

4. In actual the petitioners had previously alienated about 2 acre 15 cents in S.No.357/1 to one Jeganathan for a sale consideration of Rs.10,00,000/- by executing a Sale deed and in as much as the remaining extent of 5 acres, the petitioners executed a Separate Settlement deed.

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5. In fact, the 1st petitioner / 1st defendant has executed a settlement deed in favour of his wife in respect of an extent of 1 acre 63 cents, the 2nd petitioner has executed a settlement deed in favour of his wife in respect of 1 acre 63 cents in S.No.357/1. Hence the petitioners was not having title or interest over the suit 1st schedule properties, it remained previously sold by 1st petitioner's father and his brother in the year 2003. This being the factum, there arose a dispute with regard to suit properties resulting in filing of suits in O.S.No.102 of 2006 and O.S.No.29 of 2007 on the file of the learned District Munsif Court, Sathur. The suit in O.S.No.102 of 2006 came to be filed by the respondent as against the petitioners, seeking the relief of injunction against the petitioners herein restraining them from alienating the suit property and suit in O.S.No.29 of 2007 was filed by one P.Issakimuthu against the respondent herein for Permanent Injunction, besides seeking for a prevention restraining the respondent herein from making encumbrance over the suit properties.

6. The respondent has filed the earlier suit against the petitioners and specifically pleading that suit properties belong to Arulmigu Krishnan Kovil temple Kattalai properties and he is the trustee of the said temple. In the mean time said P.Esaakimuthu has filed the above suit for permanent injunction restraining the respondent herein /plaintiff from alienating or encumbering the suit schedule property in O.S.No.29 of 2007. The suit has been decreed on 17.09.2009. Since the respondent herein has not filed any appeal against the said suit, it became final.

7. On 14.08.2013 the respondent had issued a legal notice to the petitioners and others, asking to handover possession of the suit properties and not to encumbrance the suit properties as decreed by the learned District Munsif Court, Sattur in O.S.No.29 of 2007 judgment dated 17.09.2009. In fact the said decree is operating against the respondent herein. The respondent has willfully and deliberately suppressed the previous suits mentioned above and filed the present suit for partition and it is purely an abuse of process of law and hit by the principles of res-judicata. The suit is also barred by Article 58 of the Limitation Act, 1963 and the learned District Munsif Court, Sathur is not having jurisdiction to try the suit as the value of one of the suit property is worth about Rs.40,00,000/-. Hence, the petitioners

<https://hcservices.mca.gov.in/Services/ServicesA> A.No.57 of 2015 in O.S.No.87 of 2014 to reject the plaint under Ord.7, Rule 11 C.P.C.



8. Per contra, the respondent/plaintiff filed counter to the said application to reject the plaint and contented that the suit property originally belonged to one Karuppanan Servai and his Wife one Sundarathammal by ancestrally and they had a Son by name Palaniappan. After the demise of Karuppanan servai, the suit properties were inherited by his Wife and Son. While so, Palaniappan executed a Will on 08.05.1920 bequeathing the suit first schedule to Sattur Arulmigu Krishnan Temple to perform Poojas and Neivethiyam to Lord Krishana. The said Sundarathammal is the sister of Palaniyandi who is the grandfather of the Respondent and sister of Ramaiya Servai who is the grandfather of the Petitioners 1 and 2.

9. It is the further case of the respondent that Sundarathammal executed settlement deed on 16.03.1937 in favour of Ramaiya Servai and Achiammal as Trustees to administer the properties mentioned in the settlement deed. The said Achiammal is the sister of Respondent's father Karuppaiya servai. The petitioners created forgery sale deed and settlement deed on 18.03.2013 and 29.05.2013 in respect of S.No.357/1. He further contented that the petition is bad for non-joinder of necessary parties. Section 15 of Hindu Succession Act is not applicable to the facts of this case. Further, the provision of the Limitation Act will have no application in respect of Trust properties. The Respondent herein filed W.P.No.13587 of 2011, in which the impleading Petition filed by the Petitioners herein was not numbered and status quo order was granted in favour of the Respondent herein. The petitioners have not make out any case for rejection of plaint.

