



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2018

CORAM

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

C.R.P. (MD) (PD) No.1179 of 2018

WEB COPY

Sri Pragadambal Agencies,
Represented by its Managing Partner
A.Kumarasamy

.. Petitioner

vs.

1.Visalakshi
2.Chellammai
3.Adaikammai
4.Sethukarasi
5.Sambandam Chettiar
6.Rama.Sethu @ Raghavan
7.Rama.Subramanian
8.Rama.Chidambaram
9.Rama.Chellappan
10.Mallika

.. Respondents

(Relief given up as against Respondents 2 to 10)

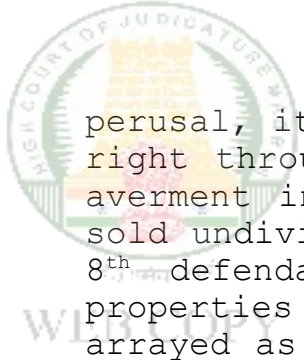
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the suit in O.S.No.62 of 2016, on the file of the Principal District Judge, Pudukottai.

For Petitioner : Mr.V.Chandrasekar
For Respondents : Mr.D.Ramesh Kumar (for R1)
R2 to R10 - Given up

ORDER

The Civil Revision Petition has been filed to strike off the plaint in O.S.No.62 of 2016 now pending before the learned Principal District Judge, Pudukottai by invoking the extraordinary and supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petitioner has given up the relief as against the respondents 2 to 10 and the only contesting respondent is the 1st respondent who is the plaintiff in the suit in question.

2.The petitioner is the 10th defendant in the suit and the 1st respondent herein is the plaintiff in the suit. The respondents 2 to 9 are the defendants 1 to 9 in the suit. The 1st respondent in the Civil Revision Petition as plaintiff has filed a suit praying for a relief of declaration that the sale deeds dated 16.02.1983 and 19.10.1983 executed by the 4th and 8th defendant in the suit in favour of the 10th defendant viz., the petitioner in the Civil Revision Petition and also prayed for a relief of partition of 1/5 share out of 1/2 share owned by defendants 1 to 4 in the suit. This Court carefully perused the plaint in question. On a careful



perusal, it is discernible that the 1st respondent herein is claiming right through his father the 4th defendant in the suit. As per the averment in the plaint the father of the 1st respondent herein has sold undivided $\frac{1}{2}$ share in the suit properties on 16.02.1983 and the 8th defendant has sold his undivided $\frac{1}{10}$ th share in the suit properties on 19.10.1983. The 4th defendant in the suit had been arrayed as 5th respondent in the Civil Revision Petition and the 8th defendant had been arrayed as 9th respondent in the civil revision petition. The suit has been filed in respect of 28 items of properties situated in Nathampennai village in Pudukottai Taluk within Pudukottai District. The entire averments in the plaint proceeded on the footing that the petitioner herein has purchased undivided share in all the properties described in the plaint in question. As per the averments in the plaint it could be inferred that the petitioner herein is the purchaser of the undivided share from the defendants 4 and 8.

3.I heard Mr.V.Chandrasekar, learned counsel appearing for the petitioner and Mr.D.Ramesh Kumar, learned counsel for the 1st respondent and perused the entire materials available on record.

