

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.647 of 2015
& M.P.No.1 of 2015

S.Shanmugam

.. Petitioner

Vs.

1.Meenakshi

2.Arul

3.State of Tamilnadu

Rep. By District Collector,
Thiruvallur.

4.Revenue Divisional Officer,
Thiruvallur.

5.Thasildar

Taluk Office
Poonamallee

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 07.10.2014 made in I.A.No.804 of 2014 in O.S.No.463 of 2010 on the file of the Principal District Munsif Court, Poonamallee.

For Petitioner : Mr.Ravikumar Paul, Senior Counsel
for M/s.Paul and Paul

For R1 to R5 : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 07.10.2014 made in I.A.No.804 of 2014 in O.S.No.463

of 2010 on the file of the Principal District Munsif Court, Poonamallee.

2.The petitioner is 4th defendant, respondents 1 and 2 are the plaintiffs and respondents 3 to 5 are the defendants 1 to 3 in O.S.No.463 of 2010 on the file of the Principal District Munsif Court, Poonamallee. The respondents 1 and 2 filed the said suit against the petitioner and respondents 3 to 5 for permanent injunction restraining the respondents 1 to 3 from carrying out any mutation of the revenue records in the name of the petitioner and permanent injunction restraining the petitioner from in any way interfering with respondents peaceful possession and enjoyment of the suit property. The petitioner filed written statement on 07.07.2011. Trial commenced. The respondents 1 and 2 examined P.W.1. P.W.1 filed proof affidavit on 10.02.2014 and marked the documents. The petitioner took time to cross-examine P.W.1. At this stage, the petitioner filed I.A.No.804 of 2014 under Section 151 of C.P.C to strike off the plaint on the ground of fraud played by the respondents 1 and 2 by suppressing material facts and fabrication of false evidence. According to the petitioner, the said property is Trust property. The original owner P.Sivaprakasa naiker and joint owners have created Public Charitable Trust by the deed of trust dated

26.03.1953. After his death, his daughter Mrs.Kamala, the mother of the second respondent knew about the Charitable Trust and proof of the Trust. Inspite of the same, she settled the property on the second respondent by deed of settlement dated 21.07.2008. The respondents 1 and 2 did not approach the Court with clean hands and patta issued in the name of the first respondent was cancelled. The respondents 1 and 2 suppressed these facts and filed the suit and prayed for striking off the plaint.

3.The second respondent filed counter affidavit which was adopted by the first respondent, wherein the second respondent denied all the averments made by the petitioner. The respondents 1 and 2 contended that the suit is filed against the private party and not against Charitable Trust and no Trust is functioning at Kattuppakam. Only to drag on the proceedings, the present application is filed by the petitioner. The petitioner, after entering appearance through Advocate, did not file any written statement and he was set exparte. On an application filed by him, the said order was set aside. On 05.02.2014, the suit was posted in the special list. On that day, the petitioner did not appear. The Witness on behalf of the respondents 1 and 2 were examined and suit was posted to 25.02.2014 for judgment. On application filed by the

petitioner, exparte order was set aside and suit was posted for cross examination of witnesses 1 and 2. At this stage, the petitioner has come out with the present application to strike off the plaint under Section 151 of C.P.C. The application filed under Section 151 of C.P.C is not maintainable. The respondents 1 and 2 further contended that the plaint can be rejected only as per provisions of Order VII Rule 11 of C.P.C. The petition filed by the petitioner does not come under the said order. The petitioner is not managing trustee of Charitable Trust and he is a land grabber. The patta was not cancelled as alleged by the petitioner. The present application is filed only to drag on the proceedings and prayed for dismissal of the application.

4.Before the learned Judge, both the petitioner and respondents did not let in any oral evidence. The petitioner marked two documents as Exs.A1 and A2. The respondents 1 and 2 marked 9 documents as Exs.B1 to B9.

5.The learned Judge, considering the averments in the affidavit, counter affidavit, provisions under Order VII rule 11 of C.P.C and materials on record, dismissed the application, holding that the petitioner has not filed application under Order VII Rule 11

of C.P.C and petition filed under Section 151 of C.P.C is not maintainable.

6. Against the said order of dismissal dated 07.10.2014 made in I.A.No.804 of 2014 in O.S.No.463 of 2010, the petitioner has come out with the present Civil Revision Petition.

