

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2017

Pronounced on : 09.06.2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.2484 of 2015
& M.P.No.1 of 2015 and
CMP No.2130 of 2016**

P.Srikanth

...

Petitioner / Defendant

Vs

1.R.Venkatesan

2.M.Balakrishnan

3.B.Manikannan

4.B.Sivakandan

5.B.Asokan

6.R.Dhanakodi

7.T.Lakshmi

8.E.B.Anandhan

9.Sivakumar

10.Mohan

11.Thasildar Taluk Office, Panruti

12.The Raja Priya, Sub-Registrar, Kadampuliyur

13.The Sub-Registrar, Kadampuliyur

14.The District Registrar, Cuddalore

15.The District Collector, Cuddalore

16.The Assistant Engineer, TNEB, Vakuthu

17.The Divisional Engineer, TNEB, Kurinjipadi

18.The Superintendent Engineer,

TNEB, Cuddalore

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Respondents / Plaintiffs

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal order made in I.A.No.336 of 2015 in O.S.No.47 of 2015 on the file of the District Munsif Court at Panruti.

For Petitioner : Mr.R.Krishnamoorthy,
Senior Counsel
for Mr.V.Ayyadurai

For Respondents : Mr.Usharaman
for R1

Mr.V.Viswanathan
for R16 to R18

ORDER

This Civil Revision Petition is filed against the order and decretal order made in I.A.No.336 of 2015 in O.S.No.47 of 2015 on the file of the District Munsif Court at Panruti.

2. The petitioner is the first defendant, the first respondent is the plaintiff and the respondents 2 to 18 are defendants 2 to 18 in the suit in O.S.No.47 of 2015 on the file of the District Munsif Court at Panruti.

3. The 1st respondent filed suit in O.S.No.47 of 2015 for declaration with regard to the suit property and for permanent injunction restraining

the defendants 16, 17,18 from drawing electric overhead line over the suit property and giving service connection to the petitioner. The petitioner filed written statement on 05.03.2015 and is contesting the suit. The petitioner filed I.A.No.336 of 2015 under Order 7 Rule 11 CPC to reject the plaint.

4. According to the petitioner, the first respondent has suppressed the material fact and fraudulently filed the suit for the relief sought for. The suit is a clear abuse of process of court on the ground that the suit in O.S.No.901 of 1986 filed by the father of the first respondent/plaintiff against the second respondent/second defendant and his father Ramakrishnan for declaration and for permanent injunction in respect of very same property was dismissed on 25.02.1992 holding that the first respondent's father did not have title and he is not in possession of the suit property. Against the said judgment and decree dated 25.02.1992, the father of the first respondent filed first appeal in A.S.No.179 of 1992 which was also dismissed on 13.02.1993 and the said judgment has become final as no further appeal was filed by the father of the first respondent or by the first respondent. Further, the first respondent filed O.S.No.111 of 2014 for permanent injunction against the 13th respondent not to release the sale deed dated 10.03.2014 executed by the second

respondent and their circle in favour of the petitioner. While the said suit was pending, the first respondent has filed the present suit in O.S.No.47 of 2015 on the file of the District Munsif Court, Panruti for the above stated relief and the same is hit by provisions of Order II Rule 2 CPC.

5. The petitioner has stated how he derived his title and also stated that he is in possession and enjoyment of the suit property. The petitioner has stated that even before filing of the suit, he is in enjoyment of the property and respondents 16 to 18 have already given electricity connection in favour of the petitioner for the suit property. The first respondent is claiming title based on the gift settlement deed dated 05.11.1999 executed by his father Ramakrishnan and his brother Balaraman executing release deed dated 29.08.2013 in favour of the first respondent. According to the petitioner, the gift settlement dated 05.11.1999 is a concocted document and it is null and void as the said Ramakrishnan did not have any title and did not have possession of the suit property to execute the said settlement deed. The first respondent did not derive any title or possession based on the said settlement deed. The petitioner prayed for rejection of plaint on the ground of res judicata as per Order II Rule 2 CPC, suppression of material fact, fraud and abuse of process of court.

