

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. (PD) Nos.3081 of 2014
& M.P.No.1 of 2014 and
CRP (PD) No.53 of 2015 & M.P.No.1 of 2015**

Judgment reserved on 20.06.2017	Judgment pronounced on 21.09.2017
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1.Rajendran
2.Allkimuthu

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Petitioners/Defendants 1 & 2

Vs.

1.Ettammal
2.Periasamy
3.Banumathi
4.Chinnadurai
5.The Assistant Engineer
Tamil Nadu Electricity Board
Mudalaipatti Village & Post,
Namakkal Taluk.
6.The Superintending Engineer,
Tamil Nadu Electricity Board
Namakkal Town & Taluk.

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Respondents / Plaintiffs

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Respondents / Defendants 3 & 4

PRAYER in CRP (PD) No.3081/2014: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order of the learned II Additional District Munsif dated 24.06.2014 made in I.A.No.1368/2013 in O.S.No.453/2013.

PRAYER in CRP (PD) No.53/2015: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order of the learned II Additional District Munsif (Trainee District Judge) dated 25.09.2014 made in I.A.No.1240/2013 in O.S.No.453/2013.

For Petitioner : Mr.I.Abrar Md Abdullah
in both CRPs

For RR1 to R4 : Mr.R.T.Doraisamy
in both CRPs

For RR5 & R6 : Mr.V.Viswanathan
in both CRPs

COMMON ORDER

The issues and parties involved in both the Civil Revision petitions are interlinked. Therefore, these petitions are disposed of by this common order.

2. The petitioners are the defendants 1 & 2, respondents 1 to 4 are the plaintiffs and respondents 5 & 6 are the defendants 3 & 4 in O.S.No.453 of 2013 on the file of District Munsif Court, Namakkal. The respondents 1 to 4 filed the above suit against the petitioners and respondents 5 & 6 for declaration that the entire suit property belongs to them and petitioners have no right or interest in

the suit properties and for permanent injunction restraining the petitioners from interfering with their peaceful possession and enjoyment of the suit property and restraining the respondents 5 & 6 from disconnecting the electricity service connection based on the petition given by the petitioners contrary to the Electricity Board Rules.

3. The petitioners filed I.A.No.1368 of 2013 under Order VII Rule 11 (d) CPC to reject the plaint on the ground of suppression of material facts and particulars on the ground that suit is barred by limitation. According to the petitioners -

(i) the respondents 1 to 4 failed to file the death certificate of Karuppa Gounder and legal heirship certificate mentioned in the plaint and in view of the said failure to produce the documents, the suit is not maintainable.

(ii) the respondents 1 to 4 have admitted that they are not the absolute owners of Survey Nos.66/28 & 66/29.

(iii) Karuppa Gounder through whom the respondents 1 to 4 are claiming title was issued patta on 20.04.1974 for D.A.0.35 in Survey No.66/29. Karuppa Gounder, during his life time did not dispute the said extent and suit filed by the respondents 1 to 4 after a lapse of 39 years for larger relief is barred by limitation.

(iv) The second petitioner / second defendant is the son of Marappa Gounder and Kaliammal. They are the parties 1 & 2 to the partition deed dated 25.03.1959 with respect to 'D' schedule properties Item No.2, about 16 cents of land. The said land was sub-divided as Survey No.66/28 and the same was allotted to share of Pavaammal and Marappa Gounder and they are entitled to the said property, i.e. 16 cents.

(v) The second petitioner's brother late Periyasamy s/o Marappa Gounder filed O.S.No.95 of 2003 on the file of Sub Court, Namakkal claiming that his father is the absolute owner of entire Survey No.66/28 D.N.0.007.0.

(vi) The 4th respondent, in collusion with Periyasamy brother of second petitioner entered into an agreement of sale and 4th respondent filed suit O.S.No.144 of 2004 on the file of Sub Court, Namakkal

and obtained exparte decree in respect of 5 cents in Survey No.66/28. Based on the exparte decree passed in O.S.No.**144 of 2003**, the 4th respondent filed REP No.**130 of 2003** on the file of Sub Court, Namakkal and got sale deed executed registered in his favour in the office of the Sub Registrar, Namakkal.