7. The learned Senior Counsel for the petitioner contended that the learned Judge has committed material irregularity in holding that application under Section 151 of C.P.C is not maintainable. The learned Judge ought to have seen that Court has inherent power under section 151 of C.P.C to strike off the plaint on the ground of fraud. The learned Judge failed to appreciate the documents filed by the petitioner. The Court has power to strike off the plaint at any stage of the suit when the respondents 1 and 2 have played fraud. In support of his contentions, the learned Senior Counsel relied on the following judgments:

(i) CDJ 2003 MHC 1674 (K.K.Swaminathan Vs. Srinivasagam):

"30. In the cases of this nature, it is not as if the Court is powerless or its hands are tied merely because the matter comes to the notice of the court in the revisional Jurisdiction under Sec.115 CPC. The

investiture of power u/s.115 CPC is of superintendence and visitorial..... Not fettered to deal with such situations. Where there is clear abuse of process of court, the Court has to view such conduct seriously and the same is to be halted to save precious time of the public and the court being wasted. In the recent decision of the Supreme Court reported in K.K.Modi ..vs.. K.N.Modi(1998)3 SCC 573 elaborately considering the abuse of process of the Court, the Supreme Court has held that the Court has power to stop frivolous and vexatious proceedings. The Supreme Court has only cautioned that such power is to be exercised with circumspection. It is necessary to refer to the observation of the Supreme Court, which are very much relevant for our purpose.

42.Under Order 6 Rule16, the court may, at any state of the proceeding, Order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the Court. Mulla in his treatise on the Code of Civil Procedure, (15th Edn., Vol.II.P.1179, note 7) has stated that power under clause A, of Order 6, Rule 15, of the Code is confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder Courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of the Court on the basis of what is stated in the

plaint.....”

“33. Be it under Article 227 of the Constitution of India or under section 115 CPC, the High Court has general supervisory jurisdiction. That supervisory revisional jurisdiction of the High Court is the residuary jurisdiction conferred on the High Court. Thus, exercising the supervisory jurisdiction conferred on the High Court under section 115 CPC, it is just and necessary that the plaint in O.S.2473/1996 to be ordered to be struck off. In the circumstances of the case, it is also necessary to direct the Revision Petitioner to pay the costs of the suit to the Respondent.”

(ii) 2007 (1) CTC 251 (Poppat Jamal & Sons, rep. By its Managing Partner, Mahmud Jamal, 129, Broadway, Chennai Vs. N.M.Venkatachalapathy @ Babulal and another):

“10.The above facts would only go to show that the respondents by playing fraud and misrepresentation have filed the Suit. The Plaintiffs have not approached the Court with clean hands and are guilty of fraud, suppression of facts and misrepresentation and as such they are not entitled for any relief. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite

determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. 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 as has been held by the Apex Court in S.P.Chengalvaraya Naidu v. Jagannath, 1994 (1) SCC 1. This aspect of the matter has also been considered by the Hon'ble Supreme Court in its decisions in Roshan Deen v. Preeti Lal, 2002 (1) SCC 100; Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education, 2003 (8) SCC 311; Ashok Leyland Ltd. v. State of T.N., 2004 (3) SC 1; and State of A.P and another v. T. Suryachandra Rao, 2005 (6) SCC 149. In view of the settled legal position of law, the case of the plaintiffs has to be thrown out at the threshold and in this case, it is the duty of the Court to reject the Plaint."

(iii) CDJ 1994 MHC 529 (Kaliaperumal Naidu Vs. Kuppuswami Naidu and others):

"2. It is a well-settled legal proposition that quoting wrong provision of law in the application cannot be a bar by itself in granting the remedy. In Alamelu. v. Rama Iyer, A.I.R. 1922 Mad. 446, a Division Bench of this Court has held that the fact the petition in a case is headed as under Sec. 151 does not debar the Court from proceeding with it under any other provision, which it may find actually applicable....."

8. Heard the learned Senior counsel for the petitioner and perused the materials available on record. Though notice was served on the respondents and their names are printed in the cause list, there is no representation either in person or through counsel.