6. The first respondent filed counter affidavit and denied all the averments made in the affidavit filed in support of the above application and stated that the petitioner did not acquire any title over the suit property as his vendor did not have any right, interest or title over the suit property. The predecessor in title and the petitioner have obtained patta by fraud and political influence. The first respondent has taken steps to get the patta cancelled issued in favour of the predecessor and in favour of the petitioner and to issue patta in his favour. The cause of action of the suit in O.S.No.111 of 2014 is entirely different from the cause of action of the present suit. The suit in O.S.No.111 of 2014 is filed for permanent injunction restraining the 13th defendant from releasing the sale deed executed in favour of the petitioner by the 2nd respondent and their circle. The cause of action for the present suit is based on the settlement deed dated 05.11.1999 executed by his father and release deed dated 29.08.2013 executed by Balaraman, brother of the first respondent and on 10.03.2014 & 10.02.2015 when the petitioner and respondents 2 to 8 tried to trespass into the suit property. In the circumstances, the present suit is not hit by principles of resjudicata. The first respondent was not aware of the suit in O.S.No.901 of 1986 filed by his father and came to know about the same only when

the petitioner filed counter in I.A.No.205 of 2015. The suit in O.S.No.901 of 1986 was dismissed on the sole ground that the father of the first respondent viz. Ramakrishnan did not file any document to prove that the patta was standing in the name of his grandfather Pichaikannu @ Picha Padaiyachi.

7. The claim of the second respondent/Balakrishnan's father Manikka Samuttiyar for adverse possession in respect of the suit property was also rejected holding that Manikka Samuttiyar failed to produce any document to prove title and possession of his father Kumarasamy Padaiyachi. The judgment in O.S.No.901 of 1986 went against both the first respondent's father Ramakrishnan Padaiyachi as well as the second respondent's father Manikka Samuttiyar. The title of the suit property was not decided in the suit in O.S.No.901 of 1986 and title in respect of the suit property was kept open. The suit filed by the second respondent/Balakrishnan in O.S.No.277 of 2000 against the first respondent, his father and his brother was dismissed on the basis of the endorsement made for withdrawal.

8. The respondents 8, 9 and 13 filed separate counter affidavit making various allegations and stated that the issue in the present I.A

filed under Order 7 Rule 11 CPC is between the petitioner and the first respondent and the 8th, 9th and 13th respondents are not necessary and proper parties and prayed for dismissal against them. The 10th respondent filed counter affidavit and stated that he is working as Tahsildar, Vridachalam and he has been wrongly impleaded as 10th respondent in his personal capacity and he is filing petition under Order 1 Rule 10 (ii) CPC to strike off the 10th respondent in the suit. The 10th respondent has also stated that he is not a necessary party to the application filed under Order 7 Rule 11 CPC. The 11th respondent filed counter affidavit which was adopted by 15th respondent. In the counter it is stated that the 11th respondent is working as Tahsildar, Panruti and he is not a necessary party in the present application.

9. Before the learned Judge, the petitioner marked six documents as Exs.A.1 to A.5 and respondents marked four documents as Exs.B1 to B4. The learned Judge framed necessary points for consideration. The learned Judge, considering the averments in the affidavit, counter affidavit, averments in the plaint and arguments of the parties, dismissed the application holding that even though the contention of the first respondent that he has no intention to suppress the material fact to fraudulently obtain the relief is not acceptable, the plaint cannot be

rejected only on that ground and the same has to be decided only after conclusion of the trial by appreciating the evidence let in by the parties. The learned Judge has held that the petitioner was not a party to the suit in O.S.No.901 of 1986 but the suit property is one and the same and on that ground, it cannot be held that the present suit is hit by principles of res judicata. In the earlier suit, the title of the suit property was not decided and therefore, in the present suit, title of the suit property can be decided .

10. Against the above said order dated 30.04.2015 made in I.A.No.336 of 2015 in O.S.No.47 of 2015, the present revision petition is filed.

11. The learned Senior Counsel for the petitioner contended that earlier suit in O.S.No.901 of 1986 filed by the father of the first respondent against the second respondent/second defendant and his father Ramakrishnan for declaration and injunction in respect of very same property was dismissed on 25.02.1992 holding that the first respondent's father failed to prove his title and possession. The said judgment and decree was confirmed in A.S.No.179 of 1992 and the said judgment has become final as the father of the first respondent or first

respondent did not file any further appeal. In the judgment in A.S.No.179 of 992, the first Appellate Judge has given a finding that the father of the first respondent has fraudulently inserted the suit property as last item of the property purchased under sale deed dated 12.03.1965 which was marked as Ex.A2. The finding in the judgment in O.S.No.901 of 1986 and A.S.No.179 of 1992 is binding on the first respondent as he is claiming title only through his father. The settlement deed dated 05.11.1999 executed by the first respondent's father in favour of the first respondent is void *abinitio*.

