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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 12.07.2018**

**Pronounced on : 03.10.2018**

**CORAM**

**THE HONOURABLE MR. JUSTICE M.V. MURALIDARAN**

**CRP (MD) (PD) No.901 of 2018**

**and**

**CMP (MD) No.3975 of 2018**

1.SPN.Sathyamoorthy  
2.SPN.Krishnamoorthy

.. Petitioners

Vs.

M. Prathap

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, in striking out the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif at Tiruchirapalli as abuse of process of the court.

For Petitioners : Mr.UM.Ravichandran for  
for Mr.Durai Gunasekaran  
For Respondent : Mr.S.K.Mani

**JUDGMENT**

This Revision Petition arises struck off the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif at Tiruchirapalli, wherein the Revision Petitioners are the defendants in the above suit.

2.The above Civil Revision Petition is filed to struck off the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif at Tiruchirapalli as the same does not have cause of action and also abuse of process of the Court. The defendants in the above suit are the revision petitioners herein and the plaintiff is the respondent.

3.The brief facts leading to the filing of this Civil Revision Petition are as follows:



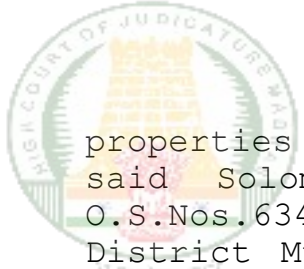
The brief facts of the case according to these Revision Petitioners:

The larger extent of lands measuring 4 Acres and 44 Cents comprised in Survey Nos. 6/1, 6/3 and 6/4 and 7/2, 7/3 and 7/4 situated in K.Sathanur Village, Tiruchirapalli District was originally belonged to late Perumal Naidu. During his lifetime, he bequeathed the said property by way of a Will dated 11.06.1970 to and in favour of his adopted son namely Mr.Muthukrishnan. Later he died on 31.10.1974. Thereafter, being the other grandchildren of Perumal Naidu, namely Mr.Govindarajan, Mrs.Ethirajammal and Mrs.Soundaram have released their entire claim over the said property on 25.10.1988 to and in favour of the above said Mr.Muthukrishnan who in turn settled the said property to his son namely Mr.M.Prathap and his wife Mrs.Muthulakshmi.

4.Later, after settling some disputes in respect of the said properties, the above said Mr.M.Prathap the respondent herein had sold the larger extent of lands comprised in Survey Nos.6/1, 6/3 and 6/4 situated in K.Sathanur Village, Tiruchirapalli District to these revision petitioners under a Sale Deed dated 11.12.2009 registered as pending Document No.98/2009 in the S.R.O., K.Sathanur, Trichy District. Similarly, the above said Mrs.Muthulakshmi had also sold the lands in Survey Nos. 7/2, 7/3 and 7/4 to these revision petitioners under a Sale Deed dated 11.12.2009, registered as pending Document No.99/2009 in the S.R.O., K.Sathanur, Trichy District. Thereafter the petitioners having taken possession of the said properties by putting up a watchman shed, compound wall and also electricity connection.

5.While so, on 27.07.2012 the Sub Registrar of K.Sathanur passed an erroneous order by refusing to register the sale deeds in pending document bearing Nos.98 and 99 of 2009 leading to filing of an Appeal before the District Registrar and in view of the order passed by this Court in W.P.No.9357 of 2014 dated 04.08.2014, the said Appeal before the District Registrar was entertained and kept pending. Meanwhile, one Suraya Begam lodged a complaint against the petitioners with the Inspector of Police, Anti Land Grabbing Cell, Trichy. The said complaint was registered under Crime No.23 of 2012 leading to obtaining an order of Anticipatory Bail by the petitioners. Meanwhile, Mr.J.Govindarajan and B.Ethirajammal, through their General Power of Attorney Agent namely Mr.Solomon Devaraj has filed a Civil Suit in O.S.No.680 of 2010 before the learned District Munsif Court at Tiruchirapalli against these revision petitioners and others.

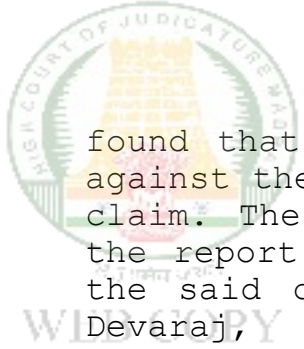
6.After executing the above said sale deeds to and in favour of the petitioners, the above named Govindarajan, Ethirajammal, Soundarammal, Muthukrishnan, M.Prathap, Senthilkumar and Meenavathi conspired with one Mr.Solomon Devaraj in grabbing the said



