



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2018

CORAM

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

C.R.P. (MD) (PD) No.2445 of 2017

and

C.M.P. (MD) No.11581 of 2017

Ravikumar

.. Petitioner/5th Defendant

Vs

1.Elangovan	..Respondent/1 st Plaintiff
2.M.Loganathan	..Respondent/2 nd Plaintiff
3.P.Subramani	..Respondent/3 rd Plaintiff
4.P.Murugesan	..Respondent/4 th Plaintiff
5.Rajeswari	..Respondent/1 st Defendant
6.Sudha	..Respondent/2 nd Defendant
7.Palanimalai	..Respondent/3 rd Defendant
8.Vembayee	..Respondent/4 th Defendant

PRAYER: Petition under Article 227 of the Constitution of India, to struck off the plaint in O.S.No.724 of 2017 on the file of Subordinate Judge, Karur.

For Petitioner : Mr.K.Govindarajan

For Respondents : No Appearance

ORDER

The revision petitioner / defendant in suit in O.S.No.724 of 2017 on the file of the learned Sub Court, Karur, by way of this Civil Revision filed under Article 227 of the Constitution of India seeks to struck off the suit plaint as abuse process of Law.

2.It is the case of the revision petitioner that the respondents 1 to 4 herein have filed the above suit in O.S.No.724 of 2017 as against the revision petitioner and respondents 7 and 8 herein for the relief of Declaration and Permanent Junction in respect of suit property situated in S.F.No.8/1 measuring an extent of 5 acres in Mookanakurichi Village. In the said suit the respondents 1 to 4 / plaintiffs set up a claim as though they purchased the property from respondents 5 and 6 in the year 2008.

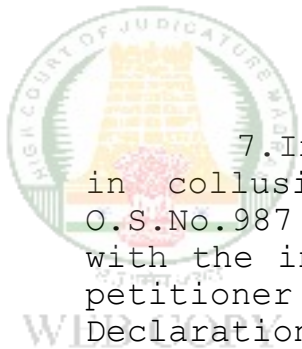


3. According to the revision petitioner the present suit plaintiff in O.S.No.724 of 2017 on the file of learned Sub Court, Karur, is liable to be struck down since being a collusive and fraudulent suit framed by the respondents 1 to 4 to overcome their failure in earlier round of litigation claiming right and title over suit property, which went up to the Hon'ble Apex Court and decided in favor of the revision petitioner.

4. According to the revision petitioner, he is the absolute owner of the suit schedule property. The suit property was purchased by him from one Kaliammal. It is his case that the suit property was originally a grant to one Dhasi Ammani towards her dance service in Karur Pasupatheeswarar Temple. Later the grant was enfranchised and Ryotwari Patta was given. Correspondingly all the revenue records reflected her name and she was in possession and enjoyment. Later the suit property was succeeded by her daughter Kaliammal the 1st defendant in the suit therein and the revision petitioner purchased the suit property from the said Kaliammal and her son namely Palanimalai vide a registered sale deed dated 03.01.1994. Though the respondents did not have any right or title whatsoever, but since being daughter, grand daughter and son of Kaliammal, with abundant caution they were also made as parties to the said sale deed.

5. Whereas contrarily, it was subsequently claimed by the respondents 1 to 4 that Nalliana Gounder, the husband of revision petitioner's vendor Kaliammal had executed a Will dated 23.09.1991 jointly along with Nalliana Gounder in respect of suit properties and some other suit properties bequeathing the same to respondents 1 to 4. It was further claimed that subsequently the will was cancelled by Kaliammal without any authorization on 10.12.1992 and the sale of the suit property was made by Kaliammal in favour of the revision petitioner. Thereupon the above suit in O.S.No.987 of 2005 came to be filed against the revision petitioner and few others to declare a sale deed standing in revision petitioner's favor in respect of suit property admeasuring 5 acres situated in S.F.No.8/1 in Mookanakurichi Village as null and void, consequently to handover the possession.

