

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. (PD) No.1383 of 2015
& M.P.No.1 of 2015 and
CMP No.4329 of 2016**

Judgment reserved on 20.12.2017	Judgment pronounced on 03.01.2018
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1.Natarajan
2.Ramasamy @ Venkataraman
3.Kumar

...

Petitioners

Vs

1.Moorthy
2.Asalambal Ammal
3.Ranganathan
4.Kalaiarasi
5.Anjalai
6.Venkataraman
7.Kamaladasan
8.Kesavan

...

Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.44 of 2015 on the file of the learned Principal District Munsif Court, Tirukoilur.

For Petitioners : Mr.N.Suresh

For Respondents : Mr.N.Manohar for R1 & R2
No appearance for R3 & R8
Not ready in notice reg. R4 to R7

ORDER

This Civil Revision Petition is filed to strike off the plaint in O.S.No.44 of 2015 on the file of the learned Principal District Munsif Court, Tirukoilur.

2. The petitioners are defendants 1 to 3, respondents 1 & 2 are plaintiffs and respondents 3 to 8 are defendants 4 to 9 in the suit in O.S.No.44 of 2015 on the file of Principal District Munsif Court, Tirukoilur. The petitioners have filed the present Civil Revision Petition to strike off the plaint in O.S.No.444 of 2015.

3. According to the learned counsel for the petitioners, the first petitioner filed O.S.No.24 of 1988 on the file of District Munsif Court, Tirukoilur against his father K.V.Raman, second petitioner who is the brother of first petitioner and one M.Ranganathan, third respondent herein for declaration of his title and for mense profits. The said suit was dismissed on 22.12.1995. Against the said order, the first petitioner filed A.S.No.57 of 1996 and the said appeal was allowed on 31.07.1997. Aggrieved against the said order, the third respondent herein filed S.A.No.379 of 1999 before this Court. This Court, by judgment dated 17.06.2011 dismissed the Second Appeal.

The third respondent herein preferred SLP (Civil) No.6715 of 2012 before the Hon'ble Apex Court and the Hon'ble Apex Court dismissed the SLP on 19.10.2012. The first petitioner filed E.P.No.153 of 2011 in O.S.No.24 of 1988 for execution of the decree. The respondents 1 & 2 filed application under Order XXI Rule 97 claiming to be the owner of the property. The said application was rejected without being numbered. CRP (NPD) No.1079 & 1080 of 2013 filed by the respondents 1 & 2 before this Court were also dismissed on 30.04.2014. The respondents 1 & 2 filed SLP (Civil) No.18996 & 18997 of 2014 before the Hon'ble Apex Court. Both the SLPs were dismissed as withdrawn.

4. The learned counsel for the petitioners contended that the present suit filed by the respondents 1 & 2 is abuse of process of court and they are re-litigating the issue which was already decided in the suit in O.S.No.24 of 1988. The third respondent who is the vendor of vendors of respondents 1 & 2 contested the suit in O.S.No.24 of 1988 filed by the first petitioner claiming title over the suit property and the same was rejected and decree in O.S.No.24 of 1988 attained finality when the Hon'ble Apex Court dismissed the SLP (Civil) No.6715 of 2012 filed by the third respondent herein.

4(a) The respondents 1 & 2, at the instigation of third respondent are re-litigating the issue. The application filed by respondents 1 & 2 under Order XXI Rule 97 CPC was rejected without being numbered and CRP (NPD) Nos.1079 & 1080 of 2013 were also dismissed by this Court by order dated 30.04.2014 and SLP (Civil) Nos.1896 & 18997 of 2014 filed by the respondents 1 & 2 were also dismissed as withdrawn. Once the claim of the third parties are decided under Order XXI Rule 97 CPC, there cannot be any suit and the present suit filed by the respondents 1 & 2 is barred by limitation and the Court below failed to take into consideration the finality of earlier suit in O.S.No.24 of 1988.

4(b) The learned counsel for the petitioners, in support of his contention, relied on the following judgments -

(1) 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.

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.

(2) CDJ 1998 SC 1015 [K.K. Modi v. K.N.Modi & Others]

42. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

43. One of the examples cited as an abuse of the process of 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 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 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 courts' 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.

(3) CDJ 2017 MHC 4358 [P.Srikanth v. R.Venkatesan & Ors.]

27. 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.

(4) CDJ 2017 MHC 6193 [Rajendran & Anr.v. Ettammal & Ors.]

12. 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.

(5) 2013 (1) CTC 180 [N.Babu v. S.Shanmugam and anr.]