properties by way of unlawful means. By such conspiracy through the said Solomon Devaraj, they obtained a compromise decree in O.S.Nos.634 of 2010, 49 of 2010 and 470 of 2010 before the learned District Munsif Court at Tiruchirapalli, thereby the said Solomon Devaraj had also lodged a complaint with the Inspector of Police, Anti Land Grabbing Cell, Trichy against the petitioners. The Inspector of Police in turn by calling for the report sent both the complaints to the Revenue Divisional Officer, Trichy who gave erroneous report dated 24.03.2014. Later, on the basis of the said report, the Inspector of Police threatened the petitioners to vacate and hand over the vacant possession of the said property. Challenging the erroneous report dated 24.03.2014 given by the Revenue Divisional Officer, Trichy, the petitioners have filed a Writ Petition in W.P.No.13550 of 2014 before this court and by an order dated 18.08.2014 this court disposed of the above writ petition giving protective measures to the petitioners in conducting enquiry by the Inspector of Police, Anti Land Grabbing Cell, Trichy. However, the Inspector of Police, in violation of the order dated 18.08.2014 passed by this court, registered the petitioners' complaint under Crime No.22 of 2014 thereby abusing his powers while investigating the said complaint, without having jurisdiction, illegally and arbitrarily chased away the petitioners' watchman from the said property with an intention to hand over the same to the above said Solomon Devaraj and Suraya Begum.

7. Therefore, the 1<sup>st</sup> petitioner herein has filed a Writ Petition in W.P.No.14491 of 2014 before this Court and in view of the order passed in the above writ petition in M.P.No.2 of 2014 dated 02.09.2014, the above said Solomon Devaraj and Suraya Begum were restrained from entering into or occupying the subject matter of property. Meanwhile, the petitioners have also filed Writ Petitions in W.P.No.17259 of 2014 and W.P.No.17260 of 2014 before this Court issuing directions to the registering authorities in registering the above said sale deeds in their favour and the same was dismissed as infructuous on account of pendency of the above Appeal before the District Registrar. Later, the District Registrar has passed an order in the above Appeal after recording statements from the parties therein thereby directed the S.R.O. K.Sathanur to register the said sale deeds in the name of the petitioners. Accordingly, the pending document Nos.98/2009 and 99/2009 were registered as Document Nos.4578/2015 and 4579/2015 respectively in the S.R.O., K.Sathanur.

8. Thereafter, an Application in Crl.O.P.No.1072 of 2015 filed by Singam @ Muthukrishnan and Mr.M.Prathap to quash the complaint given by the above said Solomon Devaraj, which was registered under Crime No.22 of 2014 has been disposed of by this Court on 28.01.2015 with a direction to the police to conduct enquiry afresh. As per the above directions, the Assistant Commissioner of Police, Anti Land Grabbing Cell conducted fresh enquiry and after enquiry, it was



found that the complaint lodged by the above said Solomon Devaraj against the petitioners are only based on the collusion and unlawful claim. The Assistant Commissioner of Police who in turn submitted the report to that effect before the Commissioner of Police, later the said complaint was closed. Meanwhile, the above said Solomon Devaraj, Muthukrishnan, Pratap, Govindarajan, Ethirajammal, Nirmaladevi have colluding with each others attempted to get the Revenue Records in their names in respect of the entire subject matter of the property. But, the proceedings before the District Revenue Officer, Tiruchirapalli ultimately ended in favour of the petitioners.

9.While so, the respondent herein Mr.M.Pratap has filed a civil suit in O.S.No.155 of 2018 before the learned District Munsif Court, Tiruchirapalli against these petitioners, which is the subject matter and leading to the filing of this Civil Revision Petition by the petitioners. In the above suit, the plaintiff Mr.M.Prathap, who is the respondent herein has sought for the relief '*... to declare that the impugned Registered Deed of Relinquishment of right dated 08.08.2016 registered as Document No.4221/2016 executed by the second defendant in favour of the 1<sup>st</sup> defendant as far as the land situated in Survey No. 6/2 in K.Sathanur Village, measuring Acre 0.94 cents, namely, the suit property herein which absolutely belongs to the plaintiff is concerned, is ab-initio null and void, non-est, invalid and unenforceable on the eye of law as the executant of the document who had no right, marketable title or interest over the suit property in any manner whatsoever and consequential relief of permanent injunction ...*' In that suit, the plaintiff, who is the respondent herein claiming that he is in possession and enjoyment of the suit schedule property.

10.In the above suit, the learned trial court has passed an exparte order of interim injunction in I.A.No.102 of 2018 in O.S.No.155 of 2018 on 16.02.2018 thereby restraining the defendants, who are the petitioners herein from interfering with his alleged possession of the suit schedule property. Thereafter, on 22.02.2018 at about 11.30 a.m., the plaintiff in the above suit along with his henchmen demolished the southern side portion of the compound wall to an extent of 15 feet, which was put up by the defendants, who are the petitioners herein. After knowing all the above illegal activities of the plaintiff, the petitioners lodged a complaint before the Inspector of Police, K.K. Nagar Police Station. When the police officials rushed to the spot, the plaintiff and his henchmen ran away, consequently, the subject matter of the suit property was prevented. However, the plaintiff and his henchmen appeared before the Inspector of Police, K.K.Nagar Police Station and contended that in view of the pendency of civil suit, the police cannot interfere in the matter. Hence the police also posted beet police force to



avoid tussle between the parties between the suit and advised them to maintain status quo as per the order passed in the above suit.

