

C.M.P.No.17621 of 2017
in C.R.P.SR.No.78769 of 2017

Dr.S.VIMALA, J.

This petition has been filed, by a third party to the suit in O.S.No.39 of 2017, seeking leave of this Court to file the Civil Revision Petition against the Judgment and Decree dated 07.04.2017 in O.S.No.39 of 2017 on the file of the III Additional District Judge, Salem.

2. The first respondent herein is the defendant and the second respondent is the plaintiff.

3. The facts leading to the filing of the suit in O.S.No.39 of 2017 run as under:

(i) The property described in the preliminary decree in O.S.No.39 of 2017 is referred to as "the suit property". The suit property was originally owned by Rev.Fr.Willaim Borthwick and he ***sold his property other than the suit property*** to one M.Devanesan (who is the grandfather of respondents 1 and 2). ***The suit property was bequeathed*** in favour of D.Yesunesan, son of M.Devanesan. Devanesan died on 28.03.1960. Yesunean is the father of the respondents herein.

(ii) *Entire property, including the suit property was sold in favour of the predecesor in tilte, to the petitioner herein, by way of sale deed dated*

(iii) The petitioner herein, after tracing out the title of the ancestors, claims title and possession over the suit property.

(iv) It is claimed that respondents herein filed the suit against the petitioner (Srikanth S.Metha) in O.S.No.1203 of 2010 on the file of the Principal District Munsif, Salem, by suppressing the sale already made in favour of the petitioner's predecessor-in-title. The suit was dismissed on 09.10.2014, which was confirmed by the First Appellate Court in A.S.No.5 of 2015 and the second appeal in S.A.No.270 of 2016 has been dismissed on 18.07.2016.

(v) While so, suppressing the earlier proceedings by exercising collusion between themselves, partition suit in O.S.No.39 of 2017 has been filed by the second respondent herein against the first respondent herein. The first respondent remained ex parte and preliminary decree has been passed on 07.04.2017.

(vi) It is alleged that the respondents have filed the suit (i.e. O.S.No.1203 of 2010) against the petitioner herein for the relief of permanent injunction over the road leading to the suit properties.

(vii) It is alleged that the filing of the suit in O.S.No.39 of 2017 is sheer abuse of process of law, vitiated by fraud and suffers from deliberate

suppression of materials facts, namely, the registered sale deed, revenue records and previous litigations.

(viii) Admittedly, the petitioner herein is not a party in the suit in O.S.No.39 of 2017. It is contended that by mis-utilizing the decree in O.S.No.39 of 2017, the respondents herein are trying to create imaginary right over the suit properties.

(ix) Contending that the fraudulent decree cannot be allowed to be on record and intending to challenge the decree, the petitioner has sought for leave to file the Revision Petition.

2. The contention of the learned counsel for the petitioner is that the decree obtained by suppressing the material facts and also not by impleading the necessary parties would amount to fraud and collusion and therefore, the petitioner herein must be permitted to challenge the decree. In support of the proposition, the following decisions are relied upon.

(i) 1988 (1) CTC 470 (J.Sivasubramanian and another vs. N.Govindarajan and another), wherein, it has been held as follows:

“Fraud and collusion – Suit filed by suppressing all materials facts and by not impleading necessary parties – Putting forth false claims and obtaining decree by consent by person who has no right in suit properties – Decree obtained with sole purpose of disturbing possession of petitioners who are not parties to suit – Constitutes fraud and collusion.”

(ii) 1991 (2) Supreme Court Cases 318 (S.P.Sawhney vs. Life Insurance Corporation of India), wherein, it has been held as follows:

"Constitution of India – Article 136 – SLP – Abuse of process of court – Multiple proceedings adopted by the petitioner for claiming the same reliefs arising out of the same cause of action relating to his dismissal from service but failed throughout – SLP before Supreme Court an off shoot of his vain attempts – Such petition is abuse of process of the Court – While dismissing the petition, Registry directed not to entertain any further application/petition from the petitioner arising out of the same cause of action and for the same reliefs."

(iii) 1994 (1) SCC 1 (S.P.Chengalvaraya Naid (Dead) by Lrs. vs. Jagannath (Dead) by LRs. And others), wherein, it has been held as follows:

"8. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court.

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-1S) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had

purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party. "

(iv) 2011 (2) MWN (Civil) 363 (Lakshmi and others vs. Prasanna Mani and another), wherein it has been held as follows:

"26. The intention of the first respondent is only to reagitate the very same matter already concluded. It is a clear case of abuse of the process of the Court. Reagitation may or may not be barred as res judicata. If it is sought to be made, it is nothing but an abuse of the process of the Court. Frivolous and vexatious proceedings also amount to abuse of the process of the Court especially where the proceedings are absolutely frivolous. The Courts are not helpless in stopping such proceeding summarily at the earliest point of time.