6. After keen contest the suit came to be dismissed on 09.1.2011. As against the same A.S.No.12 of 2011 was filed by the plaintiff and the same was also dismissed on 09.11.2011. Against which S.A.No.547 of 2012 was filed before this Court and the same was also dismissed on 24.02.2017. As against the same S.L.P.No.17960 of 2017 came to be filed by the respondents before the Hon'ble Apex Court and the same was also dismissed on 21.07.2017.



7. In the said factual background again the respondents 1 to 4 in collusion with two other defendants in the above suit in O.S.No.987 of 2005 in utter collusion and playing fraud have come up with the instant suit in O.S.No.724 of 2017 as against the revision petitioner and respondents 7 and 8 herein for the relief of Declaration and Permanent Injunction in respect of the very same property in S.F.No.8/1 in Mookanakurichi Village.

8. Thus contending the latter suit in O.S.No.724 of 2017 as an abuse of process of Law and a tool of re-litigation of an issue already decided by the Hon'ble Apex Court, the revision petitioner is before this Court by way of this civil revision.

9. Per contra, according to respondents 1 to 4, the suit properties originally belonged to one Nalliana Gounder. Both Nalliana Gounder and his wife Kaliammal held landed properties. The said Nalliana Gounder and his wife Kaliammal executed a registered will dated 23.09.1991 in favour of the respondents in respect of suit properties and the same had taken effect after death of said Nalliana Gounder on 02.12.1991. However without any authority the said will was cancelled by Kaliammal vide a registered cancellation deed dated 11.12.1992. The said cancellation is unlawful and without any authority. Subsequently the suit property was alienated by beneficiary of the Will namely respondents 5 and 6 respectively to and in favor of respondents 1 to 4 vide registered sale deed dated 28.01.2008. However as in the said circumstance, the revision petitioner and his men attempted to interfere with the respondents 1 to 4's possession, the above suit in O.S.No.724 of 2017 as against the revision petitioner and respondents 7 and 8 herein for the relief of Declaration and Permanent Junction came to be filed. Thus he sought for dismissal of the civil revision petition.

10. I heard Mr.K.Govindarajan, learned counsel for the petitioner and perused the entire records. No representation on behalf of the respondents.

11. Before dealing with the case, this Court ensured that the Schedule of suit property of both the suits in O.S.No.987 of 2005 and O.S.No.724 of 2017 are one and same, viz. admeasuring 5 acres situated in S.F.No.8/1 in Mookanakurichi Village and the four boundaries also same.

12. On perusal of the Judgments made in O.S.No.987 of 2005 and A.S.No.12 of 2011 it is seen that there were three issues framed by the Courts below, namely:

1. As to whether the respondents 1 to 4 had successfully proved the Will in their favour?



2. As to whether the Sale deed standing in favour of the revision petitioner / 6th defendant therein is liable to be declared Null and Void?

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3. Whether the respondents are entitled for recovery of possession over suit property from the revision petitioner namely the 6th defendant therein?

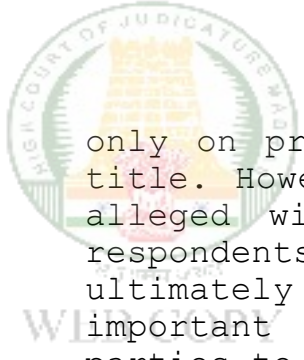
13. After keen contest by the revision petitioner as well as the respondents 1 to 4 as plaintiffs, the Courts found that the respondents 1 to 4 failed to establish that the suit property belonged to Nalliayana Gounder and further the execution of alleged Will dated 23.09.91 was held suspicious, not proved and there were considerable discrepancies and doubts with regard to nature, mode and contents of the will. Thus the will dated 23.09.1991 was held to be unproved and resultantly the revision petitioner's title deed was held to be valid and to be undisturbed. It was further held that the respondents 1 to 4 herein are not entitled for recovery of possession over suit property from the revision petitioner.

14. Whereas in the said factual background, on perusal of the plaint averments made in latter suit in O.S.No.724 of 2017, it is candidly clear from paras 6, 7 and 12 to 15 the respondents all over again put forth their case claiming Title through an alleged Will dated 23.09.91 said to have been executed jointly by Nalliana Gounder and his wife Kaliammal. As stated above, it is their further case that subsequently the will was cancelled without any authority by Kaliammal.