7. In the judgment reported in (2003) 3 MLJ 566, this court, following the judgment reported in *K.K.MODI v. K.N. MODI* ((1998) 3 SCC 573), has held that the court has got power to stop vexatious proceedings and when there is a clear abuse of process of court, the court has to view such conduct seriously and the same has to be deleted to save the precious time of the public and the court being wasted.

23. In the judgment reported in 2010 (4) CTC 690, it has been held as follows:-

"29. From the cumulative reading of the decisions referred to supra, it is easily discernible that *Article 227* of the Constitution of India can be invoked by every High Court under the guise of superintendence, on the following grounds:

- (a) to prevent abuse of process of law
- (b) to prevent miscarriage of justice
- (c) to prevent grave injustice
- (d) to establish both administrative as well as judicial power of High Court."

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.

5. Per contra, the learned counsel appearing for respondents 1 & 2 contended that the third respondent herein purchased the property on 27.10.1963 in public auction conducted by the Revenue Department for recovery of arrears of revenue of K.V.Raman, father of the petitioners herein. On 20.05.1964, the sale was confirmed in favour of the third respondent. The third respondent, by deed of sale dated 19.11.1966 sold the property to one Thoppuliammal who in turn by deed of sale dated 14.04.1970 sold the same to Periasamy Mooppar, the father of respondents 1 & 2. The revenue records were mutated by showing Periasamy Mooppar as owner and on the death of Periasamy Mooppar, the respondents 1 & 2 became the owner of the suit property. As they are deaf and dumb, the third respondent who is their relative continued to be in possession of the property as lease holder.

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5 (a) The first petitioner filed suit against his father, second respondent and third respondent therein without impleading the respondents 1 & 2. The third respondent herein, without informing the respondents 1 & 2 was contesting the suit as though he was the owner of the suit property. When the respondents 1 & 2 came

to know about the suit in O.S.No.24 of 1988 and EP filed by the first petitioner, they filed application under Order XXI Rule 97 claiming title over the suit property. The said application was dismissed on 30.06.2014. CRP (NPD) Nos.1079 & 1080 of 2013 filed by the respondents 1 & 2 were dismissed by this Court on 30.04.2013. In the SLP (Civil) No.18996 & 18997 of 2014 filed by respondents 1 & 2, they have sought liberty to claim their title before the Civil Court and prayed for withdrawal of SLP. The Hon'ble Apex Court dismissed the SLP as withdrawn giving liberty to respondents 1 & 2 to approach the competent court.

5 (b) In view of the liberty given by the Hon'ble Apex Court, respondents 1 & 2 filed present suit and the same is maintainable. The present suit is not an abuse of process of court, not re-litigating, vexatious or barred by limitation and prayed for dismissal of the Civil Revision Petition.

5 (c) The learned counsel for the respondents 1 & 2 relied on the following judgments, in support of his contention.

(1) 2014 (6) SCC 508 [Jacky v. Tiny @ Antony]

2. This appeal has been preferred by the plaintiff-appellant against the judgment and order dated 27.10.2011 passed by the High Court of Kerala at Ernakulam in O.P. (C) No.1792 of 2011. By the impugned judgment and order, the High Court while exercising its power under Articles 226 and 227 of the Constitution of India, set aside the plaint and further proceedings initiated on the basis of the plaint in the suit, quashed the order passed by the Munsiff Court and imposed cost of Rs.25,000/- on the appellant for payment in favour of the respondent-writ petitioner.

13. In view of such observations, the High Court allowed the writ petition and quashed the plaint and other orders.

15. Nature and scope of power under [Article 227](#) of the Constitution of India was considered by this Court in [Jai Singh and others v. Municipal Corporation of Delhi and another](#), (2010) 9 SCC 385. In the said case, this Court held:

“15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well-recognised principles governing the exercise of jurisdiction by the High Court under [Article 227](#) of the Constitution of India. Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this

article is, in some ways, wider than the power and jurisdiction under [Article 226](#) of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well-recognised constraints. It can not be exercised like a "bull in a china shop", to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice."

(2) 2012 (2) MWN 561 [K.Ponnammal & ors. v. V.Thayanban & Ors.

10. The only question therefore that falls for consideration is as to whether in the facts and circumstances of the case, can this Court, in exercise of its supervisory power under [Article 227](#) of the Constitution of India strike off the plaint.

18. In the light of the principles laid down by the Supreme Court, in the aforesaid cases, it can safely be concluded that :

(i) power of judicial superintendence under [Article 227](#) must be exercised sparingly only to keep the courts and tribunals within their bounds of authority and not to correct mere errors;

(ii) the supervisory jurisdiction conferred on the High Court under [Article 227](#) of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameter and not to correct an error apparent on the face of the record;

(iii) where the law provides remedy by filing an appeal or revision, then exercise of power

under [Article 227](#) may be refused, on the ground of availability of such alternative efficacious remedy by way of appeal or revision to the aggrieved party.