12. The learned Judge is not correct in holding that the title of the father of the first respondent as well as the father of the second respondent was not declared in the suit. The decree passed in O.S.No.901 of 1986 and A.S.No.179 of 1992 clearly shows that the claim of the father of the first respondent for declaration of title and possession was rejected by both the courts. The present suit, based on the settlement deed executed by father of the plaintiff is only re-litigation of the issue already decided in the earlier suit in O.S.No.901 of 1986 filed by the father of the first respondent. The failure on the part of the first respondent to disclose the earlier proceedings in O.S.No.901 of 1986 and A.S.No.179 of 1992 clearly proves that the present suit is a

clear abuse process of court and is not maintainable and is barred by law. The learned Judge, having rejected the contention of the respondent that he has no intention to suppress the material fact and obtained the decree fraudulently, ought to have allowed the application for rejection of plaint and erred in holding that the same is not a ground for rejecting the plaint.

13. The learned Judge having held that the property in O.S.No.901 of 1986, A.S.No.179 of 1992 and the present suit is one and the same, ought to have allowed the application as the first respondent is claiming title through his father whose claim for declaration of title and injunction was rejected. The learned Judge ought to have seen that the cause of action for O.S.No.114 of 2014 and the present suit is one and the same and the first respondent ought to have claimed all the relief in the suit in O.S.No.111 of 2014 only. The first respondent ought to have filed petition for amendment of plaint in O.S.No.111 of 2014 to include the relief of declaration and permanent injunction as claimed in the present suit and no separate suit is maintainable. The learned Judge ought to have seen that though the first respondent sought relief only against the 13th respondent and the petitioner, the petitioner and the second respondent are party defendants in O.S.No.111 of 2014.

14. The learned Senior Counsel for the petitioner submitted that the object of Order 2 Rule 2 CPC is to prevent the multiplicity of suit and a person shall not be vexed twice for one and the same cause of action. The learned Senior Counsel for the petitioner relied on the following judgments –

(i) 2011 (3) CTC 153 [N.Ravindaran v. V.Ramachandran]

25. The object of Order II Rules 1 and 2 C.P.C. is to prevent multiplicity of suits. The Rule in Order II Rule 2 is founded on the principle that a person shall not be vexed twice for one and the same cause of action. Order II Rule 2 C.P.C. is directed in securing a exhaustion of the relief in respect of a cause of action. In order to make Order II Rule 2 applicable, the defendant must satisfy the following conditions:- (i) The previous and second suit must arise out of the same cause of action; (ii) Both the suits must be between the same parties; and (iii) The earlier suit must have been decided on merits. In order to attract the bar of Order II Rule 2 C.P.C, the earlier suit shall be founded on the same cause of action on which the subsequent suit is based, and if in the earlier suit, the plaintiff has omitted to sue in respect of or intentionally relinquished any portion of his claim, he will not subsequently be entitled to sue in respect of the portion of his claim so omitted or relinquished.

26. The learned single Judge considered the present suit C.S.No.264 of 2007 and also the earlier suit O.S.No.6514 of 2002 and held that in the earlier suit, the plaintiff has intentionally omitted to sue for specific performance and held that the suit is barred under Order II Rule 2 C.P.C.

27. The plaint in O.S.No.6514 of 2002 was produced before us. By perusal of the averments in

both the suits - C.S.No.264 of 2007 and O.S.No.6514 of 2002, we find that the averments in both the complaints are verbatim same excepting few sentences in some paragraphs. As pointed out earlier, there was unequivocal threat to the plaintiff's right of agreement/understanding even in November 2002 when the plaintiff has also lodged a police complaint. While so, while filing the suit O.S.No.6514 of 2002, the plaintiff has omitted to sue in respect of the suit for specific performance. Order II Rule 2 is directed in securing the exhaustion of relief in respect of cause of action. When the plaintiff has intentionally omitted to claim the relief of specific performance, he will not be subsequently entitled to sue in respect of the portion of his claim right of specific performance, which he so omitted.

(ii) 2011 (2) CTC 177 [Joseph Arokiadoss v. P.Pradeep]

8. The above extracted portions of the plaint in the latter suit would disclose that the necessity to file the latter suit by the respondent has arisen because the petitioner herein, namely the defendant in the said suit, had trespassed into the property on 18.8.2007 and hence it has made the respondent to file a comprehensive suit for declaration and for other incidental reliefs. I am unable to accept the said contention of the learned counsel appearing for the respondent, since the cause of action alleged namely that the petitioner has trespassed into the property even according to the respondent, was on 18.8.2007 i.e. After filing of the suit by the respondent in O.S.No.576 of 2008 for injunction. The said suit in O.S.No.576 of 2008 for injuction. The said suit in O.S.No.576 of 2008 was filed on 21.10.2008, i.e much later to the allegation of trespass of the petitioner. In such circumstances, instead of filing an application for amending the plaint under Order 6 Rule 17, CPC, the respondent has chosen to file the subsequent suit. Thus, the later suit is clearly hit by Order 2 Rule 2 (3) CPC. At this stage, it would be useful to extract Order 2 of the Civil Procedure Code

Order 2 Rule 2 of CPC

2. Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Order 2, Rule 2, CPC extracted above, clearly envisages that every Suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff omits to sue in respect of a particular cause of action, he shall not afterwards sue in respect of the other portions so omitted or relinquish. If he omits to incorporate a prayer except with the leave of the Court, he shall not file another Suit.

