

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	05.07.2023
Pronounced on	08.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.755 of 2020

and

CMP(MD)No.5055 of 2020

- 1.Thayammal
- 2.Venkataramanujam
- 3.Jayaraman
- 4.Kosalai@ Kowsalya
- 5.Bharathi@ Jayabarathi
- 6.Santhanakrishnan
- 7.Rathamani
- 8.Harikrishna
- 9.Rajaram
- 10.Devi
- 11.Manivannan

... Petitioners

Vs.

- 1.Kesavan
- 2.Gopalakrishnan
- 3.Gokulnathan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.350 of 2019 pending on the file of the Sub Court, Theni.

For Petitioners : Mr.A.M.Raja

For R1 : Mr.R.Venkateswaran

ORDER

This revision petition is preferred by the petitioners to strike off the plaint in O.S.No.350 of 2019 pending on the file of Sub Court, Theni.

2. The petitioners are defendants 1 to 10 and 13 in O.S.No.350 of 2019 on the file of Sub Court, Theni. According to the petitioners, the second petitioner/plaintiff filed a suit in O.S.No.139 of 2011 against the petitioners 1, 3, 4, 5, 6, 9 and 10 and the respondents for the relief of partition in the suit properties. The said suit was decreed in favour of the plaintiff and hence, appeal was preferred by the defendants before the Principal District Court, Theni, in A.S.No.33 of 2014. At that time, a compromise was entered between the parties and award was passed in the lok adalat on 13.07.2020, in

which the second petitioner/second defendant, the first respondent/plaintiff and second respondent/11th defendant endorsed their signature in the presence of their respective counsels and the said award was also recorded in the appeal suit in A.S.No.33 of 2014, on 16.07.2019 and accordingly, the dispute between the parties was put to an end. Suppressing the above facts, the first respondent/plaintiff had filed the suit in O.S.No.350 of 2019 for the same relief is totally abuse of process of law. The above suit was filed only to threaten the petitioners with intention to grab money from them. Without challenging the award passed in the lok adalat, no suit or appeal would lie. Hence, the present suit in O.S.No.350 of 2019 is liable to be struck off.

3. On the other hand, the learned counsel appearing for the first respondent/plaintiff would submit that the second defendant, namely, Venkataramanujam, in O.S.No.350 of 2019 filed a suit in O.S.No.139 of 2011 claiming 1/8th share in the suit property and the same was decreed on 05.09.2014, against which, appeal was preferred in A.S.No.33 of 2014 on the file of the Principal District Judge, Theni. However, in the *lok adalat* settlement, amount of Rs.10,00,000/- were settled to the plaintiff, namely,

Venkataramanujam in O.S.No.139 of 2011. No amount was settled to the first respondent. Hence, he was constrained to file the above suit in O.S.No. 350 of 2019 for partition in the suit property. If the suit in O.S.No.350 of 2019 is struck off, the plaintiff would suffer irreparable loss and hardship. Hence, it is not necessary to struck off the plaint in O.S.No.350 of 2019.

4. Heard on both sides and records perused.

5. On perusal of the records, it is seen that the lok adalat award was passed on 13.07.2020 and the same was recorded in the appeal suit on 16.07.2020. The award passed in lok adalat on 13.07.2019 is as follows:-

"இந்நிர் மேல்முறையீட்டு எதிர்மனுதாரர் வழக்கு சொத்துக்களில் பாகப்பிரிவினை செய்து தரக்கோரி தேனி சப் கோர்ட்டில் O.S.No.139/11ல் என வழக்கு தாக்கல் செய்து அவருக்கு ஆதரவாக தீர்ப்பாணை பெற்றார். அப்பீல் வாதிகள் O.S.No.139/11ல் வழங்கப்பட்ட உத்தரவிற்கு எதிராக மேல்முறையீடு தாக்கல் செய்து சமூகம் நீதிமன்றத்தில் நிலுவையில் இருந்த நிலையில் தரப்பினர்களுக்குள் சமரசம் ஏற்பட்டு மேல்முறையீட்டு 1ம் எதிர்மனுதாரர் வழக்கு சொத்தில் தனது பாகத்திற்காக ரூ.10,00,000/- அப்பீல் வாதிகளிடம் பெற்றுக்கொண்டு விடுதலைப் பத்திரம் எழுதிக் கொடுத்துவிட்டார். எனவே O.S.No.139/11ல் வழங்கப்பட்ட

உத்தரவின் பேரில் உரிமை கோருவதில்லை என
ஒப்புக்கொண்டார். எனவே இந்நிர் மேல்முறையீட்டு
வழக்கினை தரப்பினர்கள் அனைவரும் வாபஸ் பெற்றுக்
கொள்கின்றனர்.”

