



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.07.2018

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

C.R.P. (MD) (PD) No.1180 of 2018

1.G.Venkatachalam
2.G.Aathanathan
3.N.Kalyanasundari
4.G.Rethinakumar
5.M.Ajantha
6.Amuthavalli
7.Minor Vishnuvarathan
represented By his mother and
next friend Amuthavalli

..Petitioners/
Defendants 1 to 7

vs.

1.AL.AR.K.VR.Chinna Veerappan
2.AL.AR.SM.Narayanan Chettiyar
3.G.Ramadoss
4.R.Umapathi
5.S.Balasubramanian
6.K.Arivunithi
7.K.Mahendran
8.S.Vijayashankar
Samiayyah (died)
9.The Sub-Registrar,
Thanjavur,
Maharnombuchavadi,
Thanjavur Town.

.. 1st Respondent/
Plaintiff

10.State of Tamilnadu represented by its
District Collector, Thanjavur,
Collectorate,
Trichy Road,
Thanjavur.

11.Indira
12.Minor.Rajkumar
13.Minor.Sunitha
14.Minor.Sunitha

(Minors 13 & 14 represented by their



Mother and next friend Indira)
(Relief given up in respect of
respondents 2 to 13, since they
were set exparte before the
lower Court)

.. Respondents 2 to 13/
Defendants 8 to 20

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.132 of 2016 on the file of the Principal Subordinate Judge, Thanjavur now pending on the file of the Additional Subordinate Judge, Thanjavur.

For Petitioners : Mr.V.Chandrasekar
For Respondents : Mrs.VPM.Vaishnavi (for R9 and R10)
Government Advocate

O R D E R

The petitioners herein are the defendants 1 to 7 in the suit in O.S.No.132 of 2016 on the file of the learned Additional Subordinate Judge, Thanjavur. The plaintiff in the suit is the 1st respondent in the Civil Revision Petition.

2.The 1st respondent herein has filed the suit to declare that the judgment and decree in O.S.No.184 of 2010 on the file of the learned Additional Subordinate Judge, Thanjavur is void non-est and illegal and alternatively prayed for a cancellation of the judgment and decree in O.S.No.184 of 2010 on the file of the learned Additional Subordinate Judge, Thanjavur. At the time of admission, notice was ordered to the 1st respondent herein and the petitioners have given up the relief as against other respondents. The 1st respondent is being represented by his power agent in the suit and notice was served on the 1st respondent's power agent. Private notice was also served on the 1st respondent's power agent. This Court has no other alternative except to hear the petitioners for the purpose of pronouncing orders.

3.I heard Mr.V.Chandrasekar, learned counsel appearing for the petitioners and Mrs.VPM.Vaishnavi, learned Government Advocate for the respondents 9 and 10 and perused the entire materials available on records.

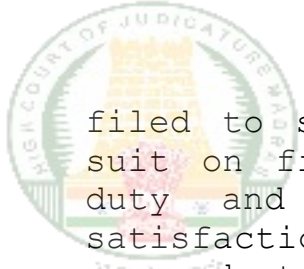
4.The learned counsel has submitted that the suit in question is clearly an abuse of process of Court. No doubt Article 227 of the Constitution of India, confers power on this Court to exercise supervisory jurisdiction to prevent flagrant misuse of law and process of Court. If there is gross abuse of process of Court repeatedly and unrepentantly then this Court could step in to prevent such abuse. Before taking into account the vehement submissions of the learned counsel that it is necessary that the



respondents/plaintiffs should pursue the suit in O.S.No.184 of 2010. The petitioners herein have filed the suit in O.S.No.184 of 2010 on the file of the learned Additional Subordinate Judge, Thanjavur for declaration and consequential injunction. The petitioners herein have also prayed for another relief to declare that the sale agreement dated 10.09.2009 executed by the 2nd respondent herein through his power agent 3rd respondent herein in favour of the respondents 4 to 6 herein as null and void and also prayed for other reliefs.

5. After full trial the suit in O.S.No.184 of 2010 was dismissed and the petitioners herein have taken up the matter on appeal before the learned Principal District Judge, Thanjavur, in A.S.No.14 of 2014. The appeal filed by the petitioners herein was allowed and consequently the suit was decreed. The decree was passed by the Appellate Court in the appeal in A.S.No.14 of 2014 in favour of the petitioners and thereby the title to the properties was declared in favour of the petitioners herein. Further, the sale agreement dated 10.09.2009 executed by the 2nd respondent herein through his power agent 3rd respondent herein in favour of the respondents 4 to 6 herein are also declared as null and void. There is no second appeal as against the decree passed in the A.S.No.14 of 2014 on the file of the learned Principal District Judge, Thanjavur and the decree has become final and conclusive. The petitioners herein have filed a comprehensive suit for declaration and the decree passed is a right in rem and it binds everyone unless a third party comes in and say that the plaintiffs in whose favour the decree was passed have no title to the properties by way of producing unimpeachable documents. But, no such exercise was resorted to by the 1st respondent on perusal of the records. Instead the 1st respondent through his power agent has filed O.S.No.132 of 2016 on the file of the learned Additional Subordinate Judge, Thanjavur to declare the decree passed in O.S.No.184 of 2010 on the file of the learned Additional Subordinate Judge, Thanjavur as null and void. This Court carefully perused the plaint averments. Except some vague averments of fraud no specific allegation of fraud was pleaded in the plaint. The plaint is a concise statement of facts and without any substratum of pleadings the plaint could not succeed. Taking into account the reliefs sought for in the suit in O.S.No.132 of 2016 the suit is clearly dearth of pleadings.

