



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.07.2018

DELIVERED ON : 31.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1840 of 2017
and
CMP (MD) No.9717 of 2017

1.Pappathi @ S.Dhanalakshmi
2.Saraswathi
3.K.Kasthoori

.. Petitioners

vs

1.N.Poonkodi
2.N.Ravichandran
3.N.Kathirvel

.. Respondents

Civil Revision Petition filed under Article 227 of Constitution of India against the fair and decreetal order 03.02.2016 passed in I.A.No.351 of 2015 in O.S.No.119 of 2014 on the file of the Subordinate Judge, Palani.

For Petitioners : Mr.R.V.Rajkumar

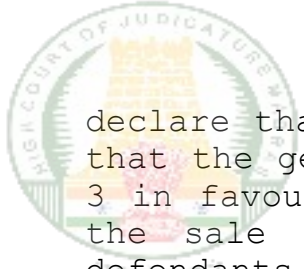
For Respondents : Mr.Anand Chandrasekar
for M/s.Sarvabhauman
Associates

ORDER

This Civil Revision Petition has been filed by the petitioners against the order dated 10.02.2016 passed in I.A.No.351 of 2015 in O.S.No.119 of 2014 on the file of the learned Subordinate Judge, Palani.

2. The petitioners are defendants and the respondents are plaintiffs in the suit.

3. The plaintiffs have filed the suit for declaration to



declare that the suit properties belong to them and also to declare that the general power of attorney executed by the defendants 1 and 3 in favour of the 4th defendant as null and void; to declare that the sale deeds executed by the 4th defendant in favour of the defendants 5 and 6 as null and void and for permanent injunction restraining the defendants 1 to 9 from interfering with the peaceful possession and enjoyment of the suit properties by the plaintiffs and also restraining the defendants 1 to 9 from creating any encumbrance over the suit property.

4. Pending suit, the defendants have filed I.A.No.351 of 2015 under Order 7, Rule 11 of CPC seeking to reject the plaint alleging that earlier the plaintiffs 2 and 3 and one Arjunan have filed suit in O.S.No.159 of 2001 against the defendants in respect of the suit properties for permanent injunction and the plaintiffs therein allowed the suit for dismissal. It is alleged that the plaintiffs have not taken steps to restore the said suit, however, they have filed the present suit concealing the filing of the earlier suit. According to the defendants, the plaintiffs were precluded from filing a fresh suit and the present suit is hit by the principles of *res judicata*. Hence, the defendants prayed for rejection of the plaint.

5. Since the plaintiffs have not filed counter, they were called absent and set *ex parte*. However, the trial Court, dismissed I.A.No.351 of 2015. Aggrieved by the order of the trial Court, the defendants have preferred this Civil Revision Petition.

6. Assailing the order of the trial Court, the learned counsel for the defendants submitted that suppressing the dismissal of the earlier suit in O.S.No.159 of 2001, the plaintiffs have filed the present suit, which is clear case of abuse of process of law. He would submit that the trial Court without considering the petition for rejection of plaint in proper perspective, dismissed the petition by observing that the issue raised in the petition can be decided at the trial stage. The approach adopted by the trial Court in dismissing the petition to reject the plaint is against the provisions of law and therefore, prayed for setting aside the same.

7. Reiterating the findings of the trial Court, the learned counsel for the plaintiffs submitted that since relief sought for in the present suit are comprehensive in nature, the trial Court has rightly dismissed the petition and there is no necessity to interfere with the order of the trial Court.

8. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

9. The grievance of the defendants is that earlier they have filed suit in O.S.No.159 of 2001 and the same was dismissed for default. Without taking steps to restore the same, the plaintiffs

have filed the present suit, which cannot be entertained as the same is hit by the principles of res judicata.

10. By placing reliance upon the decision of the Hon'ble Supreme Court in *Ramjas Foundation and another v. Union of India and others*, reported in (2011) 2 MLJ 162(SC), the learned counsel for the defendants contended that a person who approached the Court with unclean hands is not entitled to any relief. In the case on hand, by suppressing the material facts, the plaintiffs have filed the present suit and therefore, the present suit has to be rejected at the initial stage.