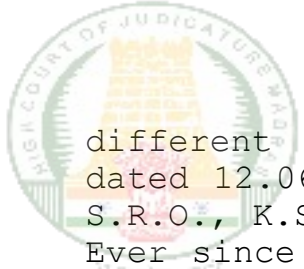
11.While so, the defendants in the above suit have approached this court by filing a Civil Revision Petition in CRP(MD)No.446 of 2018 under Article 227 of the Constitution of India, praying to strike off the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif, Tiruchirapalli as the same does not have cause of action and also abuse of process of the court. After heard both side arguments, this court was pleased to dispose of the above Civil Revision Petition by an order dated 01.03.2018 thereby directed the Revision Petitioners / Defendants '*... to file vacate stay petition before the Court below within a period of one week from the date of receipt of a copy of this order. On receipt of such petition, the court below is directed to consider and after hearing both sides, dispose of the said petition on merits and in accordance with law, within a period of one week thereafter. Till such time, both the parties shall maintain status quo and shall not take any coercive steps against each other. Both the parties are also directed to cooperate with the trial court to dispose of the said petition within the stipulated period ...*'

12.Thereafter, the present revision petitioners, who are the defendants in this suit have filed an Application in I.A.No.155 of 2018 in I.A.No.102 of 2018 in O.S.No.155 of 2018 under Order XXXIX Rule 4, read with under Section 151 of C.P.C. to vacate the exparte interim order granted in I.A.No.102 of 2018 in O.S.No.155 of 2018 along with other Application in I.A.No.156 of 2018 in I.A.No.102 of 2018 in O.S.No.155 of 2018 not to extend the exparte interim order as said above. After filing counter by the respondent therein and after heard both side arguments, on 09.03.2018 the learned trial court was pleased to pass common order in all the interlocutory applications thereby dismissed the Applications filed by the defendants, the Revision Petitioners herein and allowed the I.A.No.102 of 2018 in O.S.No.155 of 2018 - petition for interim injunction - filed by the plaintiff who is the respondent herein.

13.While so, the defendants in the above suit have approached this court by filing this present Revision Petition under Article 227 of the Constitution of India to struck off the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif at Tiruchirapalli as the same doesn't have any cause of action and also abuse of process of the court.

14.The case of the Respondent herein, who is the plaintiff in the above suit as per his plaint averments:

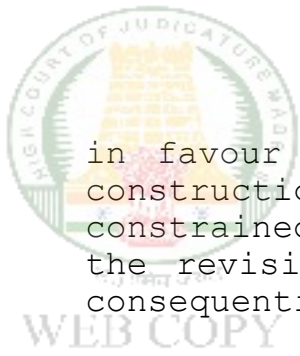
The plaintiff has acquired the larger extent of land measuring 2 Acres and 84 comprised in Survey Nos.6/1, 6/3 and 6/4 under



different Settlement Deeds, registered as Document No.3018/2007, dated 12.06.2006 and Document No.3907/2007, dated 02.08.2007 in the S.R.O., K.Sathanur, executed by his father Singam @ J.Muthukrishnan. Ever since the date of execution of the above said Settlement Deed, the plaintiff had been in continuous, peaceful and uninterrupted possession and enjoyment of the suit schedule properties. On account of paucity of funds, the plaintiff had left the suit schedule property as vacant site with a view to put up construction in future. While so, the plaintiff sold the said lands to the 2<sup>nd</sup> defendant namely SPN.Krishnamoorthy, who is the 2<sup>nd</sup> Revision Petitioner herein under a Sale Deed dated 11.12.2009, registered as Document No.4578/2005 in the S.R.O., K.Sathanur. Similarly, the step-mother of the plaintiff namely Mrs. M. Muthulakshmi had also sold the lands in Survey Nos.7/3 and 7/4 to the 2<sup>nd</sup> defendant under a Sale Deed dated 11.12.2009, registered as Document No.4579 of 2005 in the S.R.O., K.Sathanur.

