

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.991 of 2015  
and M.P.No.1 of 2015

1.Mani alias Nagamani  
2. Saravanan  
3. Raja Rajeswari alias Easwari ..Petitioners  
Vs.  
P.Ramakrishnan .. Respondent

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.48 of 2015 on the file of the I Additional Subordinate Court, Salem.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.R.Gandhi Senior Counsel  
for Mr.R.G.Narendhiran

ORDER

The Civil Revision Petition is filed to strike off the plaint in O.S.No.48 of 2015 on the file of the I Additional Subordinate Court, Salem.

2. The petitioners are the defendants and respondent is plaintiff in O.S.No.48 of 2015 on the file of the I Additional Subordinate Court, Salem. The respondent filed said suit for declaration and possession and permanent injunction restraining the petitioners from alienating or encumbering the property.

3. The learned counsel for the petitioners made the following submissions:

(i) The petitioners have come out with the present Civil Revision Petition to strike off the plaint.

(ii) The sister and wife of the respondent along with others filed O.S.No.881 of 2004 on the file of the II Additional District Munsif Court, Salem, for partition and separate possession of the properties of Madhavan Chettiar alleging that the said Madhavan Chettiar died intestate on 11.06.1985 leaving behind the plaintiffs therein as his legal heirs. In the said suit, petitioners contended that after divorcing Kamalu @ Rajammal, the sister of the respondent, who was the first plaintiff in the said suit, the said Madhavan Chettiar married the first petitioner herein and petitioners 2 and 3 are their children and Madhavan Chettiar by the Will dated

01.06.1984 bequeathed the property to the first petitioner and died on 11.06.1985. The said suit was decreed on 18.07.2005. Challenging the same, petitioners filed first appeal and the judgment and decree passed in O.S.No.881 of 2004 was confirmed in the first appeal and first appeal filed by the petitioners were dismissed on 21.12.2006. Against the said judgment and decree, the petitioners filed S.A.No.438 of 2007 in this Court. This Court by the judgment and decree dated 29.10.2010, allowed the Second Appeal filed by the petitioners and dismissed the suit filed by the said Kamalu @ Rajammal and others. The judgment of this Court was upheld by the Hon'ble Apex Court on 05.08.2014 in S.L.P.(C).No.1350 of 2011 and review petition in R.P.(C)No.2481 of 2014 filed by the petitioners therein was also dismissed on 03.12.2014.

(iii) In the earlier suit O.S.No.881 of 2004, the petitioners have proved the Will in favour of the petitioners by examining attesting witness. This Court and the Hon'ble Apex Court have held that the said Will is genuine.

(iv) The respondent herein, who is the brother of said Kamalu @ Rajammal/first plaintiff in O.S.No.881 of 2004 and husband of

Banumathi/second plaintiff in O.S.No.881 of 2004, has come out with the present suit O.S.No.48 of 2015 in order to prevent the petitioners from enjoying the fruits of the judgment of this Court in the Second Appeal and confirmed by the Hon'ble Apex Court. The respondent, his sister/first plaintiff in O.S.No.881 of 2004 and his wife Banumathi/second plaintiff in O.S.No.881 of 2004 have forged the Will dated 19.10.1984 alleged to have been executed by Madhavan Chettiar and at the instigation of Kamalu @ Rajammal and others, filed the present suit.

(v) According to the respondent, Madhavan Chettiar executed the said Will dated 19.10.1984 bequeathing the property to carry out the religious activities mentioned therein. Madhavan Chettiar died on 11.06.1985. Kamalu @ Rajammal and others filed suit in the year 2004. The respondent and others (plaintiffs therein) have not mentioned about the Will alleged to have been executed by Madhavan Chettiar in favour of the respondent. Only after judgment of this Court, order of the Hon'ble Apex Court in S.L.P. and filing of review petition before the Hon'ble Apex Court, respondent has come out with the present suit based on the forged Will dated 19.10.1984. The suit filed by the respondent is abuse of process of

Court. The plaint is liable to be struck off. In support of his contentions, the learned counsel for the petitioners relied on the following judgments:

(i) **(1977) 4 SCC 467 (T.Arivandandam v. T.V.Satyapal and another)**;

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentantly 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 plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint 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 would insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men,

(Cr.XI) and must be triggered against them. 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."

**(ii) (1994) 1 SCC 1 (S.P.Chengalvaraya Naidu (dead) by legal heirs v. Jagannath (dead) by legal heirs and others);**

"5. ... The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

6. ... Non-production and even non-mentioning of the release deed at the trial is tantamount 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."

