

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.10.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) No.2388 of 2011

&

M.P.No.1 of 2011

1.Javarilal
2.Mrs.Susila Devi
3.Ranjith

... Petitioners

Vs.

1.N.Parthasarathy
2.N.Krishnaveni
3.Tmt.Neelavathi
Wife of N.Parathasarathy
All represented by their
Power of Attorney Agent
D.Ramadoss
No.1, Sankarlal Jain Street
Nehru Nagar, Chrompet
Chennai – 600 044

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to struck off the suit in O.S.No.72 of 2011 from the file of the District Munsif Court at Tambaram.

For Petitioners : M/s.M.L.Ramesh

For Respondents : No Appearance

ORDER

Invoking the provisions of Article 227 of the Constitution of India, the petitioners herein who are the defendants in the suit in O.S.No.72 of 2011 have approached this Court with this revision to struck off the plaint in the above said suit from the file of the District Munsif, Tambaram. The respondents 1 to 3 herein are the plaintiffs.

2. Heard Mr.M.L.Ramesh, learned counsel appearing for the revision petitioner. Despite service of notice on the respondents 1 to 3, they have not chosen to appear either in person or through their respective counsels.

3. On considering the submissions made by Mr.M.L.Ramesh and also on perusal of the grounds of revision along with the plaint in the suit in O.S.No.72 of 2011 which is sought to be struck off from the file of the learned District Munsif, Tambaram along with plaint in the suit in O.S.No.130 of 2008, the following order is being passed on merits in the absence of the respondents.

4. It is manifested from the records that the suit in O.S.No.72 of 2011 seems to have been filed by the respondent herein as against the revision petitioners seeking the relief of permanent injunction. Soon after the filing of the suit, the revision petitioners, who are the defendants in that suit, have approached this Court with this revision invoking Article 227 of the

Constitution of India to struck off the plaint.

5. It is revealed from the grounds of revision that previously the second revision petitioner and one Rajendran had filed a suit in O.S.No.130 of 2008 as against the respondents 1 to 3 herein and one D.Ramadass and Muthulakshmi and thereby sought the relief of permanent injunction. On a conjoint reading of the plaint in O.S.No.130 of 2008 as well as the plaint in O.S.No.72 of 2011, it is clear that the schedule mentioned properties in both the suits are one and the same. The second revision petitioner as well as one Rajendran, who is said to be a co-owner, had filed the above said suit O.S.No.130 of 2008 as against the revision petitioners and two others and subsequently they had also obtained an order of interim injunction in I.A.No.592 of 2008, which is still in force. When the suit in O.S.No.130 of 2008 is pending and the ad-interim injunction granted in the above said application in I.A.No.592 of 2008 is in force, the respondents herein have come forward with another suit in O.S.No.72 of 2011 without disclosing the fact of pendency of earlier suit viz., O.S.No.130 of 2008.

6. In this connection, Mr.M.L.Ramesh has submitted that though the second revision petitioner and one G.Rajendran had filed the suit in O.S.No.130 of 2008 for the relief of bare injunction and obtained an order of an-interim injunction in the interlocutory application in I.A.No.592 of 2008, the revision petitioners, had deliberately and wantonly suppressed the fact

of pendency of earlier suit, and that their conduct was in gross violation of the settled principles of law and abuse of process of Court and therefore, Mr.M.L.Ramesh has urged this Court to struck off the plaint from the file of the learned District Munsif, Tambaram.

7. In support of his contention, he has also placed reliance upon the following decisions:

1. ***Lakshmi & Others Vs. Prasanna Mani & Another*** reported in ***CDJ 2011 MHC 2946;***
2. ***Ranipet Municipality rep. By its Commissioner & Special Officer, Ranipet V. M.Shamsheerkhan*** reported in ***1997-2-L.W-761;*** and
3. ***Seeni alias Sundarammal v. Ramasamy Poosari and others*** reported in ***(2000) 3 M.L.J 273.***

8. In ***Lakshmi & Others*** , cited first supra, a learned single Judge of this Court has observed that frivolous and vexatious proceedings also amount to abuse of process of the Court especially where the proceedings are absolutely frivolous. In the above cited case, a revision was filed by the petitioners to struck off the pleadings of the suit claiming that it was an abuse of process of law and that already the claim of the first respondent therein was settled in the previous proceedings and the petitioner has not filed any application under Order 7 Rule 11 of CPC and only if an application

under Order 7 Rule 11 of CPC is filed the grounds narrated therein had to be raised rejecting the plaint. Therefore, the learned Judge has found that the suit filed by the first respondent before the District Judge was clear abuse of process of law for the reasons set out earlier. Accordingly, the revision petition was allowed striking off the plaint in the suit specified in the above cited decision.

9. In ***Ranipet Municipality's*** case, cited second supra, a learned Judge of this Court has held that the suit filed by the plaintiff and order of injunction passed by the lower Court constituted abuse of process of the Court and therefore in exercise of power under Article 227 of the Constitution of India, the learned Judge has ordered to strike off the plaint in the above said suit from the file of the trial Court. He has also observed as under

"Of course, for the term 'abuse of the process of this 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 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 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.*

(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."*

Out of the 12 ingredients narrated above, the ingredients Nos.5, 6 and 8 are made applicable to the instant case on hand.

10. In ***Seenī alias Sundarammal's*** case cited third supra, a judge of this Court has held that respondent filing successive suits suppressing the filing of earlier suit, which is a clear case of abuse of process of court and therefore interference under Article 227 of the Constitution of India is warranted to strike off the plaint from the file. In Paragraph 7 of the Judgment also, the learned Judge has specifically observed as under:

"7. Process of Court must be used bona fide and properly and must not be misused or abused. It is the duty of the Court to prevent improper use of its machinery. The Court has to see that it is not used as a means of oppression and the process of litigation is free from vexatiousness. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process would depend upon the relevant circumstances. But, it has to be judged from the angle of interest of justice and public policy."

11. On coming to the instant case on hand, as rightly addressed by

Mr.M.L.Ramesh, the pendency of earlier suit in O.S.No.130 of 2008 as well as the order of injunction granted by the trial Court in the said suit in I.A.No.592 of 2008 have been wantonly suppressed in the present suit in O.S.No.72 of 2011, which is sought to be struck off from the file of the learned District Munsif, Tambaram. As rightly observed in the above cited decisions, the suppression of the fact of pendency of the suit in O.S.No.130 of 2008 as well as granting of interim injunction in I.A.No.592 of 2008 amounts to gross abuse of process of Court and therefore, this Court finds that the plaint in O.S.No.72 of 2011 is deserved to be struck off from the file of the learned District Munsif, Tambaram.

Accordingly, this Civil Revision Petition is allowed and the plaint in O.S.No.72 of 2011 is struck off from the file of the learned District Munsif, Tambaram. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

05.10.2016

Index: Yes/No
Internet: Yes
gpa

T.MATHIVANAN.J.,

gpa

To

The District Munsif Court
Tambaram

C.R.P (PD) No.2388 of 2011 &
M.P.No.1 of 2011

05.10.2016

<http://www.judis.nic.in>