9. When such is the position, it is not known why the respondent herein has filed the latter suit in O.S.No.124 of 2009 for declaration, possession and injunction. The best course would have been only to file an Application under Order 7, Rule 17, CPC for amendment in the earlier suit filed by him viz. O.S.No.576/2008. The Court below failed to take into account the said aspect while dismissing the Application preferred by the petitioner.

Case Note : Civil – Rejection of plaint – Order II Rule 2(3) of Code of Civil Procedure, 1908 (CPC) - Present application filed for seeking rejection of plaint on ground that cause of action was similar to suit which had been filed earlier by respondent – whether plaint could be rejected for non-obtaining leave of court in earlier suit for filing subsequent suit as required under CPC – Held, cause of action mentioned in present suit and earlier suit were one and same, except fact that respondent got knowledge about sale deeds executed in favour of appellant – Thus, respondent ought to have obtained leave in earlier suit for filing subsequent suit to claim such relief – As observed by honourable Supreme Court in Virgo Industries (Eng) (P) Ltd vs. Venturetech Solutions (P) Ltd, respondent omits or relinquishes one of reliefs, which he was entitled to make, he could have filed subsequent suit seeking relief omitted in earlier suit, only after obtaining leave of Court under CPC- Therefore, plaint was rejected for non-obtaining leave of court – Application allowed.

(iv) 2005 (5) SCC 548 [N.V.Srinivasa Murthy & Ors. v. Mariyamma]

17. This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of T. Arvindam vs. T.V. Satyapal [1977 (4) SCC 467] :-

"The trial court must remember that if on a meaningful no formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful

enough to meet such men (Ch.XI) and must be triggered against them."

(v) 2004 (3) SCC 137 [Sopan Sukhdeo Sable & Ors. v. Assistant Charity Commissioner and ors.]

17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised.

(vi) 2014 (3) SCC 595 [State Bank of India v. Gracure Pharmaceuticals Ltd.]

8. The scope of the above-mentioned provisions came up for consideration before this Court in several cases. The earliest one dealt by the Privy Council was reported in Naba Kumar Hazra v. Radhashyam Mahish AIR 1931 PC 229 wherein the Privy Council held that the plaintiff cannot be permitted to draw the defendant to court twice for the same cause by splitting up the claim and suing, in the first instance, in respect of a part of claim only. In [Sidramappa v. Rajashetty and Others](#) (1970) 1 SCC 186 this Court held that if the cause of action on the basis of which the previous suit was brought, does not form the foundation of subsequent suit and in the earlier suit the plaintiff could not have claimed the relief which he sought in the subsequent suit, the latter, namely, the subsequent suit, will not be barred by the rule contained in Order 2 Rule 2, CPC.

(vii) 2014 (4) LW 314 [Karuppana Gounder v. Shanmuga Gounder]

12. In the above factual position, the respondent filed the present suit without disclosing the previous proceedings by merely stating that as per the oral partition effected in the year 1977 and registered partition deed dated 17.10.1980, he is in possession of the suit property. The respondent claims title only through his father Ponkaliyappa Gounder, but in the civil suits referred supra, it has been held that the said Ponkaliyappa Gounder has lost his title in respect of above three survey numbers S.A.Nos.472/2, 472/3 and 473/3. 13. In the case on hand, the respondent has no title in S.F.No.472/3 which is now sub-divided into S.No.472/3B. The respondent claims title only through his father Ponkaliyappa Gounder. As stated supra, the said Ponkaliyappa Gounder has already lost his title in the Court auction proceedings, so the respondent cannot claim any right in the suit property. The previous proceedings and the present suit would show that this is a clear case of re-litigation.

15. In 1998 (II) CTC 165 (Nesammal and another .v s. Edward and another) , this Court has upheld the rejection of plaint by the trial Court under Order 7 Rule 11 of Civil Procedure Code on the ground of suppression of materials and reagitating the same matter and it is held as follows:

"11. In view of all these decisions the argument of the counsel for the Petitioners that unless the conditions are satisfied under Order 7 Rule 11 of Code of Civil Procedure, the plaint cannot be rejected is without any basis. The provisions of Order 7 Rule 11 are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the Court. In appropriate cases, directions, can be given by this Court as well as the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law. In this case all the grounds are made out and the very

same plaintiff who got defeated in the litigation has agitated the very same issue by filing the present plaint. I appreciate the stand taken by the Lower Court in rejecting the plaint at the threshold".

