

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 19th DAY OF FEBRUARY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

A. No.328 of 2018
in
C.S. No.77 of 2016

S.Jayalakshmi,
W/o.G.Sakthivel,
aged about 56 years,
residing at Door No.37/71,
Jawaharlal Nehru Street,
(100 feet road), Vadapalani,
Chennai-600 026. ... Applicant/Plaintiff

-Versus-

Arulmighu Vengeeswarar Alagar Perumal and
Nagathamman Devasthanam
rep. by its Hereditary Trustee,
having its office at Temple Premises
Vadapalani, Chennai-600 026. ... Respondent/Defendant

Application praying that this Hon'ble Court be pleased to grant stay of all further proceedings in O.S. No.137 of 1995 on the file of the V Assistant City Civil Court, Chennai, pending disposal of the above suit.

Application coming on this day before this court for hearing the court made the following order:-

This application has been filed by the Plaintiff, seeking an order to stay all further proceedings in OS.No.137 of 1995, on the file of the V Assistant City Civil Court, Chennai, pending disposal of the suit.

2. CS.No.77 of 2016 had been filed, seeking a judgement and decree, against the Defendant for declaration that the decree in OS.No.137 of 1995, dated 27.10.1998, on the file of the V Assistant City Civil Court, Chennai had been obtained by committing fraud on the Court and is null and void and for declaration that the Plaintiff is the absolute owner of the suit property and for permanent injunction, restraining the Defendant from interfering with the peaceful possession of the Plaintiff and for costs.

3. The Defendant in the suit is Arulmighu Vengeeswarar Alagar Perumal and Nagathamman Devasthanam, represented by its Hereditary Trustees, having its Office at Temple Premises, Vadapalani, Chennai-26. The suit property is the land, measuring about 3101 sq.ft. in Door No.37/71, Jawaharlal Nehru Road (100 feet road), rear side of Eswaran Temple, Vadapalani, Chennai-26.

4. In the affidavit filed in support of the present application, it has been stated by the Plaintiff that she had purchased a superstructure to an extent of 3277 sq.ft. in Door No.71, Easwaran Koil Rear Side, Vadapalani, Chennai-26 from one Krishnasamy on 21.11.1988 under a registered Document No.4721 of 1988 in the Office of the Sub Registrar, Kodambakkam. According to the Plaintiff, the said Krishnasamy had taken a vacant house site on lease on a monthly rent of Rs.4.5 paisa from the Respondent / Defendant.

It was stated that OS.No.137 of 1995 had been filed by the Respondent herein as against the present Applicant, seeking ejectment of the suit property. The said suit was decreed and EP.No.787 of 2005 had also been filed before the 9th Assistant City Civil Court, Chennai. Since the decree was an exparte decree, an application was filed in IA.No.4959 of 2005 to set aside the exparte decree. That was dismissed on 6.10.2005. As against the same, CRP.No.1731 of 2006 was filed. That was also dismissed on 8.2.2007. Thereafter, SLP.No.10575 of 2007 was filed before the Honourable Supreme Court and that was also dismissed on 6.9.2007. Simultaneously, the Applicant appears to have filed a first appeal as against the decree under Section 96 of CPC. She also filed EA.No.5114 of 2005 under Section 47 of CPC, contending that the decree in OS.No.137 of 1995 was obtained by fraud. However, the said application was dismissed on 17.9.2013. As against the same, she filed CRP.No.1034 of 2014 and that was also dismissed on 20.3.2014. Consequent to the dismissal of CRP, the first appeal was also dismissed.

5. It has been further stated by the Applicant that the land had been acquired for Chennai Metro Rail Project. A public notice was served and she also filed a detailed objection. It was claimed that at that time, she came to know that the Respondent/ Defendant was not the owner of the suit property. In the land acquisition proceedings in

LAOP.No.68 of 2014, she had filed a claim statement and the Defendant had also filed a claim statement. It has been further stated that the property is shown as grama natham. A verification of records show that it is manavari thoraya patta was issued by the Special Tahsildar on 26.8.2013. It was under these circumstances, claiming that the decree in the suit had been obtained by playing fraud, that the present application has been filed, seeking stay of all further proceedings in OS.No.137 of 1995.

6. A counter has been filed, denying all the allegations and along with the counter, a typed set of papers had also been filed and the Plaintiff had also filed a typed set of papers.