(iii) **2017-3-L.W. 443 (P.Srikanth v. R.Venkatesan and others);**

"21. .. .. The learned Senior Counsel for the petitioner contended that earlier, the first respondent's father Ramakrishnan filed O.S.No.901 of 1986 for declaration of title and injunction in respect of the very same suit property against the second respondent and father of the second respondent. The said suit was dismissed holding that the first respondent's father failed to prove his title over the suit property as well as his possession. The appeal in A.S.No.179 of 1992 filed by the first respondent's father was also dismissed confirming the judgment of the trial court. In view of the same, the first respondent did not acquire any title by the settlement deed. By suppression of material fact, he has filed the present suit which amounts to abuse of process of law and fraud being played on the Court. This contention has a considerable force."

(iv) **2013 (3) MWN (Civil) 702 (S.R.Nanda Kishore v. The Body of Villagers of No.29, Mambakkam Village, Chengalpattu Taluk, Kancheepuram District and others);**

"17. In K.K.Modi v. K.N.Modi, reported in AIR 1998 (3) SCC 573, the Hon'ble Apex Court has held as follows :

"43. 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."

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25. It is a well settled law that the power under Article 227 of the Constitution of India, involves a duty on the part of the High Court to keep all Court within its jurisdictional bounds to prevent abuse of process of Court. This Court has

got inherent jurisdiction under Article 227 of the Constitution to prevent abuse of process of Court and passing order to struck off plaint from the file of the Court, if it is a clear abuse of process of law and Court, as per the plaint averments and the relief sought for by the party seeking the relief.

27. It has been made clear by the Hon'ble Apex Court that for invoking Article 227 of the Constitution, to strike off the plaint, there must be abuse of process of Court, as per the plaint averments and the admission made by the plaintiff, seeking the relief in the suit, otherwise this Court cannot pass such orders."

**(v) (2013) 3 MWN (Civil) 717 (Kairunnisa Begum and others v. B.N.Sreedhara Murthy and others);**

"5. In the judgment reported in M.V.JAYAVELU v. E.UMAPATHY (2011-1-MWN (Civil) 113), after relying upon the judgment of the Honourable Supreme Court reported in Azhar Hussain v. Rajiv Gandhi, (1986 (SUPP) SCC 315), I held as follows:-

"The provisions of Order 7, Rule 11 are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the Court. In appropriate cases, directions can be

given by this Court as well as the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law."

6. In the judgment reported in Azhar Hussain v. Rajiv Gandhi, in 1986 (SUPP) SCC 315, the Honourable Supreme Court held as follows:-

"Learned Counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substances, the argument is that the Court must proceed with the trial record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondent. The word of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary scandalous, frivolous or

vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law."

7. In the judgment reported in 2011 (2) MWN (CIVIL) 363, the learned Judge of this Court elaborately dealt with the question relating to abuse of process of Court and after relying upon the decision reported in K.K.MODI v. K.N.MODI (1998 (3) SCC 573), RANIPET MUNICIPALITY, REP BY ITS COMMISSIONER AND SPECIAL OFFICER, RANIPET v. M.SHAMSHEERKHAN (1998 (1) CTC 66) and TAMIL NADU HANDLOOM WEAVERS' CO-OPERATIVE SOCIETY v. S.R. EJAZ REP BY HIS POWER AGENT, MURALIDHAR T.BALANI (2009 (5) CTC 710 = 2009 (5) LW 79), held that revision filed to strike off the plaint without filing application under Order VII Rule 11 when it is a clear case of abuse of process of law and when the present suit is a clear attempt of re-litigation is maintainable.

8. In the judgment reported in K.K.SWAMINATHAN v. SRINIVASAGAM (2003 (4) CTC 347), this Court held that one of the most abuse of process of Court is re-litigation and it is contrary to justice to re-litigate the same issue which has already been tried and decided earlier against a person. Therefore, we will have to see whether the present suit amounts to re-litigation and it is a clear abuse of process of Court."

(vi) **2013 (3) MWN (Civil) 722 (Annajothi and others v. S.Jainston Sigamony and others);**

"7. Further, in the judgment reported in J.M.Richad v. Church of South India Synod, (2012) 3 MLJ 394, this Court has held that Article 227 can be invoked to prevent the abuse of process of law, to prevent the miscarriage of justice, and to prevent the grave injustice and when the Court has no jurisdiction to decide the suit or the jurisdiction was improperly exercised in a manner not known to law, this Court has got power to correct the said order by exercising its power under Article 227 of the Constitution of India."

4. The learned Senior Counsel for the respondent submitted that the respondent is not a party to the earlier proceedings and the decision rendered in the said suit is not binding on him. The respondent has become absolute owner of the property based on the Will dated 19.10.1984 executed by Madhavan Chettiar. The suit filed by the respondent is not abuse of process of Court. The respondent was not aware of the earlier suit filed by Kamalu @ Rajammal. The respondent is entitled to have an opportunity to prove the Will dated 19.10.1984 executed by Madhavan Chettiar in favour of the respondent bequeathing the property to him. The

petitioners have not made out any case for striking off the plaint. The respondent has filed the Will executed in his favour along with the plaint. Only the petitioners have to prove before the trial Court whether the Will executed by Madhavan Chettiar in favour of the respondent is genuine or not. Earlier cases are relitigation and this case is not relitigation and in the present suit, the parties are also different.