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30. The present revision has been filed by the petitioners to strike off the pleadings in the suit claiming that it is an abuse

of process of law and claiming that already, the claim of the first respondent herein was settled in the previous proceedings. The petitioner has not filed any application under Order 7 Rule 11 of the Code of Civil Procedure. Only if an application under Order 7 Rule 11 of C.P.C., is filed, the grounds narrated therein have to be raised rejecting the plaint. In the case on hand, as stated already, the grounds raised by the petitioner is entirely on a different footing."

(v) 2013 (1) L.W. 491 (N.Babu vs. S.Shanmugam & others)

"25. Further, though an alternative remedy is available to the revision petitioner, for striking off the suit under Order XXI Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of court and when the facts are not controverted and admitted by the plaintiff/first respondent, the court can exercise the extra ordinary jurisdiction of the court under [Article 227](#) of the Constitution of India and strike off the plaint and as a matter of fact, this court and Honourable Supreme Court held that the right conferred under [Article 227](#) must be exercised very sparingly and it is also settled law that ***when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of [Article 227](#) of the Constitution of India.***"

(vi) 1977 (4) Supreme Court Cases 467 (T.Arivanandam vs.

T.V.Satyapal and another), wherein, it has been held as under:

"5.In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

"It is dangerous to be too good."

6. The trial court in this case will remind itself of s. 35-A C.P.C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

7. We regret the infliction of the ordeal upon the learned Judge of the High-Court by a callous party. We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy."

2.1. These decisions have laid down the dictum that when the suit is filed by not impleading the appropriate and proper parties and by suppressing material facts, it amounts to fraud upon the Court. The facts

in this case clearly establish the fact that the suit filed is prima facie an abuse of process of law. Hence, leave is granted to the petitioner to file this revision petition.

2.2. On appearance, liberty is left open to the respondents to challenge the right of this petitioner to challenge the decree.

3. The Registry is directed to number the petition immediately, if it is otherwise in order.

13.10.2017

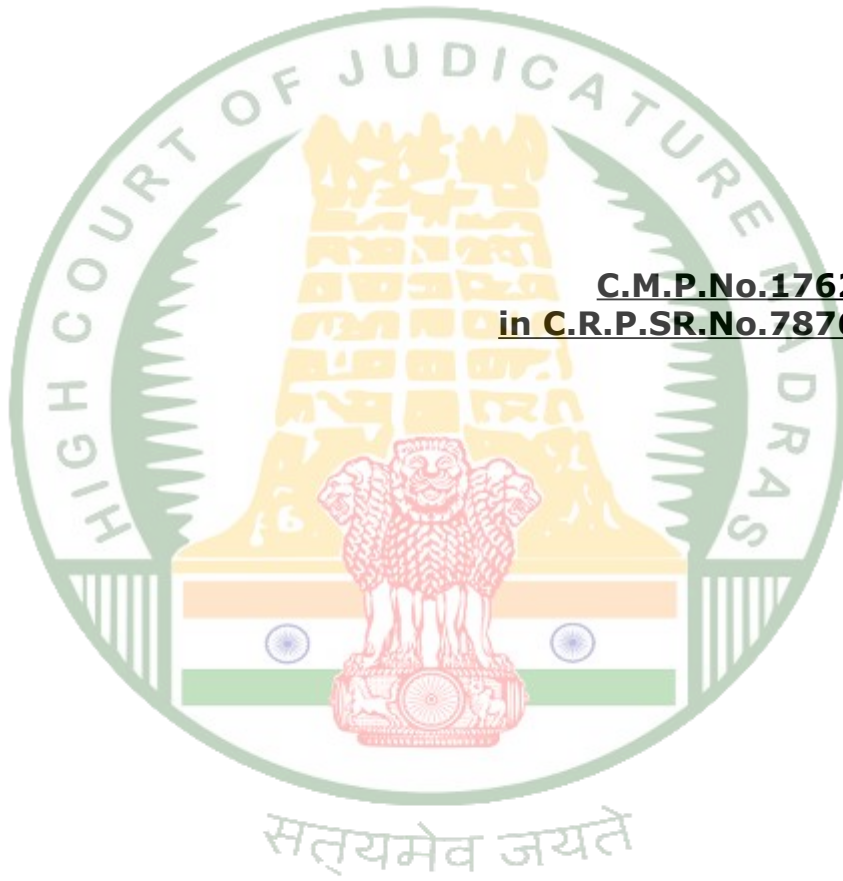
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