. Hence, at this stage, the petitioner herein has an opportunity to prove the fact that she has only paid the entire sale consideration for the purchase of first and second items of the suit schedule properties. Hence, the relief sought for by the petitioner herein does not arise.

7. In view of the same, the Civil Revision Petition is dismissed with liberty to the petitioner to prove her case before the Trial Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS )



To

The Subordinate Judge,  
Thuraiyur

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+1 CC to M/s.D.SELVANAYAGAM, Advocate in SR-50892

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