



C.R.P.(MD) No.1388 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.1388 of 2022

and

C.M.P.(MD) No.5743 of 2022

Krishnaveni

... Petitioner

Vs.

1.Palanisamy @ Papusamy

2.Chinnadurai

3.Saravanakumar

4.Pavithra

5.Chinnasamy @ Kuppusamy

6.Sumathi

7.Kaliyathal

8.Sudha

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to pass appropriate orders to strike off the plaint in O.S.No.19 of 2022 on the file of the District Munsif Court, Palani.



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4. Paragraph Nos.6 to 8 of the plaint read as under:-

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"6.இந்நிலையில் பிரதிவாதிகள், வருவாய்த்துறையினர் மூலம் அளவை செய்வது சம்பந்தமாக அவ்வப்போது மனுச்செய்து அதன்மூலம் தனிப்பட்ட முறையில் அளவை செய்வது சம்பந்தமாக பிராது சொத்திற்குள் அத்துமீறி நுழைந்து தங்கள் இஷ்டத்திற்கு அளவுகள் செய்து அதனை வைத்து பிராது சொத்தை வாதியிடமிருந்து அபகரிக்கும் நோக்கத்தோடு செயல்பட்டு இருந்து வருகிறார்கள். வாதிக்கு பாத்தியப்பட்ட பிராது சொத்தான சர்வே எண்.36/2F என்பது வாதியின் பெயரில் பட்டா எண்.2151 ஆக ஏற்பட்டு இருந்து வருகிறது.

7. பிராது சொத்தின் அருகில் 1ம் பிரதிவாதிக்கு பாத்தியப்பட்ட புலஎண்.36/3, 36/4 ஆகியவைகளில் நிலம் உள்ளது. அதேபால் 36/1, 36/2 ஆகியவைகளில் 2 முதல் 4 பிரதிவாதிகளுக்கு நிலம் உள்ளது. அதனையடுத்து 5ம் பிரதிவாதி தனக்கு பாத்தியப்பட்ட பிராது 2லக்க ஆவணமான பாகப்பிரிவினை ஆவணத்தில் கண்ட "B" ஜாப்தா சொத்துக்களை தனது மக்களான 6 முதல் 8 பிரதிவாதிகளுக்கு செட்டில்மெண்ட் எழுதி வைக்கப்பட்டு, அந்த செட்டில்மெண்ட் ஆவணத்தின்பேரில் உட்பிரிவு செய்யப்பட்டு தற்போது பிராது சொத்தை ஒட்டி வடபுறத்தில் சர்வே எண். 36/2D3, 2D2, 2D1A இருந்து வருகிறது. இப்பால்



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பிரதிவாதிகள் அனைவரும் ஒன்று சேர்ந்து கூட்டுச்சதி செய்து வாதியிடம் இருந்து பிராது சொத்தினை அபகரிக்க வேண்டும் என்ற ஒரே நோக்கத்தோடு அவரவர்களுக்கு பாத்தியப்பட்ட நிலத்தின் அத்துமால்களை சரியாக வைத்துக்கொள்ளாமல் பிரதிவாதிகளுக்கு பாத்தியப்பட்ட நிலம் பிராது சொத்திற்குள் வருவதாக கூறிக்கொண்டு ஆக்கிரமிப்பு செய்ய முயற்சி செய்து வருகிறார்.

8.பிராது 2லக்க ஆவணமாக பாகப்பிரிவினை ஆவணத்தில் வாதிக்கு ஏக்1 செ1 நிலம் பாத்தியப்பட்டிருந்த நிலையில், தமிழக அரசால் தேசிய நெடுஞ்சாலைக்காக கையகப்படுத்தப்பட்டு தற்போது வாதி தன் கைவசம் வைத்திருக்கும் சொத்தின் விஸ்தீரணமானது 77 செ மட்டுமே ஆகும். ஆனால் வாதியின் பாகப்பிரிவினை ஆவணத்திலும், வாதியின் பெயரிலுள்ள பட்டாவிலும் முழுஅளவான ஏக்1 செ1 உள்ளது. இந்த வாதி தன் கைவசம் உள்ள 77 செண்ட்க்கு மட்டும் பரிகாரம் கோருகிறார்."