19. Applying the conclusions arrived at herein above, in the instant case, we find that the revision petition cannot be entertained and the relief sought for cannot be granted by this Court in exercise of supervisory jurisdiction under [Article 227](#) of the Constitution of India.

21. Apart from that the petitioners herein have other statutory alternative remedies available under the Code of Civil Procedure. The petitioners herein, who are the defendants in the pending suit, may also move the Court below by filing an application for rejection of the plaint under Order 7 rule 11 of the C.P.C., which reads as under:-

11. Rejection of plaint:- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to so correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is property valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supply of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that

refusal to extend such time would cause grave injustice to the plaintiff.

22. It is, therefore, manifest that the respondents/petitioners herein instead of availing the remedies provided under the Code of Civil Procedure have erroneously invoked the jurisdiction of this Court under [Article 227](#) of the Constitution of India.

(3) 2007 (7) MLJ 13 [Ganapathy Subramanian v. Ramalingam]

6. [Article 227](#) of the Constitution of India confers on every High Court the power of superintendence over all Courts and Tribunals through out the territory in relation to which it exercises jurisdiction excepting any Court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power, the High Court has been conferred with certain specific powers under clauses (2) and (3) of [Article 227](#) of the Constitution. It could be seen that the power of superintendence so conferred on the High Court is administrative as well as judicial and is capable of being invoked at the instance of any person aggrieved. The paramount consideration behind vesting such wide power of superintendence in the High Court is to clear the path of justice. Such a power of superintendence is not subject to technicalities of procedure or traditional fetters. That power so conferred cannot also be regarded as appeal or revisional jurisdiction and should not be exercised in the garb of exercise of supervisory jurisdiction under [Article 227](#) of the Constitution and hence, the Court has devised a self imposed rule of discipline on this power. The supervisory jurisdiction can be refused to be exercised when an alternative efficacious remedy by way of defending the suit or filing an appeal or revision is available to the person aggrieved. The Court shall have regard to the legislative policy formulated on experience and expressed by enactments where the legislature in

exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from the appellate or revisional jurisdiction in the hope of accelerating conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision.

16. The supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. Mere filing of a suit by the respondents and taking the suit on the file by the trial Court cannot be regarded as an act on the part of the trial Court to transgress its jurisdiction or its bound. Of course, the party who files the suit might have filed the suit suppressing material facts or made up the suit to his convenience for seeking the relief which is not otherwise entitled to, But that fact has to be considered by the trial court during the relevant point of time. There is no impediment or embargo for the petitioner to put forth his contentions before the trial court to strike off the plaint at the threshold. As this Court is relegating the petitioner to go before the trial Court for the relief, the Court has restrained itself from going into the facts of the case, as any observation made by this Court would have a bearing on the suit, which is pending before the trial court. Of course, the petitioner is also having an effective remedy in the Code of Civil Procedure itself to have the suit struck off and he could very well avail that remedy. On the above said reasoning, I am not inclined to grant the relief as prayed for in the revision.

17. Yet another factor is also to be taken into consideration. Of-late, High Courts are flooded with cases and the Courts have reached a saturation point with the backlog starring on the face and the disposal of the cases by the Courts for the past four or five years could never match the institution of the cases. When Courts are facing such a situation, this sort of approaching this Court can be avoided. By saying so, this Court should not be misunderstood of shirking of its responsibilities, but it has to be taken in the way it is stated, that is, the Court has just high

lighted the state of affairs. This Court also sends a cautionary note to the litigant public to approach the court of first instance first.

6. Heard the learned counsel for the petitioners as well as respondents 1 & 2 and perused the materials available on record.

7. The petitioners are seeking to strike off the plaint in O.S.No.44 of 2015 on the ground that the respondents 1 & 2 who are close relative of third respondent filed the present suit at the instigation of the third respondent and are re-litigating the issue already decided. The petitioners are contending as stated above in view of the decree passed in O.S.No.24 of 1988. The said contention is untenable for the simple reason that the respondents 1 & 2 are not parties to the suit in O.S.No.24 of 1988 filed by the first petitioner. The respondents 1 & 2 are claiming title based on sale deed dated 14.04.1970 by which father of respondents 1 & 2 purchased the property from one Thoppuliammal. According to the respondents 1 & 2, Thoppuliammal, vendor of the respondents 1 & 2's father purchased the suit property from third respondent by deed of sale dated 19.11.1966. Based on these transactions, respondents 1 & 2 filed application under Order XXI Rule 97 CPC to determine their title to the property. The said application was rejected and two Civil Revision Petitions filed by respondents 1 & 2

were dismissed by this Court. In SLP (Civil) No.18996 & 18997 of 2014, filed by respondents 1 & 2 challenging the order of this Court in CRP (NPD) Nos.1079 & 1080 of 2013, the learned counsel for respondents 1 & 2 sought permission to withdraw the said SLP with liberty to approach the competent court for their claim. The Hon'ble Apex Court, by order dated 01.12.2014 passed the following order -

