



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 27.04.2018

Pronounced on: 03.08.2018

CORAM

WEB COPY

THE HON'BLE MR. JUSTICE M.V.MURALIDARANC.R.P. (MD) (PD) No.635 of 2018  
and C.M.P. (MD) No.2781 of 2018

K.Subramanian

... Petitioner/Defendant

-vs-

A.Prasanna

... Respondent/Plaintiff

Prayer: Civil Revision is filed under Article 227 of the Constitution of India to direct the struck off the suit in O.S.No.215 of 2017 on the file of the District Munsif Court, Pattukottai as an abuse of process of law.

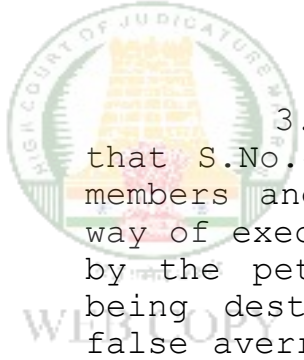
For Petitioner : Mr.Isaac Mohanlal, Senior Counsel  
For Mr.K.M.Thirupathy

For Respondent : No Appearance

O R D E R

The revision petitioner is the defendant in O.S.No.215 of 2017 on the file of the District Munsif Court, Pattukottai and in the suit filed under Order VII Rule I of CPC, the plaintiff sought for a declaration that the suit schedule property is a common cart track, etc. The suit was taken on file for hearing by the learned District Munsif, Pattukkottai, aggrieved by which the defendant has filed the present petition.

2. It was the case of the revision petitioner/defendant that in the suit, an Advocate Commissioner was appointed, who duly filed a report before the learned District Munsif, Pattukkottai that there was a newly erected compound wall in S.No.45/15B and as such, the claim of the plaintiff that S.No.45/15B is a cart track is completely contrary to the report, thereby the plaintiff attempts to mislead the Court by raising false averments in the plaint. It was the further case of the revision petitioner that on refusal by the revision petitioner for providing access to his property through "A" schedule property purchased by the revision petitioner, the plaintiff damaged the compound wall, which resulted in lodging of a complaint and registration of a case in Crime No.167 of 2017 on the file of the Sethubavachathiram Police Station. The plaintiff has approached the Civil Court with unclean hands by describing the suit property as a cart track, whereas a compound wall is in existence in the said survey number, which was also demolished by the plaintiff himself.

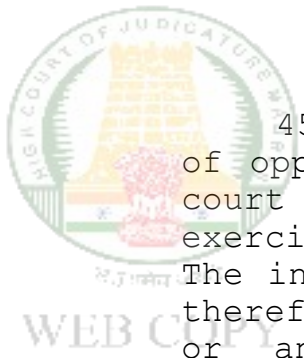


3. The revision petitioner stated that the facts remains that S.No.45/15A was purchased by him from the plaintiff's family members and S.No.45/15B was already vested with the petitioner by way of execution of probate by his father and there was a gate fixed by the petitioner in S.No.45/15B. It was further stated that on being destroyed the compound wall with hooligans, the plaintiff false averred that S.No.45/15B is a cart track, thereby attempts to defeat the rights of the revision petitioner. The sale deed dated 07.04.2004 executed by one Magesh demonstrated that he was attempting to creat a new right of way, which was not in existence and the said Magesh derived no title to the right of way in S.No.45/15B and therefore, the entries made in the sale deed executed by the said Magesh have no legal consequences.

4. It was further represented that the plaintiff cannot create any new right in S.No.45/15B by mischievously describing the boundaries as "South of K.Kovindaraj Vahayara punja lands" and moreover, the plaintiff also suppressed the factum of purchase of 68 cents of land in S.No.45/15A from the family members of the plaintiff under a valid Doc.No.2607 of 2004. The plaintiff has made a deliberate false statement that after purchase of "A" schedule property, he has been enjoying the said property through "B" schedule cart track. Since all public documents clearly establish that the plaintiff has initiated a vexatious and frivolous litigation, there is no point in conducting trial on the basis of false averments, as it is a settled principle of law that in the event of the Court coming to the conclusion that there is an abuse of process of the Court, then the Court can strike off the plaint by invoking Article 227 of the Constitution of India.