(vii) The second petitioner / second defendant alongwith his son Gurumurthy and his sister Nallammal filed suit against his brother late Periyasamy, his daughter Selvi, 4th respondent and another, for a relief of declaration that sale deed executed and registered by the court in favour of the 4th respondent is null and void as the same had been obtained by fraud and also prayed for permanent injunction.

(viii) the second petitioner also along with others filed I.A.No.83 of 2006 for temporary injunction and interim injunction was granted on 03.02.2007 by Sub Court, Namakkal. Against the said order, 4th respondent filed CMA No.3 of 2007 which was dismissed by the Additional District Judge, Namakkal. The respondents 1 to 4, have filed the suit suppressing the pendency of earlier suit filed by the second petitioner & others, injunction order and cancellation of patta transfer order by RDO, Namakkal filed the present suit, which amounts to suppression of

materials facts and particulars and it is a fraud committed by the respondents 1 to 4.

(ix) The respondents 1 to 4 have suppressed the about the suits filed O.S.No.453/2013 and OS No.17/2006 and played fraud on the courts.

(x) The respondents 1 to 4 have not approached the court with clean hands and the suit is liable to be dismissed.

(xi) the second petitioner and others filed OS No.17 of 2006 on 03.01.2006 denying the title of respondents 1 to 4 and in OS No.95 of 2003, the 4th respondent's vendor has asserted that his family is entitled to entire extent of land in Survey No.66/28. Filing of above suit denying the title of respondents 1 to 4, cause of action for the relief of declaration now sought for by the respondents 1 to 4 arose and respondents 1 to 4 ought to have filed suit within three years as per Article 58 of Limitation Act and respondents have sought for two declaration but has paid court fee only for one declaration.

(xii) The description of the property is not correct

(xiii) the respondents 1 to 4 have not obtained any service connections for the Survey No.66/28.

For the above reasons, the petitioners have sought for rejection of plaint.

4. The respondents 1 to 4 filed counter and denied all the allegations made by the petitioners and submitted that applications are liable to be dismissed for the following reasons -

(i) Only if the ingredients of Order VII Rule 11 CPC are satisfied, the plaint can be rejected.

(ii) The averments made in the plaint are to be taken as true and only if it does not disclose any cause of action or barred by limitation on the face of the averments made in the plaint, the plaint can be rejected.

(iii) The respondents 1 to 4 are claiming title through Karuppa Gounder who is a party to the partition deed dated 25.03.1959 and he was allotted a share in Survey Nos.66/28 and 66/29. Patta is not a document of title and cancellation of patta or patta

proceedings will not confer any title to any parties. The suit property mentioned in the suit filed by the petitioners are entirely different and other suits have no relevancy to the present suit. The failure to file death certificate and legal heirship certificate of Karuppa Gounder is not a fatal to the suit as suit claim is based on partition deed dated 25.03.1959.

5. The learned Judge, considering the averments in the plaint, affidavit, counter affidavit and documents filed alongwith the plaint and judgments relied on by the parties, dismissed the application.

6. The respondents 1 to 4 filed I.A.No.1240 of 2013 for appointment of Advocate Commissioner to note down the physical features of the suit property. The said application was allowed and Advocate Commissioner was appointed.

7. The petitioners filed CRP (PD) No.3081 of 2014 challenging the order dismissing the I.A.No.1368 of 2013 filed under Order VII Rule 11 CPC to reject the plaint and CRP (PD) No.53 of 2016 challenging the order dated 25.09.2014 passed in I.A.No.1240 of 2013 appointing Advocate commissioner.