5. The above suit, according to the petitioner, is nothing but an abuse of Court proceedings. It is submitted that in the plaint itself, the first respondent has the rights over the misdeclared extent of land, measuring an extent of 77 Cents. It is submitted that the land to an extent of 77 Cents has been acquired by the National Highways Department and



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that the first respondent has also received compensation of Rs.8,85,885/-

and that the balance extent of land, which has remained in the hands of the first respondent was only 24 Cents out of 1.01 Acres of land in S.No. 36/2F. It is submitted that 24 Cents of land has been further sub-divided as S.No.36/2F1 after 77 Cents of land out of 1.01 Acres of land was acquired by the National Highways Department which has been shown as land in S.No.36/2F2.

6. The learned counsel for the petitioner has drawn the attention to an order dated 28.05.2020, bearing Na.Ka.No.576/2020/A3/CU of the Special District Revenue Officer [Acquisition], Dindigul. It is submitted that though the first respondent has rights over only 24 Cents of land out of 1.01 Acres of land after acquisition by the National Highways Department, the first respondent has wrongly stated that he is having rights over 77 Cents of land in composite S.No.36/2F. It is submitted that O.S.No.19 of 2022 filed by the first respondent was nothing but an abuse of the Court proceedings. It is therefore submitted that the plaint in O.S.No.19 of 2022 is liable to be struck off.

7. The learned counsel for the petitioner has drawn attention to the



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decision of the Madras High Court (Principal Seat of this Court) in **Maria**

Soosai and another Vs. Esakkiammal, 1999 - 1 - L.W. 727, wherein, it

has been held as under:-

12. The fact whether there was an oral gift and whether petitioners' father obtained physical possession on the basis of the oral gift, has nothing to do with the alleged fraud. I also found in the earlier case that the title of the petitioners is also absolute once they have prescribed title by adverse possession. These two findings by themselves are sufficient to declare the title of the petitioners in the earlier suit. The question whether there was any forgery of documents need not be considered at all. While disposing of the review application, I have given reason why the allegation of fraud is irrelevant and why it need not be considered. The earlier suit was filed on the basis of oral gift and factum of possession. There was a further allegation that the continuous possession for more than the prescribed period will give them absolute title. All the three courts have further held in the earlier suit that the respondent herein and her predecessor did not have possession at all till 1983. Attempt made by respondent herein to canvass those findings before the Honourable Supreme Court also failed. The Special Leave Petitions filed by her were also dismissed. So, all these facts taken together, show that, de hors the patta proceedings before settlement authorities, petitioners are entitled to succeed. When they are allowed to recover possession on the basis of title, the present suit filed by respondent herein for the reliefs extracted above, is nothing but an abuse of process. Question of setting aside the decree will not arise in such case.

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14. Even though learned Counsel for respondent justified the action of respondent in filing the suit on the ground of alleged fraud, I do not think that the same could be accepted. The respondent challenged the decisions in appeal, Second Appeal and also before the Honourable Supreme Court, and in all the Forums, the decision went against her. Therefore, the same should not be allowed to be re-opened by way of another litigation.

8. The learned counsel for the petitioner also relied on the decision of the Madras High Court (Principal Seat of this Court) in **Ramiah Asari Vs. Tmt.Kurshad Begaum and another**, 1999 (1) CTC 600, wherein, the Court held as under:-

12. Having heard both sides, I feel the suit has to be struck off the file for the following reasons: (a) With regard to A Schedule items in the suit, it is agreed by the sides that in respect of same property and for the same relief O.S. No. 1459 of 1996 was filed. When earlier litigation is already pending, there is no necessity for filing another suit. Even though one more survey number is added, that will not give new right to Plaintiffs when property is same. (b) With regard to B and C Schedule items, I have already extracted relevant portions of plaint, which shows that even according to plaintiffs, defendants 1 to 3 Tamil Nadu Housing Board are the absolute owner and in possession of those items. With regard to B Schedule, case of plaintiffs is that they have right of access through B Schedule property to enter into A Schedule. Once A Schedule is not in possession of plaintiffs, there is no question of giving access through B Schedule. No relief is claimed against defendants 1 to 3,



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the Tamil Nadu Housing Board. Persons who are affected by the construction or trespass if any are only defendants 1 to 3, the Tamil Nadu Housing Board. Plaintiffs have no locus standi to file a civil suit in which they have no interest. By this finding it should not be understood that I accepted the case of plaintiffs that with regard to B and C Schedule item defendants 1 to 3 are the owners. I am only referring to the case of plaintiffs for the limited purpose that plaintiffs do not claim any right over the same. If plaintiffs have no right or interest over B and C Schedule items, naturally they cannot have any cause of action in regard to those properties. A simple reading of plaint will disclose that plaintiffs have no cause of action nor any locus standi to file the suit.