9. From the materials on record, it is seen that the petitioner was set exparte on two occasions and subsequently, the said order was set aside on the applications filed by the petitioner. The learned Senior Counsel for the petitioner contended that the Court has inherent power under Section 151 of C.P.C to strike off the plaint when fraud played by the respondents 1 and 2 are brought to the notice of the Court. This contention is not acceptable and contrary to the provisions of C.P.C and Constitution of India. The Trial Court has no power to strike off the plaint. The plaint can be struck off by this Court on the petition filed by the defendant under Article 227 of the Constitution of India or Section 151 of C.P.C. As far as the Trial Court is concerned, the Court can reject the plaint if defendant makes out the case under Order VII Rule 11 of C.P.C. When there are specific provisions for striking of the plaint or for rejection of plaint, the defendant is not entitled to file petition under Section 151 of C.P.C before the lower Court to strike off the plaint. The

learned Judge has considered all the above facts and provisions of law and has rightly dismissed the application filed by the petitioner. In view of the above facts, the judgments relied on by the learned Senior Counsel for the petitioner does not advance the case of the petitioner. Further, the respondents 1 and 2 are claiming title over the suit property as per the settlement deed whereas the petitioner is claiming title over the suit property belonging to the Charitable Trust. The respondents 1 and 2 prayed for permanent injunction on the ground that they are in possession and enjoyment of the property. It is for the respondents 1 and 2 to prove their possession and it is for the petitioner to prove that property belongs to Charitable Trust and respondents 1 and 2 are not in possession of the suit property and only petitioner is in possession by letting in acceptable evidence. The issue whether the property belongs to Charitable Trust or not and whether the respondents 1 and 2 are in possession of the suit property can be decided only by appreciating the evidence let in by the parties.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently connected Miscellaneous petition is closed. The suit is of the year 2010. Already trial commenced and P.W.1 was examined. The learned Principal District Munsif, Poonamallee is

directed to dispose of the suit as expeditiously as possible, in any event not later than three (3) months from the date of receipt of a copy of this order.

09.01.2018

Index :: Yes
Internet :: Yes/No
gsa

To

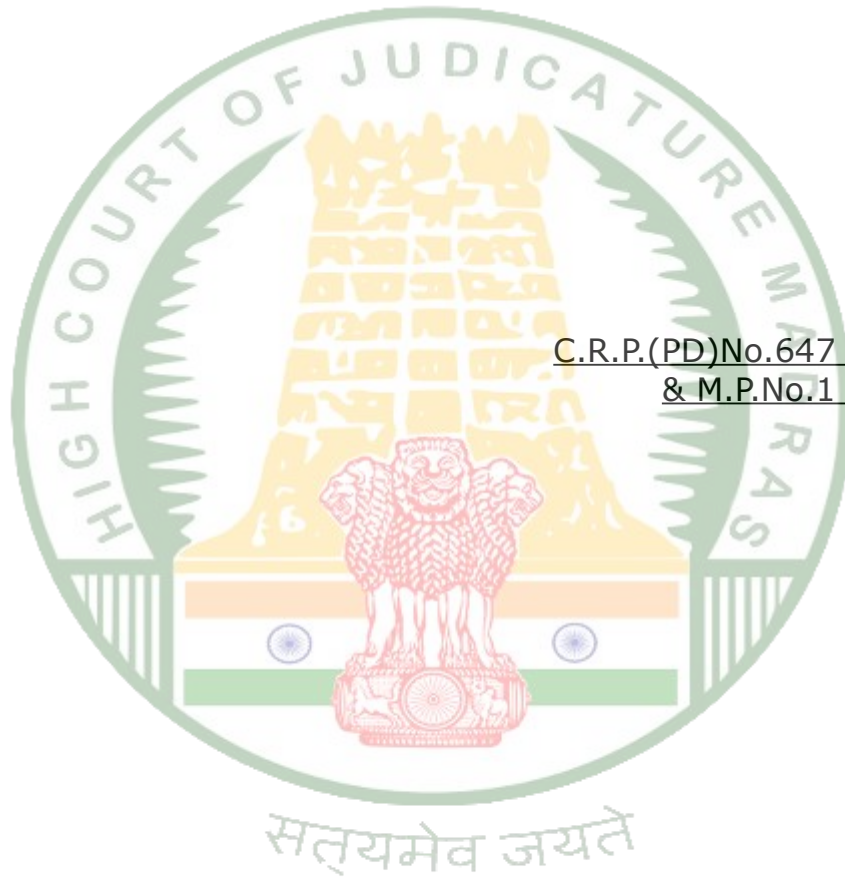
- 1.The District Collector,
State of Tamilnadu
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- 2.The Revenue Divisional Officer,
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- 3.Thasildar,
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- 4.The Principal District Munsif,
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V.M.VELUMANI,J.

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