15.While so, during the third week of November, 2017 the plaintiff went to the suit schedule property to remove the thorny bushes grown in the land and make it fit for construction activities. At that time, the defendants who came to the suit schedule property, prevented the plaintiff from leveling operation carried out by him by laying untenable claim over the said property by claiming that the 1<sup>st</sup> defendant had acquired the title over the said property by virtue of a Deed of Relinquishment dated 08.07.2016 executed by the 2<sup>nd</sup> defendant to and in favour of the 1<sup>st</sup> defendant, which was registered as Document No.4221/2016 in the S.R.O., K.Sathanur. Immediately, the plaintiff obtained Certified Copy of the said deed and on perusal of the same, he came to know that the 1<sup>st</sup> defendant while executing the deed had included the suit property also in a clandestine manner along with the other properties that had been released by him situated in Survey Nos.6/1, 6/3, 6/4, 7/3 and 7/4 by merely mentioning that the properties released were comprised in Survey Nos.6/1 to 6/4. Therefore neither the 1<sup>st</sup> defendant nor the 2<sup>nd</sup> defendant has any right over the suit property situated in Survey No.6/2.

16.The Town Survey Field Register in respect of the suit property in Survey No.6/2 still stands in the name of the settler of the plaintiff, namely, the father of the plaintiff J.Muthukrishnan @ J.Singam.Since the 2<sup>nd</sup> defendant has no right over the land in Survey No.6/2 which is the suit property, the Registered Deed of Relinquishment of right dated 08.08.2016 registered as Document No.4221/2016 executed by the 2<sup>nd</sup> defendant in favour of the 1<sup>st</sup> defendant is *ab-initio* void, invalid and non-est as far as the suit property is concerned. While so, taking advantage of the said deed of Relinquishment of right executed by the 2<sup>nd</sup> defendant to and



in favour of the 1<sup>st</sup> defendant, the 1<sup>st</sup> defendant is preventing the construction activities of the plaintiff. Hence the plaintiff is constrained to file the above suit against the defendants, who are the revision petitioners herein for the relief of declaration and consequential relief of permanent injunction.

17. The learned trial court by an ex parte order of interim injunction granted in I.A.No.102 of 2018 in O.S.No.155 of 2018 dated 16.02.2018 restraining the defendants from interfering with his possession of the suit schedule property. Thereafter, the defendants in the above suit have approached this court by filing a Civil Revision Petition in CRP(MD)No.446 of 2018 under Article 227 of the Constitution of India, thereby praying to strike off the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif, Tiruchirapalli as the same is abuse of process of the court. After heard both side arguments, this court was pleased to dispose of the above CRP by an order dated 01.03.2018 thereby directed the Revision Petitioners / Defendants '*... to file vacate stay petition before the Court below within a period of one week from the date of receipt of a copy of this order. On receipt of such petition, the court below is directed to consider and after hearing both sides, dispose of the said petition on merits and in accordance with law, within a period of one week thereafter. Till such time, both the parties shall maintain status quo and shall not take any coercive steps against each other. Both the parties are also directed to cooperate with the trial court to dispose of the said petition within the stipulated period ...*'

18. The petitioners/defendants accepting the order passed in the above Civil Revision Petition filed a petition for vacating the stay before the trial court and after heard arguments by both sides, on 09.03.2018 the learned trial Court dismissed the vacate stay petition and passed an order making the interim order absolute in favour of the respondent / plaintiff. The only remedy available for the petitioners / defendants is to file an Appeal as against the orders passed by the trial court before the Appellate Court. Per contra, the petitioners / defendants filed this present revision petition for the same relief of striking off the plaint in O.S.No.155 of 2018, which is not maintainable and prayed this Court for dismissal of this Civil Revision Petition.

19. The learned counsel for the Revision Petitioners while advancement of his arguments pointed out all the above facts leading to filing this Civil Revision Petition and urging this court to allow this Civil Revision Petition thereby reject the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif at Tiruchirapalli on the following grounds, they are:



- i) The present suit in O.S.No.155 of 2018 filed by the respondent doesn't have cause of action as allegedly stated in the plaint;
- ii) The plaintiff is estopped by conduct; and
- iii) By filing the above vexatious and frivolous suit, the plaintiff is abusing the process of the court;

20. In order to substantiate the case of the revision petitioners challenged in this Civil Revision Petition, the learned counsel for the Revision Petitioners while advancement of arguments submitted as follows:

The subject matter of the lands comprised in Survey No.6/2 as allegedly claimed by the respondent who is the plaintiff in the above suit along with larger extent of lands as mentioned above is absolutely belonged to the revision petitioners, who are the defendants in the above suit, having absolute right, title and interest over the said properties. Further, in respect of the alleged claim of the respondent, one Mr.Y.Solomon Devaraj has filed a civil suit in O.S.No.49 of 2010 before the learned District Munsif Court at Tiruchirapalli against the respondent and these revision petitioners and others. Later, the parties to the above suit have entered into a Joint Memo of Compromise and the same was recorded before the Lok Adalat Committee, Tiruchirapalli. However, these revision petitioners were exonerated in the above said Joint Memo of Compromise. Accordingly, in that Memo of Compromise entered into between the parties to the proceedings, the respondent herein has accepted the title of the said Mr.Y.Solomon Devaraj, consequently on 04.06.2013 an award was passed by the Lok Adalat Committee, Tiruchirapalli. While the fact remains so, the respondent has no title over the suit schedule property as allegedly claimed by him.