4.The submission of the learned counsel for the petitioner is that the petitioner has already filed a suit in O.S.No.163 of 1987 before the learned Subordinate Judge, Pudukottai, for partition on the basis of the sale deeds dated 16.02.1983 and 19.10.1983. As already stated the petitioner herein has purchased only undivided share from the 5th respondent and 9th respondent herein. Therefore, the petitioner firm has filed the suit for partition. The suit in O.S.No.163 of 1987 was dismissed against which the petitioner firm has preferred an appeal before the learned Principal District Judge, Pudukottai in A.S.No.77 of 1995. The appeal was also dismissed. Thereafter, the firm represented by its partners filed a second appeal in S.A.No.410 of 2002 before this Court. I have perused the entire judgment passed in S.A.No.410 of 2002 and this Court has allowed the second appeal and has also given a finding that the sale deeds dated 16.02.1983 and 19.10.1983 are perfectly valid. The judgment in the second appeal has not been challenged further and the judgment has become final. Now in the plaint in question the 1st respondent has prayed for a relief of declaration that the sale deeds dated 16.02.1983 and 19.10.1983 are invalid and void. Whether the 1st respondent has any locus standi to file a suit questioning the validity of the sale deeds which were declared valid by this Court in the second appeal is the only point to be considered by this Court in the Civil Revision Petition. This Court perused the judgment passed in the second appeal. One substantial question of law formulated in the second appeal at the time of admission was "whether registered sale deeds can be rejected as sham and nominal on the ground that payment of sale consideration charged on the property is recited to be postponed till the possession is delivered? The finding rendered by this Court in the second appeal is as follows:



"Thus the Exhibits-A9 and A11 cannot be construed as sham and nominal and they are valid and supported by consideration. Hence, the second substantial question of law is also answered in favour of the appellants/plaintiffs. The sale deeds dated 16.02.1983 and 19.10.1983 are declared as valid and therefore, the 1st respondent is totally estopped from raising the question once again. No doubt the petitioner is not a party in the earlier suit in O.S.No.163 of 1987. But, in this suit the 1st respondent is claiming right through his father who has suffered a decree by virtue a judgment in the second appeal in S.A.No.410 of 2002 as if it is an ancestral property. It is needless to point out that undivided share could be sold and as per Section 30 of Hindu Succession Act, the interest of a male Hindu in a Mithakshara coparcenary property be deemed to be the property capable of being disposed by him. It is pertinent to point out that the sale deeds are of the year 1983 which was challenged in a suit for partition filed by the petitioner firm herein and the matter has reached its finality in the year 2016."

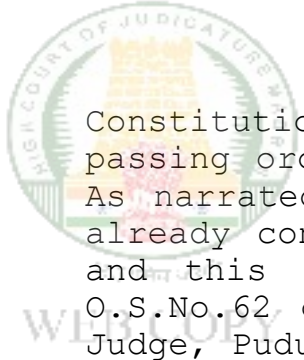
5. Now once again the validity of the sale deeds are being questioned in the plaint in question which clearly amounts to re-litigation of the already concluded matter. As narrated above already a litigation regarding the validity of the sale deeds has reached the High Court by way of second appeal wherein the sale deeds were declared valid thereafter the 1st respondent again questioning the validity of the sale deeds which clearly amounts to abuse of process of Court. The conduct of questioning the sale deeds once again by the 1st respondent is a blatant abuse of process of Court resulting in miscarriage of justice. No doubt this Court under Article 227 has got supervisory jurisdiction to prevent frivolous and vexatious proceeding. The suit in O.S.No.62 of 2016 on the file of the learned District Judge, Pudukottai is clearly an abuse of process of law which satisfies the parameters for stepping under Article 227 of Constitution of India. A purchaser should not undergo the ordeal of facing the trial again and again by different persons and this Court is duty bound to safeguard the interest of the purchaser whose sale deeds were declared valid by this Court in a second appeal. Therefore, the 1st limb of the prayer clearly amounts to re-litigation and it is clearly amounts to abuse of process of law.

6. The 1st respondent herein has claimed right on the basis that she is a member of the co-parcenary as per the Hindu Law. It is needless to point out that as per the proviso to Section 6(1) of the Hindu Succession Act contemplates that nothing contained in the sub-section affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December 2004. No doubt the sale deeds dated 16.02.1983 and 19.10.1983 and therefore, the prayer seem otiose to rehearse it all again in the suit now in question.