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17. Honourable Supreme Court in a recent decision reported in *K.K. Modi v. K.N. Modi*, 1998 (3) S.C.C. 573, had occasion to consider this question. In paragraph 44 of the Judgment, their Lordships held thus,

“One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the 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 reargitation may or may not be barred as *res judicata*. But if the same issue is sought to be reargitated, 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



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proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the courts 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.” (Italics supplied)

In that case, Lordships also accepted the explanation to the phrase ‘abuse of process of Court’ as published in the Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18, 19, 33 of the book. In paragraph 43 of the Judgment the same is stated thus,

“This term connotes that the process of the court must be used *bona fide* and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.”

In paragraph 42 of the same Judgment, their Lordships also recognised the inherent power of the Court to strike out pleading which is an abuse of process.

18. Taking into consideration above decision, I feel it is a fit case where the said power should be invoked. On going by the averments of plaint, I am satisfied that there is no chance of plaintiff succeeding in the suit and



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the claim is made only for collateral purpose or it is only a spurious claim. It is of frivolous nature and to prevent the time of public and court being wasted, suit should not be allowed to be proceeded with. Improper use of machinery of court also should not be allowed to be continued for the continued prosecution of this vexatious litigation. Interest of Justice being paramount consideration, I feel it is the fit case that the plaint is to be struck off the file.

9. The learned counsel for the petitioner further relied on the decision of the Madras High Court (Principal Seat of this Court) in **N.A.Chinnasamy and another Vs. S.Vellingirinathan**, 2013 (6) CTC 809, wherein, it has been held as under:-

39. In the instant case, as per the Plaint averments, the Respondent/Plaintiff had executed the registered Sale Deed, dated 06.03.2000 in favour of the Petitioners/Defendants for a sale consideration of Rs. 2,20,000/-. He has admitted the execution and also the registration of the Sale Deed, dated 06.03.2000. However, 12 years after the execution of the Sale Deed, he issued legal notice, dated 27.7.2012, stating that he had signed the registered document, thinking that it was a Mortgage Deed executed by him. As per the document, it is an admitted fact, in respect of execution and registration of the same and a copy of which was also filed by the Respondent/Plaintiff, along with the Plaint. However, in the Plaint the Respondent/Plaintiff has stated that he was in need of a loan of Rs. 2,00,000/-, for which he was asked by the Petitioners/Defendants to visit the Sub-Registrar's Office concerned, where



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he obtained signatures of the Respondent/Plaintiff in the stamped papers. It reads further in Paragraph Number 4 of the Legal Notice issued (copy of which was filed by the Respondent/Plaintiff) by the Respondent/Plaintiff as follows:

“My client with all faith, belief and trust executed several signatures as instructed by you under the fond hope of mortgaging his property. My client had agreed to redeem the mortgage within a period of 5 years.”

40. The xerox copy of the registered Sale Deed, dated 06.03.2000 produced by the Respondent/Plaintiff before the Court below and the averments therein would clearly show that it is a registered Sale Deed executed by the Respondent/Plaintiff in favour of the Petitioners/Defendants. The signatures of the Respondent/Plaintiff and the registration of the document by the Sub-Registrar were not disputed by the Respondent/Plaintiff. However, 12 years after the execution and registration of the said document, the Respondent/Plaintiff issued the Legal Notice as sated above, disputing the Sale Deed by saying that he had signed the same only as a Mortgage Deed.

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50. The other two points under Order 7, Rule 1, CPC are relating to no cause of action for filing the Suit and the statutory bar under the Limitation Act. Apart from the said grounds, if it is also established that the filing of the Suit itself is an abuse of process of law and the Court, hence, invoking Article 227 of the Constitution of India, the Plaint could be to struck off, to meet the ends of justice.