(viii) 2016 (3) LW 419 [Sub-Continental Equities Limited, Mauritius v. RVD Ramaiah & Ors.]

16. As rightly pointed out by the learned counsel for the petitioner, the allegations made in paragraph Nos. 8, 9 and 10 of the plaint are repetition of paragraph Nos. 5 and 6 of the affidavit filed in support of W.P. No. 12543 of 2013. Therefore, this Court cannot brush aside the contention of the learned counsel for the civil revision petitioner that the 1 st respondent/plaintiff has been set up by the petitioner in W.P. No. 12543 of 2013, namely, Mr.P.S.P.K. Maragatharaja Pandian, who failed to obtain favourable orders from this Court. Approaching the Civil Court to overcome the orders passed by this Court is a fraudulent Act. The parties are expected to approach the Court with clean hands. If any of the parties abuse the forum, the said proceedings are liable to be struck off as held by the Honourable Supreme Court in K.K.Modi V.K.N. Modi and others reported in 1998 3 SCC 573. The Honourable Apex Court, in the said judgment, held that "Relitigation is an abuse of process of Court" and paragraph 44 of the said judgment is usefully extracted as follows:

"44. One of the examples cited as an abuse of process of the court is relitigation. It is an abuse of process of the court and contrary to justice and public policy for a party to relitigate 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 re-agitated, 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 the 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 the court's 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."

18. In view of the above, it is very clear that to overreach the order of this Court, in spite of having knowledge about the order passed by this Court dated 26.11.2015 in W.P. No. 12543 of 2013, which has also been informed to the 1st respondent/plaintiff, as per the notice dated 21.12.2015 regarding conduct of Annual General Body Meetings of the Bank on 29.01.2016, the 1st respondent/plaintiff, with unclean hands, fraudulently, obtained an order of interim injunction from the Trial Court. The 1st respondent did not approach the Court with bona fide intention and it is only to overreach the order passed by this Court, that too, without any cause of action, he has filed the suit before Sub Court at Vellore. Therefore, the interim order passed by the Trial Court dated 25.01.2016 and extended subsequently is liable to set aside. Likewise, the plaint in O.S. No. 36 of 2016 has to be struck off for lack of cause of action and also for want of jurisdiction.

15. Per contra, the learned counsel for the first respondent submitted that in O.S.No901 of 1986 as well as in A.S.No.179 of 1992, the claim of the father of the second respondent viz. Manikka Samuttiyar was rejected holding that he failed to prove his possession and title by adverse possession. The first respondent's father viz. Ramakrishnan obtained patta in the year 1989 and the second defendant obtained patta in collusion with revenue officials. The second respondent filed O.S.No.277 of 2000 for declaration and injunction against the first respondent, his father and the brother of the first respondent. When the suit was posted for trial, he withdrew the suit on 06.02.2009 knowing fully well that the suit would be dismissed on merits. The first respondent filed O.S.No.111 of 2014 for permanent injunction against the 13th respondent not to release the sale deed dated 10.03.2014 executed by the second respondent and their circle in favour of the petitioner. Pending the suit, the sale deed was released and the said suit has become infructuous. Fresh cause of action has arisen in the present suit based on the settlement deed executed by his father and release deed executed by his brother, when the petitioner and respondents 2 to 7 tried to trespass into the suit property and when the respondents 2 to 14 tried to draw overhead electric wire over the suit property. In view of the fresh cause of action and relief sought for in O.S.No.111 of

2014 and relief sought for in the present suit are different and the present suit is not hit by principles of resjudicata. The learned counsel for the first respondent also submitted that suppression of material fact is not a ground for rejection of plaint. The first respondent relied on the following judgment –

(i) 2013 (2) LW 84 [R.Arumugam v. PR.Palanisamy]

9. The said view expressed by the learned single judge in the said case is quite contrary to the well established principle that a plaint can be rejected only based on the averments made in the plaint and the defence plea made and the documents produced by the defendants should not be taken into consideration in deciding an application for rejection of plaint filed under Order VII Rule 11 CPC. It is pertinent to point out that fraud has not been made as one of the grounds for rejection of the plaint under Order VII Rule 11 CPC.

(ii) 2013 (4) CTC 468 [G.Subramani v. V.Rajasekaran & anr.]