8. The learned counsel appearing for the petitioners submitted that respondents 1 to 4 have suppressed the material facts about the earlier suit filed by the brother of the second petitioner Periyasamy and suit filed by the 4th respondent himself and suit filed by the second petitioner and others. By suppressing the above suits, the respondents 1 to 4 have played fraud on the court and present suit is abuse of process of court. For the above reason, the impugned order of the learned Judge is liable to be set aside. The learned counsel appearing for the petitioners relied on the following judgments in support of his contention -

(i) 2017 (2) LW 230 [C.Kuppusamy v. C.Baby & Others]

12.The first respondent/plaintiff has not given any reason for filing the earlier suit in O.S.No.763 of 2010 and for filing the present suit in O.S.No.176 of 2012 while filing reply to the I.A.No.306 of 2013 in O.S.No.176 of 2012. Moreover, she has not given any reply about the suppression of earlier suit in the reply filed by her. The argument advanced by the first respondent also does not give any reply as to why the first respondent/plaintiff has filed earlier suit and present partition suit for the same properties. The learned counsel for the first respondent has not given any reason regarding why the earlier judgment and

decree in O.S.No.763 of 2010 was suppressed in O.S.No.176 of 2012.

13.In view of the above prevailing circumstances, this Court has to come to the conclusion that the plaint in O.S.No.176 of 2012 is clear abuse of process of Court and this Court in a compelling circumstances has to exercise its power under Article 227 of the Constitution of India.

(ii) 2017 (4) MLJ 394 [Lakshmi & Ors. v. P.Manickam & Ors.]

23.It is further to be noted that though the alienation was made by the contesting 1st respondent along with his mother as early as 09.11.1994 he chose to prefer O.S.No.28 of 2013 only on 17.01.2013 nearly after 19 years contending that the alienation in favour of defendants 5 to 10 therein is sham and nominal and is actuated by fraud committed by defendants 19 to 21 therein and therefore the subsequent sale deeds are also liable for cancellation. I am convinced, both on facts and in law that the said suit is hopelessly time barred and is abuse of the process of court. Though the plaintiff being the dominant litigant makes allegations in his plaints to suit his convenience the court cannot be a silent spectator. In the present case it is clear that the contesting 1st respondent is re-litigating without any just cause after the suit in O.S.No.91 of 1987 attained finality, by making allegations far from truth.

(iii) 2009 (2) CTC 57 [Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai v. Selvaraj]

20. In considered opinion of this Court, whenever this Court finds any abuse of process of Courts and if the proceedings initiated are possessing the elements of frivolousness and vexatiousness, this Court can very well pass appropriate orders, invoking Article 227 by exercising supervisory jurisdiction.

(iv) 2017 (2) LW 245 [Javarilal & Others]

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.

(v) 2009 (5) LW 79 [Tamil Nadu Handloom Weavers Cooperative Society v. S.R.Ejaz]

48..... However, in cases wherein the suit itself was an abuse of process of law and filed with the sole intention of defeating the order passed by the Supreme Court and the trial Court having apprised of such facts, failed to act at once, this Court is entitled to exercise the supervisory jurisdiction under Article 227 of the Constitution of India to axe the suit in the initial stage itself.

(vi) 2013 (6) CTC 809 [N.A.Chinnasamy & anr. v. S.Vellingirinathan]

51..... 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 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.

9. Per contra, the learned counsel appearing for the respondents 1 to 4 submitted that the petitioners have not made

out any case for rejection of plaint. A reading of the affidavit and grounds of revision shows that petitioners have not made out a case as contemplated under Order VII Rule 11 CPC. While considering the application for rejection of plaint, the averments made in the plaint as well as the documents filed along with the plaint are the only consideration to decide the said application. The averments in the written statement or averments in the affidavit filed in support of the application filed under Order VII Rule 11 to reject the plaint or document relied on by the defendants are not relevant and the same cannot be taken into account while considering the application.

10. In support of his contention, the learned counsel appearing for the respondents 1 to 4 relied on the judgment reported in **2012 (8) SCC 701 [Bahu Ram v. Janak Singh & Ors.]** :

14) It is relevant to point out the findings of the trial Court particularly with reference to the Suit No.424/1 of 99/97 which was dismissed for default had been restored by the trial Court even at the time of filing of the application by the defendant under Order VII Rule 11 CPC and it is also brought to our notice that the said proceedings are going on. In view of the

same, the provisions of Order IX Rules 8 and 9 CPC are not applicable to the said suit. Even otherwise, the relief sought in the suit (which was earlier dismissed for default) and in the present suit are with regard to different properties. For the same reasons, the provisions of Order XXIII Rule 1 (3) & 4 (b) of CPC are not applicable.