5. Learned Senior Counsel appearing for the petitioner has vehemently contened by referring to the judgment of the Hon'ble Supreme Court in the case of V.Chandrasekaran and another vs. Administrative Officer and others, reported in (2012) 12 SCC 133, that it is expected that the party approaching the Court must come with clean hands and objectives and the relevant paragraphs of the judgment (cited supra) are extracted as hereunder:

"44. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a Court of Equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimeto Et Injuria Fieri Locupletioem", means that it is a law of nature that one should not be enriched by causing loss or injury to another. (Vide: The Ramjas Foundation & Ors. v. Union of India & Ors., AIR 1993 SC 852; Nooruddin v. (Dr.) K.L. Anand, (1995) 1 SCC 242; and Ramkrishna N. Bhutta & Anr. v. State of Maharashtra & Ors., AIR 1997 SC 1236).



45. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.

46. In Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114, this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

47. The truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. (Vide: Ritesh Tewari & Anr. v. State of Uttar Pradesh & Ors., (2010) 10 SCC 677; and Amar Singh v. Union of India, (2011) 7 SCC 69)."

6. Learned Senior Counsel, in support of his submissions that though an alternative remedy is available for striking off the suit, still the Court can exercise its extraordinary jurisdiction under Article 227 of the Constitution of India, if there is abuse of process of Court, has relied upon the judgment of this Court in the case of N.Babu vs. Shanmugam and others, reported in (2013) 1 CTC 180, wherein it was held as under:

"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.""

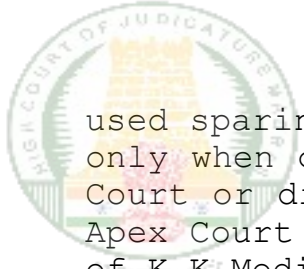
25. Further, though an alternative remedy is available to the revision petitioner, for striking off the suit under Order XXI Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of court and when the facts are not controverted and admitted by the plaintiff/first 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.

26. Hence, the revision petitioner has brought out a clear case to enforce the right under Article 227 of the Constitution of India and the first respondent cannot claim to be in possession of the property from a lawful owner and therefore, his possession cannot be termed to be lawful and the first respondent also cannot said to be in settled possession so as to protect his possession and the revision petitioner has got a decree in his favour and after the decree was confirmed in the second appeal, the first respondent/plaintiff was put in possession of the property and therefore, the first respondent is not entitled to the relief of injunction against the revision petitioner."

7. By placing strong reliance on several judgments, learned Senior Counsel has finally contended that even a petition or affidavit with false averments to achieve an ulterior purposes would destroy the case in entirety on the ground of abuse of process of the Court and in that case, alternative remedy under Order VII Rule 11 CPC is not a bar to invoke the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India and prayed that it is a fit case to strike off the plaint.

8. Heard the learned Senior Counsel for the petitioner and perused the material documents available on record. Though notice was served on the respondent and his name was also printed in the cause title, none appeared on behalf of the respondent either in person or through counsel.

9. The foremost argument advanced by the petitioner is that there are several suppression of facts in the plaint without any supporting materials therefor and continuance of trial in the suit would certainly be detrimental to the defendant. Let us first analyze under what circumstances the party can straightaway approach this Court under Article 227 of the Constitution of India without exhausting the alternative remedy. The power under Article 227 Constitution of India is extraordinary and the said power has to be



used sparingly, cautiously and this Court can struck off the plaint, only when on the face of it the proceedings are abuse of process of Court or discloses no cause of action. In that context, the Hon'ble Apex Court in the Judgement reported in 1998 (3) SCC 573 in the case of K.K.Modi Vs. K.N.Modi and others, has held as follows:-

"44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, 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 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."