21. That apart, regarding cause of action as allegedly mentioned by the plaintiff in the present suit doesn't arise. Only in order to grab the defendants' property unlawfully, the plaintiff has filed this present suit as if he is the owner of the suit schedule property, especially the lands in Survey No.6/2. The alleged cause of action as mentioned by the plaintiff in this suit doesn't arise as he has no right or title over the suit schedule property. It is relevant to reiterate at this juncture, in respect of the suit schedule property, the plaintiff has already accepted the title of the said Mr.Y.Solomon Devaraj in an earlier suit as said above and in an earlier round of litigation in respect of the said property came to an end. In this connection, the possession was restored as per the orders of this Hon'ble Court. Therefore the present suit is not sustainable in the eye of law since the defendants, who are the revision petitioners are in absolute possession and enjoyment of the suit schedule property.

22. Furthermore, the plaintiff in the present suit already



relinquished his right in respect of the suit schedule property in favour of the above said Mr.Y.Solomon Devaraj. In this connection, already they have entered into a Joint Memo of Compromise and the same was recorded before the Lok Adalat Committee, Trichirapalli, consequently an award was passed on 04.06.2013 thereby the entire disputes with regard to the suit schedule property settled amicably and came to an end. At this juncture, the above said award passed by the Lok Adalat Committee has not been set aside till now and reached the stage of finality. While the facts remain so, the subject matter of the civil suit is not only maintainable as the same doesn't have any cause of action, devoid of merits but also clear abusing the process of the Court. As said above, the respondent/plaintiff is estopped by conduct and by filing this vexatious suit, the respondent / plaintiff only with an intention to swindle the petitioners/defendants thereby attempting to enrich himself unjustly trotted out / leveled bundle of false allegations against them. Therefore the above suit has to be struck down from its file.

23.Regarding maintainability of the present revision petition, which was questioned by the respondent, the learned counsel for the revision petitioner contended that the earlier Civil Revision Petition in CRP(MD)No.446 of 2018 filed by the petitioners praying to strike off the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif, Tiruchirapalli has not been decided on merits. He further contended that it is the case of the revision petitioners in the earlier Civil Revision Petition that the above suit is not maintainable as the same doesn't have any cause of action and is abuse of process of the court and hence the above suit deserves to be struck off. However, without going into merits, facts and circumstances of the case, unfortunately, this court, instead of deciding the above Civil Revision Petition on merits directed the revision petitioners to file vacate stay petition before the trial court and further directed the trial court to dispose of the said petition on merits within the stipulated period. As the question of law leading to file the earlier Civil Revision Petition has not been decided on merits, the present revision petition is unequivocally and absolutely maintainable.

24.The learned counsel for the revision petitioners relied upon the following decisions in support of his contention, the nature of relevance and reliance are put in brief hereunder:

- i) Canara Bank Vs. N.G. Subbaraya Setty & Anr. Supreme Court of India, a reportable judgment - the question of *Res judicata* and *estoppel*;
- ii) AIR 2005 SC, page 2392 - the question of *Res Judicata*;
- iii) AIR 1958 Orissa 139 - the question of *Res Judicata*;
- iv) 2003 (3) CTC 671 AIR 1958 Orissa 139 - the question of *Res Judicata*;
- v) Parvathi, Nagammal and ... Vs. Ponnammal, Natesan,



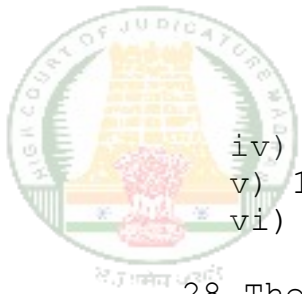
Mottaiyan, equivalent citations: (2002) 3 MLJ, page 767 - the question of *res judicata*;  
vi) B.L. Sreedhar & Ors. Vs. K.M.Munireddy (Dead) and Ors, Supreme Court of India;  
vii) 2005 (1) CTC, page 368 - the doctrine of 'issue estoppel' and 'cause of action estoppel'  
viii) 2007 (1) CTC, page 251 - Rejection of plaint - Plaint can be rejected if plaint is based on fraud and misrepresentation.

