



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE C.V. KARTHIKEYAN

C.M.A. (MD) No. 336 of 2017

WEB COPY

R. Balasubramanian

: Appellant / 1st Respondent /
Petitioner

-Vs-

1. S. A. Rajan

: 1st Respondent / Petitioner /
1st Respondent

2. The District Collector,
Salem.

: 2nd Respondent / 2nd Respondent /
2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed Under 43 Rule 1 of Civil Procedure code against the fair and decretal order dated 08.12.2016 made in I.A.No.62 of 2016 in P.O.P.No.86 of 2015 on the file of the Principal District Judge, Dindigul.

For Petitioner

: Mr. R. Balasubramanian
Party-in-person

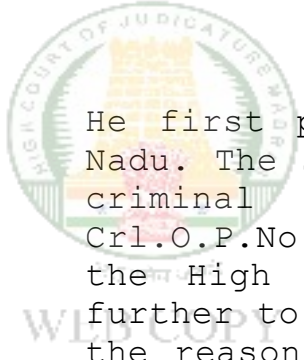
JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the order of the Principal District Judge, Dindigul made in I.A.No.62 of 2016 in P.O.P.No.86 of 2015 dated 08.12.2016. I.A.No.62 of 2016 have been filed by the first defendant in P.O.P.No.86 of 2015. The said Interlocutory Application has been filed under Order 7 rule 11 r/w Order 33 Rule 1 C.P.C., to dismiss the original P.O.P.No.86 of 2015 as the claim is barred by limitation. The learned Principal District Judge by a detailed order had allowed the application and had found that P.O.P.No.86 of 2015 is hopelessly barred by limitation.

2. The facts of the case are that the first respondent herein, who had filed I.A.No.62 of 2016 was the counsel for the present appellant, who was the petitioner in P.O.P.No.86 of 2015. There were three second appeals viz., S.A. (MD) Nos. 54, 55 and 56 of 1989. All the three Second Appeals were pending for nearly 20 years before the High Court and when they were listed 21.08.2009, they were dismissed. Subsequently, the matter was taken before the Honourable Supreme Court which had also dismissed the Special Leave Petitions.

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3. Thereafter, the present appellant had begun to involve himself in making false allegations against the first respondent.



He first preferred a complaint before the Bar Council of Tamil Nadu. The said complaint was dismissed. Thereafter, he had filed a criminal complaint leading to a criminal petition in CrI.O.P.No.6804 of 2013 and that petition was also dismissed by the High Court. However, both the matters were not taken up further to reach their logical conclusions. On the other hand, for the reasons best known to appellant, he filed P.O.P.No.86 of 2015 claiming damages for a sum of Rs.38,00,000/- as against the first respondent herein. He had not chosen to pay any Court fees. He instituted the suit as an indigent person.

4.Law is well settled in respect of abuse of Court. The appellant is guilty of busy forum shopping. He actively indulged in levelling complaints against the 1st respondent who was his own counsel. He first approached the Bar Council. His efforts failed. Thereafter he filed a Criminal complaint. His Criminal Original Petition against the first respondent was also dismissed by this Court. Thereafter, he has filed the present P.O.P., claiming damages.

5.This court has to express its serious concern and disappointment at the dedicated efforts made in re-litigating the same issue in different forms, which not only the High Courts, but also the Honourable Supreme Court have held as abuse of process of court and law. This has been consistently held from the year 1977. In this regard, it is relevant to refer to the following decisions of the Honourable Supreme Court, wherein strong views had been expressed on the point of abuse of process of court through re-litigations.

6.In the decision of the Honourable Supreme Court reported in **AIR 1977 SC 2421 1 (T.Arivanandam Vs. T.V.Satyapal)**, the father had contested the eviction proceedings, lost it, appealed against it, lost again, moved a revision, suffered rejection of the revision petition and after that, his son re-litigated by filing a suit seeking that the eviction order has been obtained by fraud and collusion. In the said decision, the Honourable Supreme Court had stated as follows:-

"2. Here is an audacious application by determined engineer of fake litigations asking for special leave to appeal against an order of the High Court on an interlocutory application for injunction. The sharp practice or legal legerdemain of the petitioner, who is the son of the 2nd respondent, stultifies the court process and makes a decree with judicial seals brutum fulmen. The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive. ..."

<https://hcservices.ecourts.gov.in/hcservices/> **1998 3-SCC-573 (K.K.Modi Vs. K.N.Modi)**, the Honourable Supreme Court had stated as follows:-



"44. one of the examples cited as an abuse of the process of the court is re litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate 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."

8.A careful perusal of the records reveal that the other appellants in the Second Appeal have not joined the appellant herein in his abusive pursuit of holding to ransom the first respondent in different forums by filing vexatious complaints.

9.On facts it is found that the Original suits were disposed by the District Musif Court, On 13.03.1986, the First Appeals by the Sub Court on 02.05.1988, the Second Appeals by the High Court on 01.08.2008 and the Special Leave Petitions by the Hon'ble Supreme Court on 04.12.2009. The present suit was filed only on 27.10.2014., well after the period of limitation of three years. The proceedings before the Bar Council and the criminal complaints are not bonafide and benefit cannot accrue to the first respondent on account of the same.

10.These proceedings are an abuse of process of law of Court. In view of the above, I do not find any reason to admit this Civil Miscellaneous Appeal. Accordingly the same is dismissed. Since, the appellant has appeared as party in person, indulgence is shown and costs are not awarded.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar



To

The Principal District Judge, Dindigul.

+2cc to M/S.R.Balasubramanian, Party in person, SR.No.53242

C.M.A. (MD) No.336 of 2017
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