10. It is pertinent to mention here that the power conferred on the Courts under Article 227 of the Constitution of India is an extraordinary power, through which, the Court has supervisory control over Subordinate Courts. The Court has power to stop the proceedings and strike out the plaint on the following grounds, namely, a) if the said proceeding is abuse of process of Court, b) the plaint does not reveal cause of action and c) the Court has exceeded its jurisdiction or failed to exercise its jurisdiction or from the averments in the plaint, it is seen that there is no possibility of plaintiff succeeding in the suit or the suit is abuse of process of Court. Article 227 of the Constitution of India can be invoked also to prevent miscarriage of justice and grave injustice and the relief sought for is contrary to justice and public policy. The Court can exercise this power even if the party has not exhausted the alternative remedy. The vexatious, obstructive or dilatory action can be struck off at the threshold itself.

11. The power conferred on the Courts under Article 227 of the Constitution of India is an extraordinary power. As per the said power, the Court has supervisory control over Subordinate Courts. The Court has power to stop the proceedings and strike out the plaint, if the said proceeding is abuse of process of Court; the plaint does not reveal cause of action; the Court has exceeded its jurisdiction or failed to exercise its jurisdiction or from the





averments in the plaint, it is seen that there is no possibility of plaintiff succeeding in the suit or the suit is abuse of process of Court. Article 227 of the Constitution of India can be invoked also to prevent miscarriage of justice and grave injustice and the relief sought for is contrary to justice and public policy. The Court can exercise this power even if the party has not exhausted the alternative remedy. The vexatious, obstructive or dilatory action can be struck off at the threshold itself.

12. The petitioner sought for striking off the plaint on the facts and a close reading of the averments made in the plaint would unfold that the plaintiff's grandfather had retained about 68 cents in S.No.45/15 on the western side and had been enjoying the same exclusively and the plaintiff's grandfather Ganesa Devar permitted the defendant's father to use the eastern side cart track to reach his southern side properties. It was merely averred that S.No.45/15B is the present "B" schedule property and a wrong entry was made during UDR survey in respect of R.S.No.45/15 without the knowledge of the plaintiff's grandfather, namely, Ganesa Devar.

13. On the other side, it could be seen from the argument put forth by the petitioner on the basis of the documentary evidence that an extent of 77 cents was subdivided and registered as R.S.No.45/15A and R.S.No.45/15B and the patta for R.S.No.45/15B to an extent of 9 cents was also issued in favour of the petitioner's father and after a lapse of nearly 32 years from issuance of patta, the plaintiff had made huge hue and cry stating that entry in the patta was not without his knowledge, which cannot be accepted. Therefore, it could be inferred that the plaintiff has made averments in the plaint only in air without any material documents and the petitioner has duly stated that after the death of his father, the property in S.No.45/15B stood vested with him through a valid probate. Thus, this Court finds force in the contention raised by the learned Senior Counsel for the petitioner that the plaintiff has initiated a vexatious and frivolous litigation against the defendant without any clear idea or thought.

14. It goes without saying that the plaint is liable to be rejected at the threshold in case the Court finds that there are material suppressions and the party has not approached the Court with cleans hands and in that event, the plaint can be struck off by exercising its extraordinary discretionary power under Article 227 of the Constitution of India without giving much importance to the alternative remedy available under Order VII Rule 11 CPC, as alternative remedy can merely be termed as an appeal from Caesar to Caesar's wife.

15. In view of the foregoing discussions and observations, this Court is of the view that the suit instituted by the plaintiff has no legs to stand and it is liable to be struck off for the numerous reasons as elucidated hereinabove and the petitioner is entitled to the relief sought for in this petition.



16. In the result,

a) this Civil Revision Petition is allowed and the plaint filed in the suit in O.S.No.215 of 2017 before the learned District Munsif, Pattukottai is hereby struck off.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-IV)

To:

1. The District Munsif,  
Pattukottai.
2. The Record Keeper, V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai. **(Two Copies)**

+3cc to M/S.K.M.Thirupathy, Advocate SR.No. 76855

ORDER IN  
C.R.P. (PD) (MD) No.635 of 2018

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JM/RP/SAR 4/28.08.2018/7P/7C