15) The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written statements would be irrelevant. [vide C. Natrajan vs. Ashim Bai and Another, (2007) 14 SCC 183, Ram Prakash Gupta vs. Rajiv Kumar Gupta and Others, (2007) 10 SCC 59, Hardesh Ores (P) Ltd. vs. Hede and Company, (2007) 5 SCC 614, Mayar (H.K.) Ltd. And Others vs. Owners & Parties, Vessel M.V. Fortune Express and others, (2006) 3 SCC 100, Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others, (2004) 3 SCC 137, Saleem Bhai and Others vs. State of Maharashtra and Others, (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee, 2012 (6) JT 149.

11. Heard the learned counsel appearing for the petitioners as well as respondents and perused the materials available on record.

12. The petitioners have come out with the application for

rejection of plaint on various grounds. The contention of the petitioners were rejected by the learned Judge and application filed by them was dismissed. In the Civil Revision Petition, the learned counsel appearing for the petitioners, in addition to the grounds raised in the affidavit filed in support of the interlocutory application for rejection of plaint also raised plea of abuse of process of court as well as re-litigation of same issue. This court has power under Article 227 of the Constitution of India to strike off the plaint, if it is brought to the notice that the suit filed by the plaintiff is abuse of process of court as well as re-litigation of issues raised in the earlier suit. The power under Article 227 is an extraordinary power. It is both judicial as well as administrative power. This power is exercised in view of the fact that this Court has over all superintending power over all the subordinate courts. The said power has to be used sparingly only in extraordinary cases / circumstances. The Court has power to strike off the plaint on the threshold itself when it comes to the conclusion that the suit is abuse of process of court, re-litigation of earlier issues and also when the plaintiff has no chance to succeed in the suit.

13. In the present case, the respondents 1 to 4 are seeking

the relief of declaration that they are the owners of suit property, declaration that petitioners have no right or interest over the suit property and for permanent injunction. The claim of the respondents 1 to 4 is based on partition deed dated 25.03.1959 in which the third item in 'B' Schedule property was allotted to Karuppa Gounder. It is not in dispute that Marappa Gounder, Kaliammal and Pavaiammal were also parties to the said partition deed and Marappa Gounder became entitled to 'D' Schedule property mentioned in partition deed and allotted to Pavaiammal. It is also admitted that Periyasamy s/o Marappa Gounder brother of the second petitioner filed O.S.No.95 of 2003, 4th respondent filed O.S.No.144 of 2003 for specific performance, O.S.No.17 of 2006 filed by the second petitioner and others against 4th respondent and others. The above suits relates to the suit properties.

14. In the suit filed by the second petitioner & Others, injunction was granted in I.A.No.83 of 2006 on 03.02.2007 and appeal in CMA No.3 of 2007 filed by the 4th respondent was dismissed. The respondents 1 to 4 have not mentioned these facts in the plaint. They have not denied in the counter about the filing of the above suits and pendency of the suit filed by the second

petitioner. They only contended that the properties are different and suits are not relevant to the present suit. The suppression of these facts clearly amounts to abuse of process of court and fraud being played on the court. In view of the above facts, the judgments relied on by the learned counsel for the petitioners are squarely applicable to the facts of the present case.

15. Considering all the materials on record, I hold that this is a fit case to exercise the extraordinary powers conferred on this Court under Article 227 of Constitution of India to strike off the plaint in O.S.No.453 of 2013. Therefore, plaint in O.S.No.453 of 2013 is struck off. The impugned order dated 24.06.2014 made in I.A.No.1368 of 2013 filed under Order VII Rule 11 CPC is set aside.

16. In the result, CRP (PD) No.3081 of 2014 is allowed. In view of order passed in CRP (PD) No.3081 of 2014, no order is need to be passed in CRP (PD) No.53 of 2015. Therefore, C.R.P.(PD) No.53 of 2015 is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

21.09.2017

Index : Yes/No

rgr

Note: Issue order copy by 21.09.2017

V.M.VELUMANI,J.

rgr

To

1.The Principal District Munsif,
Namakkal.

2. The II Additional District Munsif,
Namakkal.



Common Order in
C.R.P.(PD)No.3081 of 2014
and C.R.P.(PD)No.53 of 2015

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