25.Per contra, while advancement of arguments the learned counsel for the respondent Mr.S.K.Mani not only denied the title of the 1<sup>st</sup> revision petitioner in respect of the suit schedule properties but also questioned the maintainability of the present revision petition on the ground of *res judicata*. In this connection, he contended that the revision petitioners accepting the final order passed in the earlier Civil Revision Petition has filed an Application to vacate the order of interim injunction already granted in the above suit along with sub application. After heard both side arguments, the learned trial court has dismissed the above Applications filed by the petitioners / defendants in this suit and allowed the injunction application filed by the petitioner / plaintiff, who is the respondent in this revision petition. Therefore the only remedy available to the defendants is to file an Appeal before the Appellate Court against the order of granting of interim injunction.

26.The learned counsel for the respondent further contended that the Revision Petitioners are *estopped* from filing the second Civil Revision Petition for the same relief. Hence the present Civil Revision Petition is not maintainable since the petitioners have already approached this Court by filing similar Civil Revision Petition in Civil Revision Petition(MD)No.446 of 2018 under Article 227 of the Constitution of India for the same relief and the same was also disposed of by this court by an order dated 01.03.2018. Hence the present revision petition for the same relief does not lie. He further contended that the constructive *res judicata* prevents the filing of the Civil Revision Petition for the same relief again before this Court. Contending so, the learned counsel for the respondent summed up praying for dismissal of the present revision petition.

27.The learned counsel for the respondent relied upon the following decisions in support of his contention regarding - the issue of boundaries and the principles of doctrine of *Res judicata*:

- i) 2007 (1) LW 706;
- ii) 2016 (1) LW 127;
- iii) AIR 1964 SC 1013;



- iv) 1999 (3) SC 555 ;
- v) 1999 (3) SCC 422;
- vi) 2009 (4) SCC 299

28. The arguments advanced by Mr.UM.Ravichandan, the learned counsel for the revision petitioners and Mr.S.K.Mani, the learned counsel for the respondent are heard. On perusing the records, the facts and circumstances of the case of the revision petitioners, the following questions arises in deciding the present Civil Revision Petitions, they are:

i. Whether the constructive *res judicata* prevents the filing of the Civil Revision Petition for the same relief again before this Court;

ii. Whether the Revision Petitioners are *estopped* from filing the second Civil Revision Petition for the same relief;

iii. Whether the respondent is estopped by conduct;

iv. Whether the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif at Tiruchirapalli can be struck off as the same is no cause of action and abuse of process of the court.

29. It is seen from the documents submitted by the revision petitioners in the form of Typed set of papers, these revision petitioners already approached this court by filing a Civil Revision Petition in CRP(MD)No.446 of 2018 praying to strike off the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif, Tiruchirapalli. I have also gone through the final order passed in the above Civil Revision Petition and on careful reading of the said order, I came to understand that there is no discussion regarding the case of the revision petitioners leading to file the above Civil Revision Petition on the ground that no cause of action and abuse of process of the court while filing the suit. The case of the revision petitioners in that Civil Revision Petition is to strike off the plaint in O.S.No.155 of 2018 as the same is no cause of action and abuse of process of the court and hence deserves to be struck off. The question of law involved in that Civil Revision Petition is whether the suit doesn't have cause of action and abuse of process of the court or not? Such question of law has not been decided in the previous Civil Revision Petition, instead, directed the revision petitioners to file a vacate stay petition in the above suit and further directed the trial court to dispose of the said petition on merits within the stipulated period. It is also seen from the above order that unfortunately, the question of law raised in that Civil Revision Petition has not been decided either in law or on facts.

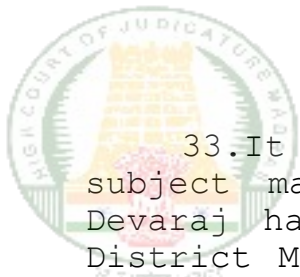
30. It is relevant to point out at this juncture, it is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being



invoked at the instance of any person aggrieved or may even be exercised *suo motu*. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar. Further, in exercise of supervisory jurisdiction, the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, maybe, by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. In appropriate cases the High Court, while exercising supervisory jurisdiction, may substitute such a decision of its own in place of the impugned decision, as the inferior court or tribunal should have made.

31.As the question of law leading to file the earlier C.R.P. has not been decided on merits and disposed of finally, the present revision petition is absolutely maintainable. Further, on a careful examination of all the documents produced in the form of typed set of papers and the written arguments submitted by both sides and also the cases cited above and the relevant provisions of law, I clearly reach the conclusion that the present civil revision petition is absolutely maintainable and it cannot be simply ignored. At the same time, I am unable to accept the submission made by the learned counsel for the respondent and the judgments relied on him will not helpful for his case on going through the facts and circumstances of this case.