10. Before the trial Court, on the side of the revision petitioners Exs.A1 to A7 were marked and there was no oral or documentary evidence on the side of the respondent herein. Upon considering the rival submission on either side, the trial Court dismissed the application filed in I.A.No.57 of 2015, holding that all the grounds raised by the petitioners could be considered only after conducting full-fledged trial. Feeling aggrieved over the same, the petitioners are before this Court by way of this civil revision petition.

11. I have carefully considered the rival submission on either side and perused the entire records.

12. The contention of the learned counsel for the Respondent that CRP.No.122 of 2015 filed by the Petitioners herein was dismissed at the admission stage itself and therefore the learned counsel submitted that the forgery act of the Petitioners had come into light, cannot be accepted for the simple reason that the said Civil Revision Petition was filed to strike off the Plaint without exhausting the remedy available to the Petitioners to file application under Order 7, Rule 11 of C.P.C. to reject the Plaint.

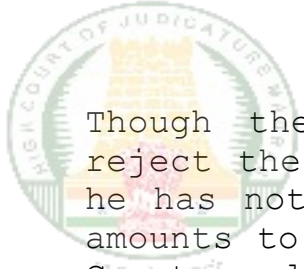


The petitioners were granted liberty to approach the trial Court to file application under Order 7, Rule 11 of C.P.C. and accordingly they have filed the above application to reject the plaint.

13. The Trial Court was not right in holding that under Ex.A3 Judgment in O.S.No.62 of 2007, it was declared that settlement deed executed by the Respondent herein in favour of one Kalavathy on 27.05.2004 as null and void and therefore in the said Judgment the lower Court has not decided the issue relating to the Title. In the considered opinion of this Court, the said finding of the Trial Court is totally perverse, since the lower Court under Ex.A3 Judgment made in O.S.No.62 of 2007 has declared the settlement deed executed by the Respondent herein in favour of one Kalavathy as null and void, the question of deciding the Title to the property conveyed under the settlement deed does not arise. Once the lower Court has come to the conclusion that the Respondent herein has no right to execute the settlement deed with respect of the property conveyed under the said settlement deed, it cannot be said that the Respondent herein is having right and Title to the property or in otherwise the Title and right in the property conveyed under the settlement deed has not been decided. Hence this Court is not in agreement with the above finding rendered by the trial Court.

14. The Trial Court further went in wrong by holding that the relief sought for under Ex.A6 Judgment made in O.S.No.29 of 2007 dated 17.09.2009 and the relief sought for in the present suit in O.S.No.87 of 2014 is not one and the same. Though the relief sought for in the above said suits are different, but the Trial Court failed to consider the fact that when the Respondent herein was restrained from alienating or encumbering the properties and it is further held in the said Judgment that the suit properties in Ex.A6 was settled to perform the Poojas and Neivethiyam to Krishnan Kovil at Sattur under a registered settlement deed dated 16.03.1937, the Plaintiff/respondent herein has no cause of action to file the present suit for partition. Most of the properties in O.S.No.29 of 2007 and in the present suit in O.S.No.87 of 2014 are one and the same. Therefore in my view, the finding rendered by the Trial Court that since there is no pleading in the affidavit filed by the Petitioners regarding estoppel and Limitation cannot be sustained for the reason that the legal plea could be made at anytime. Even the Courts are having power to consider the legal issues at anytime though it is not raised or pleaded by the parties.

15. Further admittedly the Plaintiff/Respondent herein has not obtained any permission/leave from the Court, since the suit <https://hccpcorpus.org/hccpcorpus> is dedicated to the Trust. That apart the Plaintiff/Respondent herein has not come with clean hands to the Court and he suppressed about the all previous suits in which he is a party.



Though the suppression of previous suits are not a ground to reject the Plaintiff, but it shows the conduct of the Plaintiff that he has not approached the Court with clean hands and the same amounts to abuse of process of law and Court. In this regard, this Court would like to emphasize the principle of law enunciated by the Hon'ble Supreme Court in a Judgment reported in 1994 (1) SCC 1 that "one who comes to Court must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation." The above said principle of law is squarely applicable to the facts of the present case on hand. Hence, I have no hesitation to hold that the Plaintiff in O.S.No.87 of 2014 on the file of the learned District Munsif Court, Sathur is liable to be rejected.