15. Thus this Court finds that pleadings in respect of title by respondents are one and same in both the suits and the issue in as much as the validity of will, it was found that the execution of the Very Will dated 23.09.1991 was held not proved and doubtful and accordingly their claim through the alleged Will stood rejected by the Courts below in earlier round of litigation as mentioned above. As stated above, the matter went up to the Hon'ble Apex Court and the respondents 1 to 4 were unsuccessful.

16. In the said circumstance, from the pleading made in the plaint and in the light of issues answered with regard to the alleged Will and specific issues and findings thereon corresponding to O.S.No.987 of 2005, this Court have no hesitation to hold that the suit on hand is utter abuse of process of Law.

17. Regardless of the contentions made by the revision petitioner, it is quiet natural to see from the plaint averments that the respondents 1 to 4 can get a declaration over suit property



only on proving the Will dated 23.09.91, through which they claim title. However the fact remains that the validity and proof of the alleged will were already answered and decided as against the respondents 1 to 4 in earlier round of litigation, which was ultimately decided by the Hon'ble Apex Court. It is equally important to note all the parties to the earlier suit are also parties to the present suit.

18.This Court is again clueless as to how the respondents 1 to 4 who had sought for recovery of possession from the revision petitioner and failed in the same vide O.S.No.987 of 2005 and that their case was decided by the Hon'ble Apex Court on 21.07.2017, within another three months i.e on 13.10.2017 is able to claim for an Injunction as though the respondents 1 to 4 are in possession of the very same property from the year 2008 as stated in their cause of action.

19.For the forgoing discussion this Court finds that the instant suit on hand in O.S.No.724 of 2017 is nothing but an intended tool to circumvent the earlier verdict of the Trial Court made in O.S.No.987 of 2005, which attained finality by way of SLP.No.17960 of 2017.

20.In this situation it would be apposite to look into the following decisions of this Court made in

I) RM.Subbiah v. S.Ramakrishnan & others, reported in 2012-1-LW 437 holding that if a party comes to the Court with unclean hands and re-agitates the matters, Courts are not powerless to exercise its discretion in putting a full stop to the same and accordingly, the suit is liable to be struck off under Article 227 of the Constitution of India.

II) Tamil Nadu Handloom Weavers' Co-operative Society v. S.R.Ejaz, reported in 2009 (5) CTC 710, this Court holding that that Courts cannot be a tool in the hands of vexatious litigants and that would be a mockery of justice to permit respondent therein to enjoy luxury of re-litigation.

III) Seeni alias Sundarammal v. Ramasamy Poosari, reported in 2000 (III) CTC 74, holding that that process of Court should not be misused or abused and the same has to be judged from the angle of interest of justice and public policy. It was further held that the High Court, while exercising its power of superintendence can step in, where there is blatant violation of process of Court.

IV) K.K.Modi v. K.N.Modi, reported in (1998) 3 SCC 573, the Hon'ble Supreme Court holding that



"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."

The Hon'ble Apex Court has held in paragraph number 44 as follows:

"44. ... 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."

21. It is a well settled law that the power under Article 227 of the Constitution of India, involves a duty on the part of the High Court to keep all Court within its 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 plaint from the file of the Court, if it is a clear abuse of process of law and Court, as per the plaint averments and the relief sought



for by the party seeking the relief.

22. Therefore in view of the foregoing factual reasons and the settled legal proposition, this Court find that suit in O.S.No.724 of 2017 on the file of the learned Sub Court, Karur is instituted with a fraudulent design for reagitation of an issue and more so to circumvent a verdict attained finality before the Hon'ble Apex Court. Thus the suit on hand is utter abuse of process of Law and Court and the same can never be allowed.

23. In the result, the Civil Revision Petition succeeds, the Plaint in O.S.No.724 of 2017 on the file of the learned Sub Court, Karur shall stand struck off. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-III)

To

The Subordinate Judge, Karur.

+1 CC To MR.K.GOVINDARAJAN, Advocate SR. NO. 73499

C.R.P. (MD) (PD) No.2445 of 2017

and

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