4(a). In support of his contention, the learned Senior Counsel relied on the following judgments:

(i) ***Order of this Court made in C.R.P.(MD)No.563 of 2015 (PD), dated 16.02.2017 (Dr.R.Arun v. Dr.D.Manivannan and another);***

"18.The petitioner is seeking for striking off the plaint on the facts, which are disputed by the respondents. The disputed question of fact can be decided only based on evidence let in by the parties during trial. From the reading of the plaint, it cannot be said that there is no cause of action or the suit is abuse of process of Court. The various contentions made by the learned Senior Counsel for the petitioner can be decided only after trial and the plaint cannot be struck off at the threshold. Considering all the facts and circumstances of the case, I hold that the petitioner has not made out any case

to strike off the plaint by exercising extraordinary discretionary power under Article 227 of the Constitution of India.”

(ii) **(2016) 2 MWN (Civil) 538 (A.R.Suresh and others v. Tek Smart Group);**

“21. The power of Superintendence of the High Court under Article 227 of the Constitution of India is akin to the Extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. It is a settled principle of law that in cases wherein there is an alternative remedy, which is effective and efficacious, the High Court shall not exercise its power either under Article 226 of the Constitution of India or under Article 227 of the Constitution of India. In the case on hand, when a pertinent question was asked to Mr.D.Sadhasivan, learned Counsel for the Defendants 1 to 4/Revision Petitioners, he contended that the Defendants 1 to 4/Revision Petitioners could very well file a petition under Order 7, Rule 11, C.P.C., for the rejection of the Plaint and that still they chose to file the present Revision as they were advised that the filing of the Suit itself was an abuse of process of Court.

22. The High Court, while dealing with a plea of abuse of process of Court as a ground for striking off the Plaint, should exercise caution and restraint, since use of such a power under Article 227 of the Constitution of India will have the drastic effect of denying the chance of the Plaintiffs to resist a Petition for similar relief in the Trial Court and of filing an Appeal in case the Plaint is rejected. It has been an established principle that the power under Article 227 of the Constitution of India to strike off the Plaint shall be exercised with great caution and circumspection, that too in the rarest of rare cases, in order to avoid miscarriage of justice. If the said principle is applied to the case on hand, this Court has to arrive at a conclusion that the filing of the Civil Revision Petition itself can be viewed as an attempt at abuse of process of Court and that it is not a fit case in which this Court can exercise its power of Superintendence under Article 227 of the Constitution of India to strike off the Plaint, which is intended to confine the Trial Court within the bounds of its jurisdiction and to ensure that the Trial Court does not exceed its jurisdiction or fails to exercise a jurisdiction conferred on it. "

5. Heard the learned counsel for the petitioners as well as the learned Senior Counsel for the respondent and perused the materials available on record.

6. The following are the admitted facts:

The respondent is the brother of Kamalu @ Rajammal/first plaintiff in O.S.No.881 of 2004 and husband of Banumathi/second plaintiff in O.S.No.881 of 2004. The said Banumathi is the daughter of the said Kamalu @ Rajammal. The said Kamalu @ Rajammal, Banumathi and others filed suit O.S.No.881 of 2004 for partition and separate possession. This Court accepted the contention of the petitioners that Madhavan Chettiar bequeathed the suit property to the petitioners by the Will dated 01.06.1984 and allowed the Second Appeal filed by the petitioners dismissing O.S.No.881 of 2004 filed by Kamalu @ Rajammal, Banumathi and others. The judgment of this Court dated 29.10.2010 was confirmed by the Hon'ble Apex Court in S.L.P.(C).No.1350 of 2011 on 05.08.2014 and review petition in R.P.(C)No.2481 of 2014 filed by the petitioners therein was also dismissed on 03.12.2014.

7. It is the contention of the respondent that as a brother-in-law, he was assisting Madhavan Chettiar in his business. In the circumstances, the contention of the learned Senior Counsel for the respondent that respondent was not aware of the suit O.S.No.881 of 2004 filed by his sister and his wife for partition and separate

possession, is unbelievable. According to the respondent, the said Madhavan Chettiar executed the Will dated 19.10.1984 bequeathing the suit property to him to carry on religious activities. The said Madhavan Chettiar died on 11.06.1985. From that date onwards till 2015, respondent has not taken any steps to prove the alleged Will dated 19.10.1984. He has also not taken any steps to recover possession of the suit property from the petitioners in order to carry out the religious activities as instructed by Madhavan Chettiar.

