



C.R.P.No.4781 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.4781 of 2023
and C.M.P.No.28350 of 2023

N.Ummusalma

... Petitioner

-Vs-

1.Hari Govinda Iyer Dharma Trust
Chidambaram, represented by
Managing Trustee, R.K.Kamalakaran
No.153, Kasu Kadai Street
Chidambaram - 1.

2.The District Registrar
Office of the District Registrar
Cuddalore.

3.The Sub Registrar
Office of the Sub Registrar
Chidambaram.

4.S.A.R.Mohamed Iqbal

5.S.A.R.Rabeek

6.S.A.R.Hasina Banu

(Respondents 4 to 6 given up)

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to call for the records in O.S.No.164 of 2021 on the file of the Additional District Munsif Court, Chidambaram and strike off the plaint, being grave abuse of process of law, vexatious and allow the CRP.



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For Petitioner : Mr.P.M.Subramaniam, Senior Counsel
for Mr.A.J.Alwyn Prabhakar

For Respondents : R1 - Served, no appearance
Mr.J.Arunkumar,
Additional Government Pleader-for RR 2 & 3
RR 4 to 6 - Given up

ORDER

This civil revision petition seeks to strike off O.S.No.164 of 2021 on the file of the Additional District Munsif Court at Chidambaram. The ground that Mr.P.M.Subramaniam representing Mr.Alwyn Prabhakar would state is that the suit suffers from the vices of relitigation and is a gross abuse of the process of the Court.

2. The grandfather of the civil revision petitioner Sheikh Dawood purchased the property from one R.H.Krishnamoorthy. This purchase was on 04.09.1968. R.H.Krishnamoorthy alienated the property as the Trustee of Hari Govinda Iyer Dharma Trust having its office at Chidambaram. The said Trust had been created on 09.03.1931 by way of a registered document. The grandfather of the petitioner who has purchased the property in 1968 passed away on 19.03.1973, leaving behind him as his legal heirs, the father of the civil revision petitioner one S.A.Rasheed.



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3. Claiming that his father Krishnamoorthy had unauthorisedly alienated the property in 1968, the first respondent herein presented O.S.No.610 of 1987. In the said suit, he sought for a declaration that the suit schedule mentioned properties belong to the Trust as per the Trust Deed dated 09.03.1931, for removal of the first defendant from the office of the Trustee and for recovery of possession of the property from defendants 2 to 10. The defendants 2 to 10 are the purchasers of the properties which had been alienated by the first defendant therein Mr.R.H.Krishnamoorthy. After hot contest, the suit came to be decreed in and by way of a judgment dated 08.03.1999.

4. Aggrieved by the same, three regular appeals were presented to this Court in A.S.No.699 of 1999, A.S.No.727 of 1999, and A.S.No.31 of 2000. The father of the civil revision petitioner had presented the lead case viz., A.S.No.727 of 1999.

5. A perusal of the record shows that the decree for recovery of possession granted in favour of the present plaintiff R.K.Kamalakaran on 08.03.1999 had been kept in abeyance by an order of this Court in C.M.P.No.21707 of 1999 dated 22.12.1999. Despite the order of stay, it seems the first respondent herein presented an execution petition in E.P.No.70 of 1999 and took delivery of the property. Nonetheless, when the appeal was taken up for hearing, the counsel for the alienees as well as the counsel for Mr.R.K.Kamalakaran were heard. Thereafter, by a detailed judgment dated 02.01.2008, the regular appeal was allowed setting



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aside the judgment and decree of the learned I Additional Subordinate Judge at Chidambaram in O.S.No.610 of 1987 dated 08.03.1999. This Court held as follows:

" 44. *It is therefore clear that the plaintiff himself admitted that in view of the alienation of the suit properties, the charity got stopped as a sequela and it got extinguished. In such a case, the plaintiff had no locus standi at all, to file the suit. As revealed by the above narration of facts in the written statement, which are borne by the documents marked during trial, even as early as in the year 1944 onwards, the suit properties were started to be sold and ultimately, during the year 1968 as revealed by Ex.A.2, sale deed dated 04.09.1968, the first item of the suit property wherein the charity has to be performed, was also sold. As such, ever since 1968, the very first item of the suit property was not in the possession of any of the trustees and that the charity was not performed. The suit was filed in the year 1987. In the meanwhile, as per Ex.A.1, even though there were lot of elderly and major beneficiaries who could have filed the suit, yet none filed any suit. The trustees as contemplated under Ex.A.1 and some of the deceased trustees' descendants also have not chosen to file any suit.*

....