7. This Court heard Mr.K.V.Babu, the learned counsel for the Applicant/ Plaintiff and Mr.P.L.Narayanan, the learned counsel for the Respondent/ Defendant.

8. This is a clear case of abuse of process of law and Court. The Defendant had filed OS.No.137 of 1995, following the due procedures. The Applicant was represented by her counsel, Mr.K.Balasubramaniam. She was a Defendant in the suit. For reasons best known to her, she did not choose to participate in the judicial proceedings. Accordingly, a decree was passed on 27.10.1988. A witness was also examined as PW.1 and exhibits were also marked. On consideration of the oral and documentary evidence, the suit was decreed.

Thereafter, the Respondent/ Defendant herein filed EP.No.787 of 2005 to take possession of the suit property. The Applicant herein had filed IA.No.4959 of 2005, seeking to set aside the exparte decree. The said application was filed to condone the delay of 2370 days in filing the application to set aside the exparte decree. The application was dismissed on 6.10.2005. As against the same, the Applicant herein filed CRP.No.1731 of 2006.

9. In the presence of both the counsel, this Court had noted that the suit summon was received by the husband, Sakthivel of the Applicant herein and the Applicant had engaged a counsel by name, K.Balasubramaniam and contested the suit for nearly four years. The Applicant had also filed IA.No.3460 of 1995 under Section 9 of the City Tenants Protection Act. This Court had adversely commented on the fact that the Applicant had denied that the suit summon was not served on her husband. This Court had examined the bailiff's endorsement and had actually found that the notice was also served. This Court had actually stated that as follows:-

"As rightly observed by the lower Court, the Petitioner has not come to the Court with clean hands. She has not only alleged forgery of her signatures, but has also made serious allegations about the proceedings of the Court."

10. This Court had, thereafter, dismissed the said

Civil Revision Petition. As against he same, the Applicant herein had filed SLP.No.10575 of 2007 and that was also dismissed on 6.9.2007. Quite independently, the Applicant herein had filed an appeal as against the decree in OS.No.137 of 1995. She filed AS.SR.No.48064 of 2005 along with the application to condone the delay of 2473 days. In the execution petition, she filed EA.No.5114 of 2005 under Section 47 of CPC, contending that the decree was obtained by fraud. The 9th Assistant City Civil Court, Chennai, dismissed EA.No.5114 of 2005 on 17.9.2013. The Applicant filed CRP.No.1034 of 2014 and that was also dismissed by this Court on 20.3.2014. Consequently, the appeal in AS.SR.No.48064 of 2005 was also dismissed.

11. The contention of the Applicant that the Respondent/ Defendant is not the owner of the property cannot be taken into consideration and as stated above, even in the Civil Revision Petition, it is clear that the Applicant has not come to Court with clean hands. She is wavering her stand in Court after Court. She had reagitated the same issues again and again.

12. 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 a 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. .."

13. In **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.

14. The same dictum and preposition of law had been reiterated with much advantage by this court in **2005 4 LW 206 (The Member Concern Department of Post, Government of India, Ministry of Communication Vs. Annapoorni and others)**, which is a case where the property of the Respondents in the civil revision petition had been acquired by the Postal Department for construction of a Post Office and a Postal Department Administration Block. Numerous litigations were filed by the wife and the family members of the land owner entwining the Postal Department in a number of litigations, which had been filed with the purpose of insisting reconveyance of land or getting more rent or to just keep the litigation alive. In such circumstances also, this court affirmed that relitigation at various forums with respect to the same subject matter would amount to abuse of process of court and law.

15. In the present case, it is clear that the Applicant herein is indulging herself in reagitation of the same issues and this cannot be permitted and it has to be prevented. I have no hesitation in holding that the Applicant has deliberately delaying the judicial process. As a matter of fact, the suit in CS.No.77 of 2016 had been

originally presented on 12.1.2016. After two years, she had thought it fit to file the present application. I have no reason to accept the case of the Applicant and the same is liable to be dismissed with costs.

16. In the result, this application is dismissed, with a cost of Rs.25,000/- (Rupees twenty five thousand only).

Sd./-C.V.K.J

19/02/2018

//Certified to be true copy//

Dated at Madras this the day of 2018.
JJ 20/02/2018

COURT OFFICER(O.S.)

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