6. On perusal of the award, it is found that the first respondent has affixed his signature along with other co-sharers. Apart from that, the learned counsel appearing for the petitioners at the time of the arguments produced the copies of indemnity deeds said to have been executed by the first respondent, namely, Kesavan and by the plaintiff, namely, Venkataramanujam, in O.S.No.139 of 2011 and submitted that the first respondent and his brother second petitioner, namely, Venkataramanujam, after receiving a sum of Rs.10,00,000/- in respect of their shares, executed the indemnity deeds, in favour of the other petitioners and also endorsed their signatures in the indemnity deeds. On perusal of the above documents, it is found that the first respondent and his brother have endorsed their signatures in the above said deed. It is not the case of the first respondent that his signature was forged or he was compelled to sign the above documents. Though the said deed was executed even prior to the passing of the award in

the lok adalat, no weightage could be given to that. The parties would have entered into a compromise even before making appearance in the lok adalat. In fact, in the suit filed by the first respondent in O.S.No.350 of 2019, he did not disclose the award passed in the lok adalat in O.S.No.139 of 2011. If really, the first respondent was aggrieved by the award passed in the lok adalat, he would have challenged the same before the appropriate forum instead of filing a fresh suit for partition in O.S.No.350 of 2019. It is only an “abuse of process of the Court”.

7. In the Judgement reported in (1998) 3 SCC 573 - *K.K.Modi Vs. K.N.Modi*, wherein the Honourable Supreme Court has observed as follows:

"42.Under Order 6 Rule 16, the Court may, at any state of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court. Mulla in his treatise on the Code of Civil Procedure. (15th Edition, Volume II, page 1179 note 7) has stated that power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under Section 151, where under

Courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of Court on the basis of what is stated in the plaint.

43.The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (page 344) explains the phrase "abuse of the process of the court" 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."

44.One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a

party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation 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 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 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." In the said Judgement the Honourable Supreme Court has equated re-litigation as one of the examples of an abuse of process of the Court.

8. In the above judgment, the issue of re-litigation and abuse of process

of Court was elaborately dealt with. Normally, a suit cannot be struck off while exercising power under Article 227 of the Constitution. However, if a party comes to the Court with unclean hands and re-agitate the matter again and again, the Courts are not power less to exercise its discretion in putting a full stop to the same. The suit that has been filed by the first respondent herein is a glaring example where the Courts have to exercise its power to stop the first respondent from proceeding with the matter endlessly and in order to prevent the abuse of process of the Court and to avoid miscarriage of justice, this Court has to order strike off the plaint. The first respondent herein having obtained an award in the lok adalat, filed a suit in O.S.No.350 of 2019 for the very same relief is totally misuse or abuse of process of law. The first respondent has not challenged the award passed in the lok adalat, by stating that a fraud has been committed by the other side. Therefore, the first respondent is not only attempting to protract the proceedings but also to keep litigation alive which is also abuse of process of Court in another grab. Therefore, considering the above factors, I am of the view that the present suit in O.S.No.350 of 2019 is nothing but a re-litigation and abuse of process of Court.

9. In the result, this Civil Revision Petition is allowed. The suit in O.S.No.350 of 2019 pending on the file of Sub Court, Theni, is struck off from the file. However, there shall be no order as to cost. Consequently, connected civil miscellaneous petition is closed.

08.08.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
cp

To

The Additional District Munsif,
Valliyoor

K.GOVINDARAJAN THILAKAVADI

cp

order made in
CRP (MD) No.755 of 2020

08.08.2023