47. *The mere reading of it, would show that the plaintiff calling himself as a trustee, cannot institute such a suit. Even as per his version, he cannot be the trustee and also as discussed supra and he never stated precisely on which date or in which year, he came to know about the alienations, for calculating the twelve years' period. The evidence on record would show that in the year 1968, so to say when he was two years old, the first item of the suit properties was sold by the plaintiff's father, the first defendant and the said Seethammal and in such a case, it is not known as to how, the suit has been filed in the year 1987. It is obvious, Article 92 of the Limitation Act, could not be pressed into service in this*



factual matrix. Here, all alienations are for consideration as set out supra and in such a case, Section 10 of the Limitation Act also cannot be pressed into service and it is quite obvious. If there are gratuitous alienations, then Section 10 of the Act would come in support of the plaintiff's case.

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50. Section 59 of the Act, contemplates institution of suit by a beneficiary. Here, the plaintiff posed himself as a trustee and he wants to manage the trust, but the trial Court gave a finding as though he is a beneficiary. As such, without any pleadings, the trial Court's finding is untenable.

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53. Section 63 of the Act, contemplates the filing of the suit to get back the trust property and it also contemplates that if the trust property was converted into some other form, then it should be treated as trust property, but the trial Court miserably failed to take into consideration the fact that the sale considerations of item No.3 and 4 were used for purchasing a house property as set out supra. As per Ex.B.1, one other house was got exchanged for item No.2 of the suit property as found above. There is no whisper in the plaint as to what happened to those properties acquired by the first defendant from out of those alienations.

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61. P.W.1 in his deposition would admit that he was born on 12.11.1965 and as such, he might have attained majority on 11.11.1983, but the suit was filed on 08.09.1987 even long after three years from the date of he having attained majority. This aspect has also been highlighted by the learned Counsel for the appellants in A.S.No.31 of 2000. P.W.1 in his deposition clearly stated that he never took steps to gather particulars about five other trustees as contemplated in Ex.A.1 or their descendants."

6. After returning these findings, this Court specifically held that the suit filed



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by the son Mr.R.H.Krishnamoorthy is barred by time and in any event, the issue of Trust will not arise since it stood extinguished. Not being satisfied with the judgment and decree of this Court, R.K.Kamalakaran Special Leave Petitions (SLP) to the Supreme Court against this judgment. The Supreme Court, in and by way of its order dated 05.05.2008, dismissed the SLPs. In other words, the judgment and decree passed by this Court in A.S.No.727 of 1999 had attained finality.

7. After the dismissal of the SLPs on 05.05.2008, an attempt was made by the first respondent to review the order passed by this Court in A.S.No.699 of 1999 dated 02.05.2008. This was by presenting review applications in Review Application Nos.29 to 31 of 2012. The said review applications came up for hearing and were dismissed on 20.06.2012 by Hon'ble Mr.Justice M.Sathyanarayanan. This concludes the challenge that had been made to the decree passed by this Court.

8. The unfortunate yet successful defendant Mr.S.A.Rasheed presented an application for redelivery in E.A.No.176 of 2010. This Execution Application sought for redelivery of the property. On 30.09.2020, the learned Subordinate Judge at Chidambaram, within whose jurisdiction the property is situated, directed the father of the civil revision petitioner to produce certified copy of the judgment and decree passed by this Court in A.S.No.727 of 1999. On 08.11.2020, for production of the certified copy, the learned Judge adjourned the matter to 18.01.2021. Thereafter, the first respondent R.K.Kamalakaran presented an application for stay on redelivery. I should point out here that insofar as redelivery is concerned, it is



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passed in the exercise of the jurisdiction *ex debito justitiae*, since no order of the Court must affect any litigant. When such an order is passed, there is no question of granting a stay on the order since it will amount to continuing the injustice that had been caused to the judgment debtor who had been successful before this Court.

9. Be that as it may. The learned Subordinate Judge seems to have numbered the stay application and adjourned the matter for enquiry. Finally, the stay application in E.A.No.98 of 2021 came to be dismissed by the I Additional Subordinate Judge at Chidambaram on 14.06.2022. Thereafter, the execution application for redelivery was taken up for enquiry. At that stage, the first respondent herein changed his counsel, as is expected of any person who would attempt to use all available tools, to drag on the matter. Having changed the counsel, the new counsel seems to have filed an application under Section 47 of the C.P.C. The said application is numbered as E.A.No.26 of 2024 and is pending for filing a counter and adjourned to 28.08.2024.

