

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.02.2017**

CORAM

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

CRP PD.No.824 of 2014
and
M.P.No.1 of 2014

A.Valliammai

.. Petitioner

VS

1. Karuppaya

2. The District Collector
District Collector Office
Perambalur District.

3. The Revenue Divisional Officer
Revenue Divisional Office
Perambalur District.

4. The Tahsildar
Kunnam Taluk
Perambalur District.

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the
Constitution of India to strike off the plaint filed in O.S.No.31 of
2014 on the file of the District Munsif, Perambalur.

For Petitioner : Mr.M/s.Achari and Antoni
Associates

For Respondents : Mr.P.Valliappan for R1
RR2 to 4 - Served-
No appearance

ORDER

This Civil Revision Petition is filed by the first defendant in OS No.31 of 2014 on the file of District Munsif Court, Perambalur to strike off the plaint filed by the first respondent/plaintiff, with exemplary costs.

2. The brief facts of the case would run thus:

(i) It is stated by the revision petitioner/first defendant that she owns ancestral property at Paravai village and she is in possession and enjoyment of the same from 1939 onwards. According to her, her grand parents executed the settlement deed in 1939 in favour of her parents, who in turn, had executed a sale deed in her favour. Accordingly, she along with her husband has been in peaceful possession of the property till 1983, when the father of the first respondent/plaintiff trespassed into the same and drove them away. Hence, her husband filed

the suit in O.S. No.467 of 1983 on the file of the District Munsif Court, Perambalur for recovery of possession and the said suit was decreed on 26.07.1984 in their favour. As against the same, the plaintiff/the defendant therein has not filed any appeal and allowed the decree to become final. Thereafter, E.P.No.72 of 1986 was filed by the husband of the revision petitioner herein. The said Execution Petition was allowed and delivery was effected in the year 1986.

(ii) While so, the first respondent/plaintiff's father filed another suit for declaration and injunction in the year 1986 and the same was dismissed with costs in the year 1992. Again there was no appeal against the same. Thereafter, the first respondent/plaintiff once again trespassed into the suit property on 15.09.2009 and put up a hut like structure. Immediately, a police complaint was given.

(iii) It seems, the revision petitioner/first defendant has filed W.P.No.8031 of 2010 to take action against the respondents therein, including the first respondent herein and his father. The

said writ petition was allowed vide order dated 08.10.2010 and against the same, the first respondent/plaintiff along with others filed W.A.No.2281 of 2010 was filed. The writ appeal was allowed vide order dated 07.03.2011 with a positive direction directing the fourth respondent herein to initiate appropriate action under Section 145 of the Cr.P.C. The Tahsildar/fourth defendant herein also conducted an enquiry and passed orders on 30.05.2011 directing the first respondent to handover possession to the revision petitioner. As the said order was not obliged, contempt petition was filed and statutory notice was issued.

(iv) The contempt petition was closed recording the statement of the first respondent herein, when he was produced before the Court. While so, the above suit is now filed by the first respondent/plaintiff for a declaration declaring that he is the owner of the suit property; for a permanent injunction and also for a mandatory injunction to issue patta in his favour.

3. Challenging the same, the present revision is filed by the first defendant seeking to strike off the plaint.

4. Heard the learned counsel for the petitioner and the learned counsel for the first respondent. Despite notice being served on the respondents 2 to 4, there was no representation on their behalf either in person or through the counsel.

5. The learned counsel for the petitioner submitted that the present suit is not maintainable as the earlier suit filed by the first respondent's father in 1986 was dismissed with costs. Now this is the second suit again filed for the same relief, which is vexatious. The earlier suit filed by the revision petitioner in O.S. No.467 of 1983 was decreed and possession also was taken through court. Hence, the present suit is an abuse of process of law. The subject matter in OS No.467 of 1983 is Survey No.159/1 to an extent of 0.5 cents in Paravai village. In the suit filed by the first respondent/plaintiff's father in O.S.No.588 of 1986 is also in respect of the very same survey No.159/1 to an extent of 0.05 cents of land and after the alleged trespass by the father of the plaintiff, the writ petition was preferred and also writ appeal was filed. In fact, in the judgment of the writ appeal, this Court has held as follows:

" 9. In view of the above, the writ appeal is allowed and the positive direction issued by the learned Single Judge is set aside. The matter is remitted back to the Executive Magistrate concerned, for consideration on merits. We make it clear that the Executive Magistrate shall also take into consideration the decree obtained by the fifth respondent for possession. Further, the documents, which were filed by her before the Civil Court in the subsequent suit filed by the appellants shall also be considered by the Executive magistrate to find out whether the fifth respondent was in actual possession and whether the property in question was taken possession by the appellants when she was away in September, 2009. The said exercise shall be completed by the Executive Magistrate before the end of May 2011. No costs. Connected M.Ps. are closed."

A direction was given to the Executive Magistrate to conduct an enquiry and pass orders with reference to the judgment in the earlier suit viz., in O.S.No.588 of 1986. The Executive Magistrate vide his proceedings dated 30.05.2011 has held that the father of the first respondent/plaintiff had trespassed into the property and

had put up the hut. Therefore, ordered restitution of possession in favour of the revision petitioner. As the said order was not complied with, contempt petition was filed, in which it was admitted by the plaintiff herein that pursuant to the order of Tahsildar dated 30.05.2011, the possession was handed over to the revision petitioner, on 18.06.2014. Recording the said statement, the contempt petition was closed.

6. Once again in the present suit in O.S.No.31 of 2014, the first respondent/plaintiff is seeking a prayer for declaration of his right and for permanent injunction with respect to the same property in Survey No.159/1. Hence, the revision has been filed to struck off the plaint for having filed the frivolous, vexatious suit.

7. From a reading of the typed set of papers, it is seen that pursuant to the decree dated 26.07.1984 passed by the learned District Munsif, Perambalur in O.S.No.467 of 1983, possession was taken by the revision petitioner in E.P.No.72 of 1986 and the dismissal of the suit filed by the plaintiff in O.S.

No.588 of 1986 followed by a direction in W.A.No.2281 of 2010, it is clear and evident that the possession was restored to the revision petitioner, which has been admitted by the first respondent/plaintiff in the suit, in the affidavit filed by him before this Court in Contempt Petition No.1528 of 2011.

8. Having lost in two suits with respect to the same property, the first respondent/plaintiff has come up with the present suit on the same cause of action, which is frivolous and vexatious and the relief sought for in the present suit is also the same and the revision petitioner is unnecessarily been dragged to the Court from 1983.

9. At this juncture, I would like to refer to the judgment of the Hon'ble Supreme Court reported in **(1977) 4 SCC 467 [T.Arivandandam vs. T.V.Satyapal and another]**. The relevant portion reads as follows:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is

perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial courts should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. "

10. It is a settled proposition of law that to exercise the superintending power under Article 227 of the Constitution of India and to strike off a complaint, the Court should come to a conclusion that the suit is an abuse of process of law based on the complaint averments and the admission made by the plaintiff. When there is no subsisting legal cause of action for seeking the relief sought for in the complaint or the suit filed as such is an abuse of process, the same has to be struck off, to meet the ends of justice.

11. The present suit filed being an vexatious litigation, it is the solemn duty of the Court to invoke Article 227 of the Constitution of India to strike off the plaint.

12. Considering the aforesaid facts and circumstances of the case and following the principle laid down by the Hon'ble Supreme Court in the judgment **(1977) 4 SCC 467 [cited *supra*]**, this Court is of the view that the suit filed by the first respondent/plaintiff in O.S.No.31 of 2014 on the file of the learned District Munsif, Perambalur has to be struck off. Accordingly, it is struck off.

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

01.02.2017

vj2

Index : Yes/No

Internet: Yes

To

The District Munsif, Perambalur

PUSHPA SATHYANARAYANA,J.,

vj2

CRP PD No.824 of 2014

01.02.2017