8. It is pertinent to note that the respondent has come out with the present suit O.S.No.48 of 2015, after this Court and Hon'ble Apex Court upholding the Will dated 01.06.1984 produced by the petitioners, dismissed the suit O.S.No.881 of 2004 filed by the respondent's sister, wife and others. It is also an admitted fact that Kamalu @ Rajammal filed suit for partition against the petitioners, as legal heirs of Madhavan Chettiar. They contended that Madhavan Chettiar died intestate. The said contention was rejected by this Court in Second Appeal filed by the petitioners and confirmed by the Hon'ble Apex Court. Even though the petitioners have claimed absolute possession based on the Will dated 01.06.1984, the said Kamalu @ Rajammal/sister of respondent or

Banumathi/wife of respondent or respondent have not come forward to claim title based on the subsequent Will dated 19.10.1984 alleged to have been executed in favour of the respondent.

9. The power under Article 227 of the Constitution of India is extraordinary discretionary power which can be exercised to strike off the proceedings, which is frivolous, vexatious and fraudulent at the initial stage itself. The power to strike off the plaint can be exercised even if the defendant did not file an application to reject the plaint under Order VII Rule 11 C.P.C. The scope of power under Article 227 of the Constitution of India is to prevent waste of time of Court as well as to prevent hardship and harassment to the other side.

10. Considering the above facts in entirety, it reveals that the present suit O.S.No.48 of 2015 filed by the respondent is clearly abuse of process of law and amounts to relitigation for title of the suit property. The judgments relied on by the learned counsel for the petitioners are applicable to the facts of the present case. The judgments relied on by the learned Senior Counsel for the respondent do not advance the case of the respondent. By order

dated 16.02.2017, C.R.P.(MD)No.563 of 2015 (PD) was dismissed by me on the ground that the defendant sought for striking off the plaint on disputed question of facts. Therefore, the plaint in O.S.No.48 of 2015 is liable to be struck off and it is hereby struck off.

11. In the result, the Civil Revision Petition is allowed. The learned Judge is directed to return the plaint in O.S.No.48 of 2015. No costs. Consequently, connected Miscellaneous Petition is closed.

31.01.2018

Index:Yes/No

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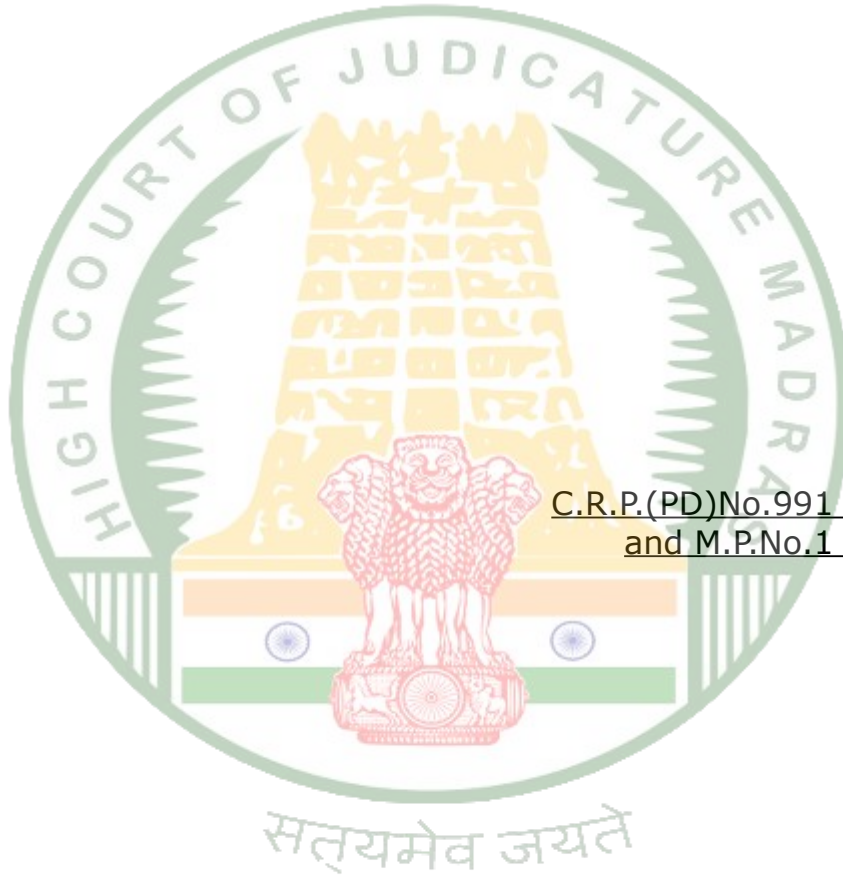
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