10. So far as the question of suppression of material fact is concerned, this Court is of the considered view that the revision petitioner has not made out any case that there has been a suppression of a material fact on the question of jurisdiction or cause of action, which can be viewed as an abuse of process of Court. The contention that the first respondent/plaintiff has chosen to deny the receipt of an amount allegedly paid to him in consideration of his retirement from the partnership firm and the denial of due execution of the retirement deed by him, shall not be the ground on which the plaint can be rejected, as the contention of the revision petitioner, in this regard, is that the first respondent/plaintiff has made a false allegation. Such a contention has to be tried as an issue and

decided in the suit and the same can never be a ground for rejection of the plaint.

(iii) AIR 2010 SC 818 [Ramchandra Dagdu Sonavane v. Vithu Hira Mahar]

41) In Syed Mohd's case, this court has stated that before a plea of res-judicata can be given effect the four conditions requires to be proved. They are, that the litigating parties must be the same; that the subject matter of the suit also must be identical; that the matter must be finally decided between the parties; and that the suit must be decided by a court of competent jurisdiction.

(iv) 2011 (2) LW 332 (DB) [Astral Cables Limited v. The National Small Industries Corporation]

"15. Order VII, Rule 11(d) CPC has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order VII, Rule 11 should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order VII, Rule 11 CPC is the averments made in the plaint.

(v) 2006 (3) SCC 100 [Mayar (H.K.) Ltd. & Others v. Owners & Parties Vessel m.v. Fortune Express & Ors.]

12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a

whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants.

(vi) 2011 (3) MWN CIVIL 787 [T.Mohanraj v. Akila Thiruvidadancore Siddha Vaidhya Sangam]

57. On a careful consideration of respective contentions, this Court is of the considered view that before the Learned Single Judge in Application Nos.7131 and 4527 of 2007, the Appellant/Defendant or the Respondent/Plaintiff has not let in any oral or documentary evidence to satisfactorily establish the plea of bar under Order 2 Rule 2(3) of Civil Procedure Code and also even for the rejection of Plaint on the basis of cause of action where previous and subsequent suits have arisen out of the same cause of action and between the same parties, which has to be proved by oral and documentary in the manner known to law. If both the suits are on the basis of two different cause of actions for which

separate evidence will have to be let in by the parties, then, the ingredients of Order 2 Rule 2 of Civil Procedure Code are not attracted, in the considered opinion of this Court. It is to be borne in mind that the ingredients of Order 2 Rule 2 of Civil Procedure Code are penal in nature and they should be construed strictly, as opined by this Court.

16. Heard the learned counsel for the petitioner and respondents and perused the material available on record.

17. The petitioner is the first defendant in O.S.No.47 of 2015. The first respondent has filed the said suit for declaration and injunction in respect of the suit property. According to the first respondent, the property originally belonged to his father Ramakrishnan who, by deed of settlement dated 05.11.1999, settled the suit property on him and his brother Balaraman. His brother Balaraman executed release deed dated 29.08.2013 releasing his share in the suit property in favour of the first respondent. In view of these two documents, the first respondent has become the absolute owner of the suit property and he is in enjoyment of the same.

18. The first respondent has stated in the plaint that the cause of action has arisen on 05.11.1999, when his father executed settlement deed in his favour, on 29.08.2013, when the first respondent's brother

executed release deed in his favour, on 11.03.2009, when the petition for transfer of patta in favour of first respondent was filed and on 19.11.2014 when the District Registrar, Cuddalore sent a letter not to transfer the patta in favour of the petitioner on the basis of sale deed dated 10.03.2014 and subsequently on 10.02.2015, when the petitioner and respondents 2 to 7 tried to trespass upon the suit property and interfered with his possession and enjoyment of same. According to the first respondent, he became the owner based on the settlement deed dated 05.11.1999 referred to above. He has filed the suit for declaration and injunction as the petitioner and the respondents have created documents claiming title over the suit property.

19. The petitioner filed written statement and is contesting the suit. He also filed I.A.No336 of 2015 under Order 7 Rule 11 r/w Section 151 of CPC for rejection of plaint. According to the petitioner, the present suit is hit by principles of res judicata, as contemplated under Order 2 Rule 2 CPC. The first respondent filed O.S.No.111 of 2014 for permanent injunction restraining the 13th respondent from releasing the sale deed executed in favour of the petitioner by the second respondent and their circle. In the said suit itself, the first respondent ought to have claimed relief of declaration and injunction, as claimed in the present

suit. The said contention is untenable.

