

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD No.202 of 2014

1. M.Vijayalakshmi
2. M.Sundaravadivelu .. Petitioners

vs

1. S.Leela
2. S.Eswari
Rep by their Power Agent
S.Sumar .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 11.11.2013 in I.A.No.878 of 2012 in O.S.No.365 of 2012 on the file of Principal District Munsif Court, Alandur.

For Petitioners : Mr.R.Subramanian

For Respondents : Mr.B.Vijay

ORDER

The defendants are the revision petitioners, who have filed this civil revision petition, challenging the order passed by the court below in dismissing the application, filed under Order VII Rule 11 C.P.C.

2. Originally, the respondents herein have filed a suit in O.S.No.365 of 2012 on the file of the District Munsif, Alandur for permanent injunction. It was their case that they were the absolute owners of the suit property situated at Door No.26/38, Hoppamen Street, Alandur, Chennai-16. According to them, the suit property was inherited from their grand father who had purchased the same under a registered sale deed dated 30.07.1929. Subsequently, the suit property was mortgaged. A suit for redemption was filed in O.S.No.555 of 1953 on the file of the District Munsif Court, Poonamallee and the mortgaged properties were redeemed. Thereafter, the heirs of the original owners Rajarathinam and Rajammal had sold the property to the first defendant on 22.06.1994. While so, the plaintiffs' mother Sakunthala along with one Rajammal had filed O.S.No.2017 of 1992 and the said suit was decreed on 13.09.1993 ex-parte. Subsequently, the ex-parte decree was set aside and the suit was transferred to the District Munsif Court, Tambaram and re-numbered as O.S.No.1015 of 1994 and thereafter again transferred to the District Munsif Court, Alandur and re-numbered as O.S.No.1690 of 1997. The said suit was dismissed for default on 27.10.2000 and the same was restored subsequently.

However, the suit was dismissed on merits on 27.10.2000, against, which, no appeal was filed. Hence, the said decree has become final.

3. In the meanwhile, one another suit in O.S.No.438 of 2012 was filed by one Karunakaran along with first plaintiff for declaration to declare that the sale deed dated 22.06.1994 in favour of the revision petitioners as null and void. The said suit is also with respect to the same property, which is subject matter of the present suit O.S.No.365 of 2012. In the said suit, the revision petitioners once again had filed I.A.No.1003 of 2012 for rejection of plaint on the ground that the plaintiffs were re-agitating the same issue. In fact, O.S.No.438 of 2012 was filed, as the plaintiffs could not obtain an order of injunction in O.S.No.365 of 2012. The said rejection application was allowed on 11.12.2012 dismissing the suit O.S.No.438 of 2012. The earlier suit O.S.No.1690 of 1997 was also dismissed on 27.10.2000, which has become final and the other suit O.S.No.438 of 2012 was also rejected under Order VII Rule 11 C.P.C. Now, the present suit has been filed through the Power Agent Mr.S.Kumar. When the earlier suit for declaration of the title of the plaintiffs was already rejected, the present suit has been filed for the same relief, abusing the process of the Court.

4. A reading of para 6 of the plaint would reveal that though it refers to O.S.No.2017 of 1992, which was originally filed on the file of the District Munsif Court, Poonamallee, does not speak about the dismissal of the same. After, the suit was transferred to District Munsif Court, Tambaram and again to District Munsif Court, Alandur, deliberately, the plaintiffs have suppressed the subsequent dismissal of the suit. Further, the plaintiffs have also not mentioned about the dismissal of O.S.No.438 of 2012, which was also rejected at the instance of the revision petitioners. In fact, while dismissing the application No.1003 of 2012 in O.S.No.438 of 2012 filed under Order VII Rule 11 C.P.C, the learned District Munsif, Alandur has specifically stated that the plaintiffs had purposely suppressed the earlier proceedings and the alleged ownership certificate issued by the Village Administrative Officer not being a genuine one as per the letter issued by the very same Village Administrative Officer. It was further held that the plaintiffs had not approached the Court with clean hands and only with an intention to abuse the process of law, the suit had been filed and the same was rejected.

5. However, the learned District Munsif, Alandur dismissed the application in I.A.No.878 of 2012 stating that the plaint cannot be rejected, as the plaint averments and the documents filed by the plaintiffs are sufficient to prove the allegations made in the plaint. The plaintiffs had not filed the copy of judgment and decree in O.S.No.1690 of 1997, which is the re-numbered suit of O.S.No.2017 of 1992 on the file of the District Munsif Court, Poonamallee. Curiously, the same District Munsif, Alandur has allowed the application under Order VII Rule 11 C.P.C fled by the plaintiffs in O.S.No.438 of 2012 rejecting the said suit based on the ground that the plaintiffs have suppressed the earlier proceedings. In fact, in para 9 of the order dated 11.12.2012, the very same learned District Munsif, Alandur had stated that the plaintiffs had purposely suppressed the earlier proceedings and held that it is abuse of process of law and this is the very same suit which is referred to by the learned Judge, but the application was rejected without application of mind. As the plaintiffs have deliberately suppressed the dismissal of the earlier suit and the rejection of the suit in O.S.No.438 of 2012, they are guilty of *Suppressio Veri* and *Suggestio Falsi*.

6. The cause of action paragraph also does not specify about the filing of the earlier suits and only mention about the alleged trespass by the defendants. Therefore, I have no hesitation to hold that even the cause of action is also absolutely vague. No doubt, while considering the application under Order VII Rule 11, the averments in the plaint should be assumed to be true and the Court has to find out whether the applications disclose the cause of action or a triable issue as such and the Court cannot probe into facts. But in the case on hand, deliberately plaintiffs had suppressed the earlier proceedings and mentioning only about decreeing of the O.S.No.2017 of 1992 initially and suppressed the fact that the suit was subsequently dismissed. Hence, I have no hesitation to hold that the plaint does not disclose the proper cause of action and can be rejected, as the suit is utterly vexatious and abuse of process of Court.

7. In the said circumstances, it would only be appropriate to reject the plaint saving the defendants from the onerous and hazardous task of defending a frivolous claim under a dead suit. The provision of Order VII Rule 11 C.P.C being procedural is designed and aimed to prevent the vexatious and frivolous claims, the plaint is liable

to be rejected on the ground that it is nothing but 're-litigation' without any valid basis.

8. For all the above said reasons, the order of the trial Court is set aside and the application is allowed. The plaint is rejected. Accordingly, the Civil Revision Petition is allowed. No costs.

03.02.2017

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Index: yes/No

Internet: yes

To

The Principal District Munsif Court,
Alandur.

PUSHPA SATHYANARAYANA,J.,

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