"After arguing the matter for sometime, the learned counsel for petitioners sought permission to withdraw the Special Leave Petitions to enable the petitioners to move before the Court of competent jurisdiction for appropriate relief. Liberty is granted, it is not barred by limitation and without any liberty to challenge the same very order before this Court. The Special Leave Petitions are dismissed as withdrawn".

8. A reading of the said order shows that the respondents 1 & 2 had been granted liberty by Hon'ble Apex Court "to move before the court of competent jurisdiction for appropriate relief". This liberty given by the Hon'ble Apex Court amounts to filing of the suit by respondents 1 & 2 to establish their case. In view of the liberty given by the Hon'ble Apex Court, it cannot be said that respondents 1 & 2 are re-litigating the issue or suit filed by the respondents 1 & 2 is vexatious or abuse of process of court. The respondents 1 & 2 have also made averments as to how the suit is

maintainable and that suit is not barred by limitation. The said averments can be decided only by appreciating the evidence let in by the parties, especially the issue whether the suit is barred by law or not since the said issue is a mixed question of law and fact.

9. Considering the facts of the case and the liberty given by the Hon'ble Apex Court, the judgments relied on by the learned counsel for the petitioners do not advance the case of the petitioners.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed. It is open to the petitioners to file written statement raising all the objections available to them in law which will be decided on merits, in accordance with law by the Trial Court.

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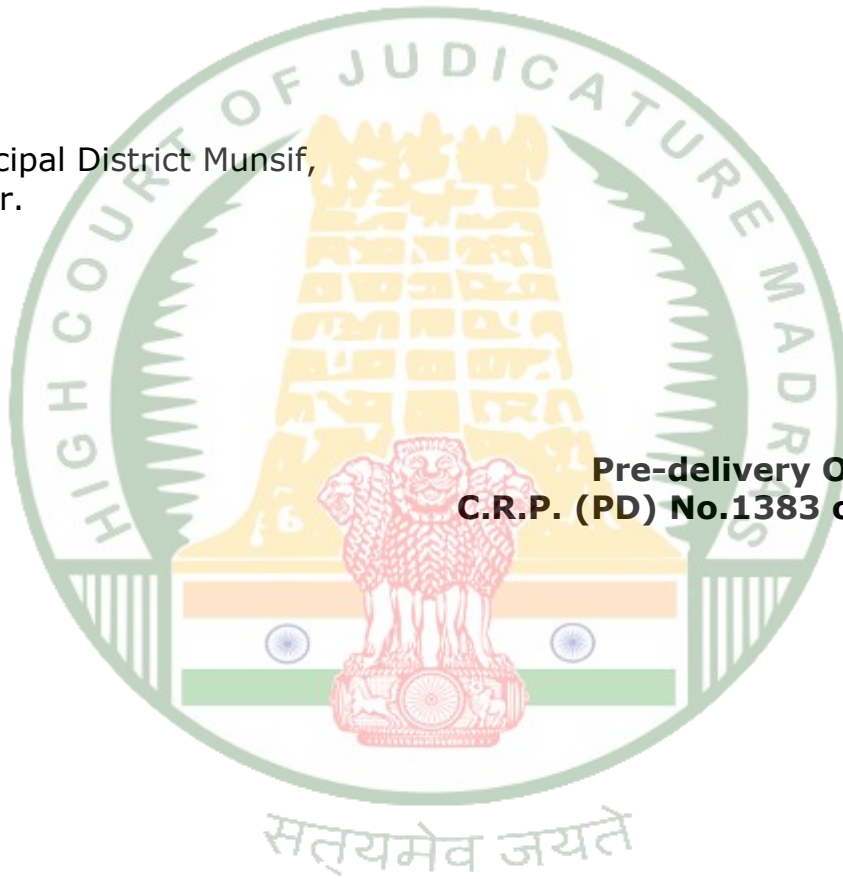
Index : Yes/No

V.M.VELUMANI, J.

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To

The Principal District Munsif,
Tirukoilur.



**Pre-delivery Order in
C.R.P. (PD) No.1383 of 2015**

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