32.Regarding the title of the suit schedule property, which is under dispute, on perusal of records I came to a conclusion that the larger extent of lands including the property under dispute were already purchased by these revision petitioners from its erstwhile owners namely Mr.M.Prathap, who is the respondent herein and his step-mother Mrs.Muthulakshmi under two different sale deeds vide pending document Nos.98/2009 and 99/2009 in the S.R.O., Sathanur. After passage of several years, the said pending documents were got registered as Document Nos.4578/2015 and 4579/2015 respectively in the S.R.O., K.Sathanur. Meanwhile, the disputes with regard to the devolution of title amongst the parties to the proceedings including these revision petitioners resolved and reached the stage of finality. Thus, the revision petitioners have acquired valid and absolute title over the larger extent of lands including the suit schedule property, especially, the lands comprised in Survey No.6/2.



33. It is also seen from the records that in respect of the subject matter of the suit schedule property, one Mr.Y.Solomon Devaraj has filed a civil suit in O.S.No.49 of 2010 before the District Munsif Court at Tiruchirapalli against the respondent and these revision petitioners and others. Later, by exonerating these revision petitioners, the parties to the above suit have entered into a Joint Memo of Compromise and the same was recorded before the Lok Adalat Committee, Tirichirapalli. In that Joint Memo of Compromise entered into between the parties to the proceedings, the respondent herein has accepted the title of the said Mr.Y.Solomon Devaraj. Thereafter, the Lok Adalat Committee, Tiruchirapalli passed an award on 04.06.2013 thereby confirming the title of the revision petitioners. Thus, the entire disputes with regard to the suit schedule property settled amicably and reached the stage of finality. While so, the respondent has no title over the suit schedule property. Therefore the respondent/plaintiff is estopped by conduct.

34. In one of the landmark reportable judgments of the Hon'ble Supreme Court of India in the case of *Canara Bank Vs. N.G. Subbaraya Setty & Anr.*, the question of law regarding *Res Judicata & Estoppel* has been discussed in detail. The relevant paragraphs are reproduced hereunder:

Para 15 ...

"... The doctrine of res judicata is contained in Section 11 of the Code of Civil Procedure, 1908, which, though not exhaustive of all the facets of the doctrine, delineates what exactly the doctrine of res judicata is in the Indian context, Section 11 reads as under:

11. Res judicata - No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

Para 22 ...

"... The conspectus of the above authorities shows that until the limitation period for filing of an appeal is over, the res remains sub judice. After the limitation period is over, the res decided by the first Court would then become judicata..."

Para 28 ...

" 18. ... The principle of law which their Lordships herein have reiterated is that a pure question of law including the interpretation of a statute will be res judicata in a subsequent proceeding between the same parties. To this salutary rule, four specific exceptions are indicated. Firstly,



the obvious one, that when the cause of action is different, the rule of *res judicata* would not be attracted. Secondly, where the law has, since the earlier decision, been altered by a competent authority. Thirdly, where the earlier decision between the parties related to the jurisdiction of the Court to try the earlier proceedings, the same would not be allowed to assume the status of a special rule of law applicable to the parties and therefore, the matter would not be *res judicata*. Fourthly, where the earlier decision declared valid a transaction which is patently prohibited by law, that is to say, it sanctifies a glaring illegality ..."

Para 33 ...

"... Given the conspectus of authorities that have been referred to by us herein above, the law on the subject may be stated as follows:

(2) (i) ... where an issue of law decided between the same parties in a former suit or proceeding relates to the jurisdiction of the Court, an erroneous decision in the former suit or proceeding is not *res judicata* in a subsequent suit or proceeding between the same parties, even where the issue raised in the second suit or proceeding is directly and substantially the same as that raised in the former suit or proceeding. This follows from a reading of Section 11 of the Code of Civil Procedure itself, for the Court which decides the suit has to be a Court competent to try such suit. When read with explanation (1) to Section 11, it is obvious that both the former as well as the subsequent suit need to be decided in Court competent to try such suits, for the "former suit" can be a suit instituted after the first suit, but which has been decided prior to the suit which was instituted earlier. An erroneous decision as to the jurisdiction of a Court cannot clothe that Court with jurisdiction where it has none ..."

(ii) An issue of law which arises between the same parties in a subsequent suit or proceeding is not *res judicata* if, by an erroneous decision given on a statutory prohibition is not given effect to..."

(iii) Equally, where the law is altered by a competent authority since the earlier decision, the matter is issue in the subsequent suit or proceeding is not the same as in the previous suit or proceeding, because the law to be interpreted is different..."

As found in 2005 (3) R.C.R. (Civil) 404, Supreme Court of India - Principles of *Res judicata* - the relevant paragraph is reproduced hereunder:

Para 24 ...

"... The object and purport of principle of *res judicata* as contended in Section 11 of the Civil Procedure Code is to uphold the rule of conclusiveness of judgment, as to the points



decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment..."

Para 25 ...

"... The principle of *res judicata* envisages that a judgment of a court of concurrent jurisdiction directly upon a point would create a bar as regards a plea, between the same parties in some other matter in another court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment..."

Para 26 ...