11. In *Ramjas Foundation and another v. Union of India and others*, supra, the Hon'ble Supreme Court held:

"14. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other Courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issues(s) arising in the case."

12. On a perusal of the typed set of papers, it is seen that the plaintiffs have earlier filed O.S.No.159 of 2001 on the file of the District Munsif Court, Kodaikanal against the present defendants for permanent injunction restraining them from in anyway interfering with the peaceful possession and enjoyment of the suit properties by the plaintiffs. The said suit came to be dismissed for default on 20.2.2003. After that, the plaintiffs have filed the present suit against the defendants and others in the year 2014. It is seen that suppressing the dismissal of the earlier suit, the plaintiffs have filed the present suit, which is in clear abuse of process of law.

13. In *M.Nagabhushana v. State of Karnataka and others*, reported in (2011) 3 MLJ 982 (SC), the Hon'ble Supreme Court held:

"21. Therefore, any proceeding which has been initiated in breach of the principle of Res Judicata is prima facie a proceeding which has been initiated in abuse of the process of Court."

14. In a catena of decisions, the Hon'ble Apex Court as well as the Hon'ble High Courts have explained in clear terms that principle behind the doctrine of res judicata is to prevent an abuse of the process of Court.



15. The decision of the Court by concluded judgments is binding on the parties, unless the findings are reversed or nullified in the decision made in exercise of the judicial power and party to the proceedings are bound by the findings rendered on the same issues. In the case on hand, though the suit was dismissed for default, a decision has been arrived at by the Court concerned, which has attained finality, as no application to restore the suit was filed by the plaintiffs.

16. It was contended by the learned counsel for the plaintiffs that the suit which was dismissed for default was filed for permanent injunction, whereas the present suit is for declarations and permanent injunction and therefore, the plaintiffs are entitled to maintain the present suit.

17. It is apposite to mention that the plaintiffs have instituted the suit being O.S.No.159 of 2001 in the year 2001 and allowed to be dismissed for default in the year 2003. The plaintiffs have not taken steps to restore the suit till date. However, after a lapse of nearly 11 years, the plaintiffs have filed the present suit seeking various reliefs without disclosing the factum of filing of the earlier suit.

18. The only reason given by the trial Court in dismissing the petition is that the grounds raised in the application for rejection of plaint can only be decided at the time of framing of issues. The aforesaid finding of the trial Court is in conflict with the provisions. As stated supra, the present suit filed by the plaintiffs suppressing the dismissal of the earlier suit filed by them against the same defendants is clear case of abuse of process of law and in the given facts and circumstances of the case, the plaint in the present suit ought to have been rejected by the trial Court under Order 7, Rule 11 of CPC, more specifically, when the averments raised by the defendants in I.A.No.351 of 2015 were neither denied by the plaintiffs nor negatived by the trial Court.

19. On a careful perusal of the order impugned, this Court is of the view that without proper analysis, the trial Court has dismissed I.A.No.351 of 2015 by simple order stating that the issue raised in the application can be decided at the trial stage. Except the aforesaid reason, there was no whisper about the merits of the petition.

20. Since the present suit filed by the plaintiffs against the defendants is in clear abuse of process of law and also hit by the principles of *res judicata*, I am of the view that the trial Court erred in dismissing I.A.No.351 of 2015. Resultantly, the suit on hand has to be struck off on the ground of abuse of process of law and on the principles of *res judicata*.

21. In the result,



(a) The Civil Revision Petition is allowed by setting aside the order passed in I.A.No.351 of 2015 in O.S.No.119 of 2014 dated 03.02.2016 on the file of the learned Sub-Judge, Palani.

(b) The suit in O.S.No.119 of 2014 is struck off from the file of the learned Sub-Judge, Palani.

(c) No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-IV)

To

The Sub-Judge,
Palani.

+1cc to M/S.SARAVANABHAUMAN ASSOCIATES, Advocate, SR.No.81671

+1cc to Mr.R.V.RAJKUMAR, Advocate, SR.No.82133

Pre-delivery order made in
C.R.P. (MD) (PD) No.1840 of 2017
and
CMP(MD)No.9717 of 2017

VSV

KK/SV/SAR-4/30.11.2018/5P-4C