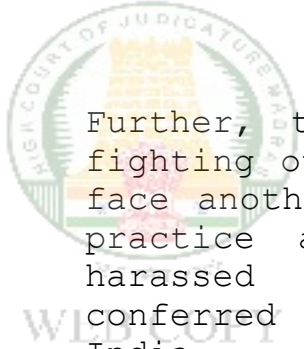
6. The learned counsel for the petitioners has also indicated that no document has been filed to prima facie satisfy the trial Court regarding the title of the 1st respondent for the purpose of taking the suit on file. This Court has also perused the plaint except the judgment and decree passed in the suit in O.S.No.184 of 2010 on the file of the learned Additional Subordinate Judge, Thanjavur and the judgment and decree passed in the appeal in A.S.No.14 of 2014 on the file of the learned Principal District Judge, Thanjavur. No other documents have been



filed to satisfy the trial Court for the purpose of taking the suit on file. Unfortunately, the trial Court has failed in its duty and taken the suit on file without any subjective satisfaction and without *prima facie* satisfied itself that the 1st respondent has got semblance of right over the property. Anyhow, this Court also perused the plaint in question carefully and found that the 1st respondent has pleaded that the suit properties in the suit in question was originally owned by one AL.AR.Arunachalam Chettiar and also found that the plaintiff has referred to a decree passed in O.S.No.3 of 1919 on the file of the learned District Judge, Thanjavur West.

7.It was also pleaded regarding devolution of title. The plaintiff has not filed any document to *prima facie* satisfy the Court regarding the title of so called AL.AR.Arunachalam Chettiar. Further, no Genealogy tree was filed to show that the plaintiff is a descendant of so called AL.AR.Arunachalam Chettiar. It is needless to point out that the learned Principal Subordinate Judge failed to go through the plaint averments at the time of taking the suit on file and mechanically taken the suit on file. The duty of the Subordinate Courts at the time of taking the suit on file should satisfy itself *prima facie* that the plaintiff is having title to the property in question. As far as the case on hand is concerned the plaintiff has prayed for a declaration that the decree passed in O.S.No.184 of 2010 is null and void. When the decree was sought to be set aside on the ground of fraud and collusion before the trial Court in a separate suit by a third party then the burden is heavily on the Court to *prima facie* satisfy itself regarding the title of the plaintiff. It is a sorry state of affair that the plaintiff in the suit in question has not filed any document to show his title to the property.

8.Apart from that the cause of action pleaded in the plaint is nebulous in nature and non-disclosure of cause of action also non-suit the plaintiff. In the absence of valid documents to show *prima facie* title of the plaintiff, the learned Principal Subordinate Judge, Thanjavur has committed a grave error in taking a vexatious suit on file. When a vexatious suit is taken on file it would cause serious prejudice and hardship to the contesting parties. The process of the Court must be used properly and must not be misused or abused by the plaintiff and if it is allowed it is nothing but an improper use of the machinery. Already a litigation has reached its finality subsequently a third party has filed another suit questioning the validity of the decree without *prima facie* satisfy the Court regarding the title to the suit property clearly amounts to abuse of process of Court. This tendency on the part of the litigants should be curbed because it is nothing but a blatant abuse of the process of Court resulting in miscarriage of justice. Viewing from any angle if the suit is allowed to be proceeded further it would clearly amount to encouraging an unscrupulous litigant to misuse the Court process.



Further, the petitioners herein who have obtained a decree by fighting out the case for years together should not be allowed to face another vexatious litigation. In order to curb this sort of practice and also to save the bonafide litigant from being harassed again and again the supervisory jurisdiction was conferred on this Court under Article 227 of the Constitution of India.

9. Therefore, this Court has no hesitation to struck off the plaint in O.S.No.132 of 2016 from the file of the learned Additional Subordinate Judge, Thanjavur by invoking the extraordinary power conferred on this Court by the Constitution of India.

10. In the result:

(a) this Civil Revision Petition is allowed;

(b) the plaint in O.S.No.132 of 2016 pending on the file of the learned Additional Subordinate Judge, Thanjavur, is struck off from its file. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

The Additional Subordinate Judge,
Thanjavur.

+ 1 CC TO MR.V.CHANDRASEKAR, ADVOCATE IN SR NO.70800
+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.70981,71089

VSV

BU/NM/SV/SAR-IV :14.11.2018 : 5P/4C

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