10. Whether an application under Section 47 is maintainable when the order that has been passed is one for redelivery is itself questionable. This is because, an application under Section 47 deals with discharge, satisfaction and executability of the decree passed. The decree in this case had been first passed by the trial Court, reversed by this Court and the reversal finding having been confirmed by the Supreme Court, the issue of probing the decree by filing an application under



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Section 47 would not arise. In any event, that is for the learned I Additional Subordinate Judge at Chidambaram to decide after receiving the counter that would be filed by the civil revision petitioner. I narrated the aforesaid facts in order to show that the first respondent herein, who was successful before the trial Court in O.S.No.610 of 1987 and unsuccessful before this Court and the Supreme Court, is very well aware of the judgment and decrees of all the three Courts and yet, proceeded to file the present suit, which is sought to be struck off.

11. The successful defendant S.A.Rasheed settled the property in favour of his daughter, the civil revision petitioner by way of a registered document dated 21.06.2017. After having settled the property and handing over possession to his daughter, he passed away on 17.07.2019. Having obtained the property by way of a settlement deed, the civil revision petitioner filed an application to continue with the proceeding which has been numbered as E.A.No.193 of 2020. Curiously enough, realising that he has reached the end of the road, the first respondent filed a writ petition in W.P.No.22497 of 2017 challenging the settlement deed that has been executed by the father S.A.Rasheed in favour of his daughter. This writ petition came up for hearing before this Court on 18.06.2021. The writ petition was dismissed for default on that date. After having failed before this Court, the first respondent herein has been emboldened to file a suit in O.S.No.164 of 2021. The reliefs sought for in the suit are as follows:

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அ) தாவா சொத்தை கடந்த 04.09.1968 தேதி வாதி



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தகப்பனார் R.H.கிருஷ்ணமூர்த்தி அவர்கள் பொறுப்புக்கிடையில் இருந்த சமயத்தில் ஷேக்தாவுதுசாயுபு அவர்களுக்கு கிரைய ஆவண எண்.2098/68 மூலம் எழுதி பதிந்து கொடுத்த கிரைய ஆவணம் செல்லத்தக்கதல்ல (Null and void) என்றும், அது வாதியைப் பொறுத்து கட்டுப்படுத்தாது என ஒரு விளம்புகை பரிகாரம் வழங்கும் படிக்கும்,

ஆ) தாவா சொத்தை கடந்த 21.06.2017ம் தேதி S.அப்துல் ரஹீது சாயுபு அவர்கள் N.உம்முசல்பா (பிரதிவாதி)க்கு முறைகேடாக எழுதிவைத்த செட்டில்மெண்ட் ஆவண எண்.1622/17 மூலம் எழுதி பதிந்து கொடுத்த செட்டில்மெண்ட் ஆவணம் செல்லத்தக்கதல்ல (Null and void) என்றும், அது வாதியைப் பொறுத்து கட்டுப்படுத்தாது என ஒரு விளம்புகை பரிகாரம் வழங்கும் படிக்கும்,

இ) மேற்படி பிரதிவாதிகளோ, அவரது அடியாட்களோ, அல்லது அவர்களது முகவர்களோ வாதிக்கு பாத்தியப்பட்ட தாவா சொத்துக்களின் அனுபவத்தையோ, பாத்தியதையோ எவ்வித வில்லங்க, விற்கிரையங்களுக்கும் உட்படுத்தக்கூடாது என நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வழங்கும்படிக்கும்,"

12. I cannot throw out the plaint on the ground of suppression of facts because the plaintiff has, in detail, set forth the proceedings in O.S.No.610 of 1987, the appeal in A.S.No.727 of 1999 as well as the dismissal of the review applications in his plaint. The cause of action that has been pleaded is that the property is a Trust property and therefore S.A.Rasheed did not possess the right to alienate the same in favour of the civil revision petitioner by way of the settlement deed.