20. The first respondent has filed O.S.No.111 of 2014 for permanent injunction against the 13th respondent only, even though he has impleaded the petitioner and the second respondent in the suit. A reading of the plaint in O.S.No.47 of 2015 would show that the first respondent is claiming relief of declaration of title and injunction against the petitioner and other respondents. The cause of action for both the suits are different and relief sought for is also different.

21. The learned Senior Counsel for the petitioner submitted that the first respondent is claiming title over the suit property through his father. According to the first respondent, his father was the owner of the suit property and he settled the same in favour of the first respondent by settlement deed dated 05.11.1999. The learned Senior Counsel for the petitioner contended that earlier, the first respondent's father Ramakrishnan filed O.S.No.901 of 1986 for declaration of title and injunction in respect of the very same suit property against the second respondent and father of the second respondent. The said suit was dismissed holding that the first respondent's father failed to prove his title over the suit property as well as his possession. The appeal in

A.S.No.179 of 1992 filed by the first respondent's father was also dismissed confirming the judgment of the trial court. In view of the same, the first respondent did not acquire any title by the settlement deed. By suppression of material fact, he has filed the present suit which amounts to abuse of process of law and fraud being played on the court. This contention has a considerable force.

22. From the reading of the judgment in O.S.No.901 of 1986 and A.S.No.179 of 1992, it is clear that both the courts have held that the first respondent's father failed to prove his title and possession. It is pertinent to note that the First Appellate Court has held that the first respondent's father has inserted in Ex.A2, sale deed filed in the said suit, the property which is the subject matter of present suit. The First Appellate Court held that such insertion clearly shows that the first respondent's father did not purchase the suit property from Rasambal Ammal w/o.Kumarasamy by Ex.A2, sale deed dated 12.07.1965. The first respondent has suppressed the suit filed by his father for declaration and injunction in respect of the very same property and rejection of the said claim by the trial court as well as the First Appellate Court. The contention of the first respondent that he did not know about the suit in O.S.No.901 of 1986 filed by his father and he came to know about the

same only when the petitioner filed counter in I.A.No.205 of 2015 is unbelievable.

23. The first respondent's father executed settlement deed dated 05.11.1999 settling the suit property on the first respondent to re-litigate the issue of title in respect of the suit property, as the claim of the title by the first respondent's father in respect of the suit property was rejected by both the trial court as well as the First Appellate Court. The contention of the learned counsel for the first respondent that the earlier suit was dismissed on the ground that the first respondent's father failed to produce patta standing in the name of the first respondent's grandfather is contrary to the judgments of Trial Court as well as Appellate Court. With regard to possession, it was also rejected and in the said circumstances, the present suit for declaration of title based on the settlement deed is untenable.

24. The First Appellate Court has given a categorical finding that the first respondent's father did not purchase the suit property from Rasambal Ammal w/o Kumarasamy by Ex.A.2 sale deed dated 12.07.1965 but inserted the suit property as last item in the last line of the sale deed. The First Appellate Court has held that the said sentence

was inserted in Ex.A2 only for the purpose of filing of the suit in O.S.No.901 of 1986 and has not obtained any title over the said property as per Exs.A1 & A2. In the present case, the learned Judge, having rejected the contention of the first respondent that he has no intention to suppress the material facts and to obtain relief fraudulently, erred in holding that the same will not be a ground for rejection of the plaint. The learned Judge having taken note of the fact that the property in O.S.No.901 of 1986 and the present suit is one and the same, failed to take note of the fact that the claim of the first respondent's father for declaration of title was rejected. Once it is held that the first respondent's father has no title over the suit property by competent trial court as well as the First Appellate Court, the first respondent does not acquire any title over the suit property on the basis of the settlement deed dated 05.11.1999 executed by his father. Suppression of earlier proceedings where the title of suit property was an issue and the same was negated by the courts, will amount to abuse of process of court and it is a ground for rejection of plaint. The learned Judge failed to consider that the suppression of fact would amount to abuse of process of court and on that ground, the plaint can be rejected. The settlement deed dated 05.11.1999 executed by father of the first respondent settling the property on him and his brothers does not confer any title on

the first respondent and his brother and does not give rise to cause of action for the present suit.

25. Considering all the materials on record and judgments relied on by the learned Senior Counsel for the petitioner, I hold that the suit filed by the first respondent is a clear abuse of process of court and it is nothing but re-litigation of the very same issue of title to the suit property. The judgment relied on by the learned Senior Counsel for the petitioner with regard to re-litigation are squarely applicable to the facts of the present case. The relief sought for in the suit in O.S.No.11 of 2014 and the present suit is entirely different and cause of action for both the suits are also different. Further the learned counsel for the first respondent has stated that the suit in O.S.No.111 of 2014 has become infructuous in view of the fact that the sale deed has been released to the petitioner. In view of the same, the suit is not hit by provisions of Order II Rule 2 CPC.