16. In so far as the issue relating to rejection of plaintiff under Order 7, Rule 11 of C.P.C., this Court would like to refer the following decisions:

(A) The decision of this Court made in the matter of **M.Perumal Vs Vijayakumari** reported in **2017 (1) CTC 517**

"24. It is made clear that when the first respondent/first plaintiff has sold 4 cents of land, she has no right to file the suit for the entire property of 25 cents for declaration, declaring the plaintiff is the owner of the entire 25 cents of land. Therefore, the ground raised by the petitioners/defendants for rejecting the plaintiff that there was no cause of action for filing the suit is absolutely correct. Once the first respondent/first plaintiff has sold the 4 cents of land out of 25 cents, she can file suit only for 21 cents out of 25 cents. Therefore, it is made clear that there was no cause of action for filing the suit in O.S.No.1 of 2011.

25. But, without gone through the records and without giving the proper appreciation of the claim of the petitioners/defendants, since on record it made clear that the first respondent/ first plaintiff has sold 4 cents of land, the learned Judge had simply stated that the prayer sought for the rejection of the plaintiff should be decided only in the trial and the interference of the defendant also to be considered.

26. It is very unfortunate and shock and surprise that once the plaintiffs have approached the Court by suppressing the fact about the sale of the portions of the land and sought for the prayer for declaration, declaring the title of the plaintiffs for the entire property of the 25 cents, which is absolutely amounts to fraud played by the plaintiffs particularly, the first



respondent/first plaintiff on the Court. Therefore, it is made clear that there was no cause of action for filing the suit.

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

(C) *Seeni alias Sundarammal v. Ramasamy Poosari*, reported in **2000 (III) CTC 74**, holding that process of Court should not be misused and where the Court come across such abuse of its process, then it is the bounden duty of the Court to curtail such abuse.

(D) In *Ramiah Asari v. Kurshad Begaum*, reported in **1999 (I) CTC 600**, this Court holding that the Court should invoke its inherent power to strike off plaint when it comes to the conclusion that the claim are spurious, frivolous or continued prosecution resulting in vexatious litigation.

(E) *Arivanandam v. T.V.Satyapal*, reported in **(1977) 4 SCC 467**, the Hon'ble Apex Court, has observed as follows that:

"The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases.

5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the Court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits."

(F) *N.Balakrishnan v. M.Krishna Murthy*, reported in **1998 (7) SCC 123** holding that "Unending period of launching the remedy may lead to unending uncertainty and consequential anarchy.



(G) **Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai Vs. Selvaraj**, reported in **2009 (2) CTC 57**, this Court has held that Courts have got inherent powers to see that vexatious litigations are not allowed to consume time of the Court and the Courts can reject the plaint, if allegations in plaint reveals an abuse of process of law.

(H) In **K.K.Modi v. K.N.Modi**, reported in **(1998) 3 SCC 573**, the Hon'ble Supreme Court has held as follows:

"One of the examples cited as an abuse of the process of the Court is re-litigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, 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." and

".... The re-agitation may or may not be barred as res-judicata. But if the same issue is sought to be re-agitated, 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."

(I) **Maria Soosai and another v. Esakkiammal**, reported in **1999-1-LW 727**, this Court holding that:

Frivolous or vexatious proceedings may also amount to an abuse of the process of 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 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."

17.All the above decisions would demonstrate that if any party comes to the Court with unclean hands and re-agitates the matters, the Courts are not powerless to exercise its discretion in putting a full stop to the same.

18.In the said circumstances, this Court of the firm opinion that the filing of the suit in OS.No.87 of 2014 is an abuse of process of law and at this moment, this Court like to emphasis that in as much as the responsibility of this Court while coming across such abusive suits, it is a bounden duty to prevent such abuse of process of law and Court by striking of the Plaint.

19.In view of the forgoing discussion, the order of the Trial Court is not sustainable and the same is liable to be set aside and accordingly, set aside.

20.In the result, this Civil Revision petition is allowed and the Plaint in O.S.No.87 of 2014 on the file of the learned District Munsif Court, Sathur is hereby rejected. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The District Munsif,
Sattur.

+1cc to Mr.J.John, Advocate Sr.No.74752
+1cc to Mr.S.Subbiah, Advocate Sr.No.74594

VSV

VB/KAK/SAR3/24.08.2018/8P/4C

order made in
C.R.P. (MD) (PD) No.1533 of 2016
and
CMP (MD) No.7463 of 2016
24.07.2018