51. In the instant case, a perusal of the averments made in the cause of action, para of the



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Plaint by the Respondent/Plaintiff could not be construed as cause of action, in the eye of law, to maintain the Suit, for the relief sought for in the Plaint. Having executed the registered Sale Deed, 12 years after the execution of the Sale Deed, the Respondent/Plaintiff has come forward with the present Suit, by raising an unsustainable plea, that on the date of executing the Deed, he was thinking that it was a Mortgage Deed and not a Sale Deed. 12 years after executing the deed, he has raised such an unreasonable plea, hence, such an abuse must be deprecated. After executing the Sale Deed before the Sub-Registrar's Office, as per the earlier registered Agreement for Sale, it is not open to the Respondent/Plaintiff to raise a self contradictory plea stating that he had signed in the Sub-Registrar's Office in various papers, 12 years later in the last week of June 2012, he came to know that it was a Sale Deed, though he was thinking that it was only a Mortgage Deed, for which he received a loan of Rs. 2,00,000/-, out of which, Rs. 1,00,000/- and interest was paid without getting any receipt or acknowledgement, saying that the Petitioners/Defendants were not in the habit of issuing receipt. Such unsustainable, frivolous plea against the registered document executed by him would show that the Respondent/Plaintiff has not come forward with clean hands and also spoken the truth in the Plaint. The self-contradictory version of the Respondent/Plaintiff, which is against law, cannot be construed as cause of action to maintain the Suit. In a case of vexatious litigation, it would be the solemn duty of this Court to invoke Article 227 of the Constitution to struck off the Plaint, which contains improper and unreasonable pleadings of the Respondent/Plaintiff, which could not be accepted by any reasonable prudent man. The Suit has been filed after 12 years, after executing the Sale Deed is hopelessly barred by limitation and the Respondent is



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not entitled to raise a plea of date of knowledge, as he was party to the Sale Deed.

52. It cannot be disputed that Plaint could be struck off only in the rarest of cases, when there is clear abuse of process of law and Court, however, the same has to be decided only based on the pleadings and the admission made by the Plaintiff and not based on the Written Statement and when the Court comes to a conclusion that there is no possibility for the Plaintiff to succeed and filing such a Suit is also an abuse of process of law and the Court. In this Revision, all these aspects are available against the Respondent/Plaintiff, hence, this Court has no hesitation to invoke Article 227 of the Constitution and struck off the Plaint, to meet the ends of justice.

53. Having considered the Plaint averments and the admitted documents, copy of the notice issued by the Respondent/Plaintiff and the other public document, namely G.O. (2D) No. 19, Municipal Administration and Water Supply (T.P.II) Department, dated 25.03.2010, it has been made crystal clear that the Suit itself is a clear abuse of process of law and Court. There is no legally acceptable cause of action available to the Respondent/Plaintiff, for the relief sought for in the Plaint, the Suit is also barred by statute, namely the Limitation Act, hence, this Court is of the view that there is no chance of the Suit succeeding and accordingly, to meet the ends of justice and to prevent abuse of process of Court, this Revision has to be allowed and pass orders to struck off the Plaint, invoking Article 227 of the Constitution.

10. A reading of the above documents filed indicates that the first respondent has resorted to clever drafting of the plaint to contrive a



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possible case by suppressing the fact that 77 Cents of land out 1.0 Acres of land in S.No.36/2F has been acquired by the National Highways Department. The first respondent has suppressed order dated 28.05.2020, bearing Na.Ka.No.576/2020/A3/CU of the Special District Revenue Officer [Acquisition], Dindigul.

11. A reading of the Judgments cited by the learned counsel for the petitioner makes it clear that the first respondent has no case against the petitioner in O.S.No.19 of 2022 before the District Munsif Court, Palani. Having entered appearance after notice and filed vakalat, the respondents particularly the first respondent have failed to appear themselves in this proceeding.

12. Considering the above, this Court is inclined to allow this Civil Revision Petition. Accordingly, O.S.No.19 of 2022 pending on the file of the District Munsif Court, Palani is directed to be struck off from the file of the Court.

13. This Civil Revision Petition is allowed. No cost. Consequently, connected Miscellaneous Petition is closed.



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Internet: Yes/No

NCC: Yes/ No

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To

The District Munsif Court, Palani.



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C.SARAVANAN, J.

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