13. This Court under Article 227 of the Constitution of India retains in itself the power to strike off suits in case they are an abuse of process of the Court or amount to relitigation. In **Ranipet Municipality represented by its Commissioner -vs- Shamsheer Khan 1998 (1) CTC 66**, the contours of this power has been delineated by **Justice S.S.Subramani**. The relevant portion of the said judgment is extracted hereunder:

" What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

- (1) Gaining an unfair advantage by the use of a rule of procedure.*
- (2) Contempt of the authority of the Court by a party or stranger.*
- (3) Fraud or collusion in Court proceedings as between parties.*
- (4) Retention of a benefit wrongly received.*
- (5) Resorting to and encouraging multiplicity of proceedings.*
- (6) Circumventing of the law by indirect means.*
- (7) Presence of witness during examination of previous witness.*
- (8) Institution of vexatious, obstructive or dilatory actions.*
- (9) Introduction of Scandalous or objectionable matter in proceedings.*
- (10) Executing a decree manifestly at variance with its purpose and intent.*
- (11) Institution of a suit by a puppet plaintiff.*



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(12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc. (See The Code of Civil Procedure- A.I.R. Commentary to Section 151, C.P.C.)

The above are only some of the instances, where a party may be said to be guilty of committing abuse of the process of Court.

14. The attempt made by the first respondent is nothing but to nullify the judgment and decree of this Court in A.S.No.727 of 1999. I have extracted the relevant paragraphs of the judgment in order to show that this Court had concluded that the properties had been alienated by the Trustee, the control of the Trust over the property had extinguished and also that the charitable endowment ceased to exist on 28.04.1966 when it was mortgaged in favour of Sheikh Dawood, the grandfather of the civil revision petitioner. Yet again, claiming that this property is a Trust property, the first respondent has presented this suit.

15. This Civil Revision Petition was entertained by this Court and notice was issued to the first respondent for his appearance. Notice was served on 01.01.2024 on the first respondent and yet he has not troubled himself by engaging a counsel nor is he present in the Court to oppose the revision.

16. In **K.K.Modi -vs- K.N.Modi (AIR 1998 SC 1297)**, the Supreme Court concluded that if the proceeding is an abuse of process of Court or amounts to relitigation, the Court possesses jurisdiction in terms of Order VI Rule 16 to strike off the proceedings. The first respondent / plaintiff, having lost his cause till the



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Supreme Court, is certainly not entitled to re-agitate the issue before the learned District Munsif. The decree of the I Additional Subordinate Judge had, by virtue of the order of this Court dated 02.01.2008, merged with the appellate decree and the attempt to review the said judgment, as pointed out above, had failed for the first respondent. Having failed before the High Court on two occasions and before the Supreme Court, I find it extremely shocking and surprising that the first respondent would seek to claim the very same relief before the learned District Munsif. The learned District Munsif ought to have been vigilant as held by the Supreme Court in **T.Arivanandam -vs- V.Satyapal and Another (1977 AIR SC 2421)** and nipped this suit, which is nothing but an abuse of process of Court and attempted relitigation, in the bud. The entire exercise by the first respondent seems to be somehow or the other prevent the civil revision petitioner from enjoying the benefits of the decree that was obtained by her predecessor-in-title at least 16 years ago.

17. Therefore, the continuation of the plaint every minute on the file of the Court, is an abuse of process of Court. Such an abuse should not be encouraged by any authority, let alone by this Court. Further more, having claimed the very same relief of declaration that the settlement deed is null and void before this Court in W.P.No.22497 of 2017 and having let that cause go for default, it is not open to the first respondent to reopen the said plea before the learned District Munsif.

18. In the light of the above discussion, the Civil Revision Petition stands allowed. The suit in O.S.No.164 of 2021 on the file of the learned Additional District



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Munsif at Chidambaram shall stand struck off. The learned Additional District

Munsif is requested to pass consequential orders based on this revision and draft a decree for the same.

19. The striking off the suit does not put an end to the agony of the civil revision petitioner. Her father had lost the possession despite the fact he was armed with an order of stay granted by this Court. The appeal having gone in his favour, every second that the successful party is kept away from the property will amount to travesty of justice. Hence, the learned Subordinate Judge at Chidambaram is requested to dispose of E.P.No.193 of 2020 and all the connected applications which are pending before him within a period of eight weeks from the date of receipt of a copy of this order. Mr.P.M.Subramaniam, learned Senior Counsel states that the civil revision petitioner shall file her counter for the Section 47 application and will be ready for arguments on **20.08.2024**.

20. In fine, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

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V. LAKSHMINARAYANAN, J.

KST

To

The Additional District Munsif
Chidambaram

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