26. I had an occasion to consider the issue of striking off the plaint under Article 227 of the Constitution of India and I referred to the

following judgments in my order dated 16.02.2017 made in CRP (MD) No.563 of 2015 (PD).

(i) **1998 (3) SCC 573 [K.K.Modi Vs. K.N.Modi and others]**, wherein at paragraph 44, it has been held as follows:-

“44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation 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 the 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 the court’s 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.”

(ii) **2013 (6) CTC 809 [N.A.Chinnasamy and another Vs. S.Vellingirinathan]**, wherein at paragraph 38, it has been held as follows:-

“38. As the revision petition has been filed under Article 227 of the Constitution of India, it being the superintending power of the High Court over all subordinate

Courts, including Tribunals, this Court can interfere, only if there is clear abuse of process of Court, based on the averments or pleadings of the plaint. If it is established that the suit has been filed as an abuse of process of Court, in order to prevent the abuse of process of court and to avoid miscarriage of justice, this Court has to order strike off the plaint. The Hon'ble Supreme Court in the decisions referred to above has categorically ruled that where there is abuse of process of Court or filing the suit itself is contrary to justice and against public policy, this Court has to exercise its power under Article 227 of the Constitution. If it is a frivolous or vexatious suit, as per the pleadings of the plaint and the Court process is being wasted, this Court has to exercise its power under Article 227 of the Constitution of India to strike off the plaint. However, such jurisdiction should be exercised sparingly. When the Court is satisfied that there is no chance of the suit succeeding, as held by the Hon'ble Apex Court in *K.K. Modi v. K.N. Modi* (cited supra), petition filed under Article 227 of the Constitution of India, has to be allowed by this Court, to prevent abuse of process of law and to meet the ends of justice.

(iii) 2009 (2) CTC 57 [Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai and another Vs. Selvaraj and another], wherein at paragraphs 11, 20, 21 and 23, it has been held as follows:-

“11. As per the above said dicta, if a party has initiated a vexatious or frivolous litigations in order to harass the other party, the Court can nip the attempt in the bud itself, irrespective of the stage of such proceedings.

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.

21. Following the dictum in *Surya Dev Raj's* case (supra) the interest of justice, it is also to be observed that in all the cases it need not be held that a particular party has to

exhaust the alternative remedy and however every case depends upon its nature, facts and circumstances.

23. As far as the scope of exercising the supervisory jurisdiction under Article 227 is concerned, the duty of this Court is to infer or discern any vexatious or frivolousness in the proceedings initiated.”

(iv) 2001 (1) LW 202 [Senni @ Sundarammal Vs. Ramasamy and others], wherein at paragraph 9, it has been held as follows:-

“9. Here in this case on hand, there was already a litigation with reference to which the matter has reached the High Court by way of Second Appeal, wherein interim order has been passed, vacating the injunction. Subsequently, another suit has been filed and the first respondent could not get any interim order. Thereafter, he thinks of the idea of filing of suit in a court which has nothing to do at all with the matter and without impleading the party really affected, files a suit and obtains an order of injunction. It clearly amounts to abuse of process of court. Such tendency on the part of the litigant should be put down with strong hands. Hence, I am of the view that as there is a blatant abuse of process of court resulting in miscarriage of justice, it eminently satisfies the parameters for stepping in under Article 227 of the Constitution.”

27. The above judgments are squarely applicable to the facts of the present case and this Court has power not only under Section 115 of CPC and has power under Article 227 of the Constitution of India to reject the plaint but also has power to strike off the plaint, when it is brought to the notice of the court that the suit is abuse of process of court. The Hon'ble Apex Court held that it is the duty of the courts to prevent the said abuse

of process of court becoming perpetual by interfering with the proceedings. The abuse of process of court is instituting vexatious, obstructive or or dilatory action in court of law is one instance; where a party should be held to be guilty of an abuse of the multiplicity of proceedings for enhancing one's own wealth is yet another instance where a party could be said to have committed an abuse of the process of the court.

28. In view of the above finding, the order of the Trial Court is liable to be set aside and the plaint is liable to be rejected. In the result, this Civil Revision Petition is allowed on the ground of abuse of process of court and lack of cause of action. No costs. Consequently, connected Miscellaneous Petitions are closed.

09.06.2017

Speaking/Non-speaking order
Index : Yes/No
rgr

To

The District Munsif Court
at Panruti.

V.M.VELUMANI, J.

rgr

**Order in
C.R.P. PD No.2484 of 2015**

09.06.2017

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