"... The doctrine of res judicata is conceived not only in larger public interest which requires that all litigation must, sooner than later, come to an end but is also founded on equity, justice and good conscience..."

As found in 2005 (1) CTC, page 368 - the doctrine of '*issue estoppel*' and '*cause of action estoppel*' - the relevant paragraph is reproduced hereunder:

Para 27 ...

There is a distinction between 'issue estoppel' and 'res  
judicata' -

Para 28 ...

"... *Res judicata* debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine '*issue estoppel*' is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of *res judicata* creates a different kind of *estoppel viz. Estoppel By Accord*.

Para 29...

"... In a case of this nature, however, the doctrine of 'issue estoppel' as also 'cause of action estoppel' may arise.

"cause of action estoppel" is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped *per res judicata*."



35. In a judgment reported in 2007 (1) CTC, page 251 - regarding the issue of Rejection of plaint, it seems that a plaint can be rejected if plaint is based on fraud and misrepresentation. The relevant paragraph 10 is reproduced hereunder:

"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 includes 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 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. ..."

36. It is settled law that wherever there is abuse of process of Court, either the Trial Court or this Court can straight away strike out the plaint without even an application under Order 7, Rule 11 C.P.C. Alternative remedy under C.P.C. is not a bar to invoke the jurisdiction under Article 227 of the Constitution of India. Thus this Court finds that the contention of the Learned Counsel for the respondent that revision petitioners cannot approach this Court as they have an alternate efficacious remedy under Order VII, Rule 11 C.P.C. do not have much force and thus the present revision petition is maintainable under Article 227 of the Constitution of India.

37. 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.

38. The term Real cause of action used above refer to an actual, concrete, existing cause of action and do not refer to time off claim, illusionary and invented for the purpose of suit by clever draft which are fictitiously and artificially projected as right to sue. It is settled law that in cases involving illusionary cause of



action, the role of the Court is to nip it in the bud.

39. It is significant to see that on coming to the other facet of claims of the Revision petitioners that the plaint is liable to be struck off for want of cause of action and is abuse of process of the Court, regardless of such arguments made by the learned counsel for the revision petitioners, this Court deems fit to go by the averments of the plaint and contention of the respondents set up in the plaint as a whole. On a careful reading of the documents submitted by the revision petitioners in the form typed set of papers, the respondent / plaintiff himself relinquished his right in respect of the subject matter of the suit schedule property to and in favour of the revision petitioners / defendants and as such they became absolute owners of the said properties. Thereafter several civil suits and multiplicity of proceedings reached the stage of finality and the award passed by the Lok Adalat Committee, Tiruchirapalli has not been set aside any of the parties to the proceedings till now. Therefore the award passed by the Lok Adalat dated 04.06.2013 become final and came to an end. Consequently the revision petitioners acquired valid and absolute title over the suit schedule properties, especially the lands comprised in Survey No.6/2. Hence, the alleged cause of action averred by the respondent / plaintiff could not be construed as cause of action, in the eye of law, to maintain the suit, for the relief sought for in the plaint. At this juncture, I am unable to accept the submission made by the learned counsel for the respondent regarding the claim of the respondent in respect of the said property.

40. Considering the above facts in entirety, it reveals that the present suit in O.S.No.155 of 2018 filed by the plaintiff, who is the respondent herein doesn't have any cause of action. Therefore, this Court do not find any value in the alleged cause of action, consequently the above suit is clearly abuse of process of Court. Apart from above, if it is also established that the filing of the suit itself is an abuse of process of law and the Court, hence, by invoking under Article 227 of the Constitution of India, the plaint could be struck off, to meet the ends of justice. Therefore, the plaint in O.S.No.155 of 2018 is liable to be struck off.

41. It cannot be disputed that plaint could be struck off only in the rarest of cases, when there is clear abuse of process of law and Court, however, the same has to be decided only based on the pleadings and the admission made by the plaintiff and not based on the written statement and when the court comes to a conclusion that there is no possibility for the plaintiff to succeed and filing such a suit is also an abuse of process of law and the Court. In the case on hand, all these aspects are available against the respondent /



plaintiff, hence, this Court has no hesitation to invoke under Article 227 of the Constitution of India and struck off the plaint to meet the ends of justice.

42. In the result, this Civil Revision Petition is allowed and the plaint in O.S.No.155 of 2018 pending on the file of the learned II Additional District Munsif at Tiruchirapalli is hereby struck off. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To  
The II Additional District Munsif Court,  
Tiruchirapalli.

+1 CC To MR.DURAI GUNASEKARAN, Advocate SR. NO. 88311

order made in  
**CRP (MD) (PD) No. 901 of 2018**  
**and**  
**CMP (MD) No. 3975 of 2018**  
**03.10.2018**

VSV  
TR/SKN/SAR-IV(05.10.2018)18P 3C