7. In the plaint in question the 1st respondent has prayed for a relief of partition which also amounts to improper exercise. I have perused the plaint in question the 1st respondent claimed relief of partition in all 29 items of properties. Out of which 8 items already a subject matter of S.A.No.410 of 2002. The plaint proceeded on the footing that the 1st respondent herein is a coparcener but the plaint is blissfully vague as to how she is entitled to a share in the properties. When already a partition decree was passed in respect of 11 items of properties in the suit in O.S.No.163 of 1987 on the file of the learned Subordinate Judge, Pudukottai and out of 11 items only 8 items are found place in the plaint in question which clearly depicts that the attempt of the 1st respondent only to protract the proceeding detrimental to the interests of the lawful purchaser. This practice has to be deprecated at the threshold and the conduct of filing this sort of a vague plaint has to be nipped in the bud. Anyhow the valuable right of the plaintiff should not be defeated on technical grounds and therefore, this Court has no other alternative except to give liberty to the 1st respondent herein to file a fresh suit by excluding the properties described in the suit in O.S.No.163 of 1987 on the file of the learned Subordinate Judge, Pudukottai filed by the petitioner firm herein would serve the purpose. The plaint in O.S.No.62 of 2016 on the file of the Principal District Judge, Pudukottai is struck off from its file and at the same time the 1st respondent is at liberty to file fresh suit with all relevant particulars for partition in respect of the properties by excluding the properties described in the suit in O.S.No.163 of 1987 on the file of the learned Subordinate Judge, Pudukottai.

8. At the time of hearing of the Civil Revision Petition, the petitioner has brought to the notice of this Court that the father of the 1st respondent has filed another suit in O.S.No.69 of 2012 on the file of the learned Principal District Judge, Pudukottai, including the properties which are the subject matter of the suit in O.S.No.163 of 1987. One thing is very clear that the father of the 1st respondent is doing all sorts of mischiefs by abusing the process of the Court after he has executed the sale deed in favour of the petitioner firm in the year 1983. This Court having supervisory jurisdiction has no other alternative except to stop this sort of illegality. A firm which is a juristic entity succeeded in the Second Appeal but facing litigation again and again in respect of the properties purchased by it clearly amounts to harassment. The object of the Court process to give a quietus to the dispute and any attempt to protract the litigation again and again by the unscrupulous litigants has to be dealt with hardly then only the object of conferring supervisory jurisdiction to this Court would be achieved to save the litigants from being harassed again and again. The power under Article 227 of the Constitution of India, casts a duty on the part of the High Court to keep all Courts within the jurisdictional bounds to prevent abuse of process of Court. This Court has got inherent jurisdiction under Article 227 of the



Constitution of India to prevent abuse of process of Court and passing order to struck off the plaint from the file of the Court. As narrated above the attempt of the 1st respondent to re-open the already concluded issue clearly amounts to abuse of process of law and this Court has no hesitation to struck off the plaint in O.S.No.62 of 2016 from the file of the learned Principal District Judge, Pudukottai and as far as the suit in O.S.No.69 of 2012 on the file of the learned Principal District Judge is concerned, this Court is of the view that the properties described in the suit in O.S.No.163 of 1987 on the file of the learned Subordinate Judge, Pudukottai, have to deleted from the description of properties to avoid giving any findings regarding the sale deeds in favour of the petitioner firm herein and the suit could be proceeded in respect of the other properties.

9.In the result:

(a) this Civil Revision Petition is allowed and the plaint in O.S.No.62 of 2016 on the file of the learned Principal District Judge, Pudukottai, is struck off from its file and at the same time the 1st respondent is at liberty to file fresh suit with all relevant particulars for partition in respect of the properties by excluding the properties described in the suit in O.S.No.163 of 1987;

(b) the suit in O.S.No.69 of 2012 on the file of the learned Principal District Judge, Pudukottai is concerned, this Court is of the view that the properties described in the suit in O.S.No.163 of 1987 on the file of the learned Subordinate Judge, Pudukottai have to deleted from the description of properties to avoid giving any findings regarding the sale deeds in favour of the petitioner firm herein and the suit could be proceeded in respect of the other properties in the suit. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Principal District Judge, Pudukottai.

+1CC to Mr.V.Chandrasekar, Advocate, SR.No.71023

C.R.P. (MD) (PD) No.1179 of 2018

04.07.2018