



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 21.06.2018
DELIVERED ON : 28.09.2018
CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

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C.R.P. (MD) (PD) No.2543 of 2016
and
CMP(MD)No.11960 of 2016

Karaipangudars of Pandaravadai Village
represented by

1.E.K.P.M.Javukar Ali

2.P.A.Abdul Rahman ... Revision Petitioners/Defendant 1 & 2
vs

1.Sri Mariamman Koil at Punainallur

by its Hereditary Trustee of
Thanjavur Palace Devasthanam,
West Main Street,
Thanjavur Town & Munsifi.

....1st Respondent/Plaintiff

2.State of Tamilnadu,
rep. by District Collector,
Thanjavur, Cutchery Road,
Thanjavur Town & Munsifi.

3.The Special Tahsildar,
Nila Udamai Membattu Thittam (Thanjavur)
Thanjavur Town & Munsifi.

.. Respondents 2 & 3/
Defendants 3 & 4

Civil Revision Petition filed under Article 227 of
Constitution of India seeking to call for the records in connection
with O.S.No.163 of 2012 on the file of the Principal Sub Court,
Kumbakonam and to strike off the same.

For Petitioners : Mr.M.Ajmal Khan Senior Counsel
for M/s.Ajmal Associates

: For Respondents : Mr.V.Chandrasekar (for R1)
Mrs.VPM Vaishnavi (for R2 & R3)
Government Advocate

ORDER

The petitioners have filed this Civil Revision Petition
seeking to strike off the plaint in O.S.No.163 of 2012 on the file
of the learned Principal Sub-Court, Kumbakonam. The petitioners
are defendants 1 and 2 and the first respondent is the plaintiff in
the suit. The respondents 2 and 3 are defendants 3 and 4 in the
suit.



2. The first respondent filed the suit, being O.S.No.163 of 2012, before the learned Principal Sub-Court, Kumbakonam for declaration to declare that the plaintiff temple is the absolute owner of the suit properties and for injunction restraining Karaipangudars of Pandaravadai village, who have been arrayed in the representative capacity, from alienating the suit properties and for costs.

3. Briefly stated, the case of the first respondent/plaintiff is as follows:

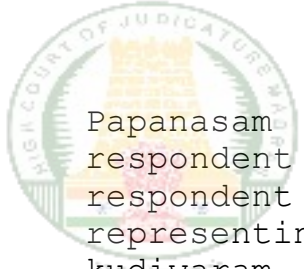
Arulmigu Mariamman Koil at Punnainallur is a Hindu public and religious institution under the administration and supervisory control of the Hindu Religious and Charitable Endowments Board and the same was under the administration of Hereditary Trustee of Thanjavur Palace Devasthanam as per the scheme framed by the HR & CE Department. There were immovable properties consisting of dry and garden lands belonging to the temples situated in the revenue taluks of Papanasam and Thanjavur.

4. As far as properties in Papanasam taluk are concerned, there was a village called Mariambalpuram (Inam), which was a hamlet of No.6, Pandaravadai village and was a Inam village. The said hamlet consists of 132-42 acres of 2 wet lands and 58-2 acres of dry lands. These lands were granted to the first respondent temple in the year 1788, which was later confirmed by the British Government, and the same was incorporated in the Sarvamanyam register maintained in the Collector's office, Thanjavur.

5. Karaiyedu Gramani village was divided into 18 Karais and each Karai was divided into 16 pangus. The village was governed by the system known as Amani tenure. As per the Amani tenure system, persons who were cultivating the lands are only tenants and they have to measure 65% of the net produce after deducting the common expenses. Thus, the temple was the absolute owner of the suit properties and persons who were in possession of the lands are only tenants and they cannot claim any exclusive right over the lands.

6. The contesting defendants are Karaipangudars living in Pandaravadai village because the system of Karaiyedu was still prevailing in the village and separate patta has not been granted in favour of any individual so far. None of the villagers could claim any exclusive right over any portion of the properties owned by the temple. Apart from that, the villagers cannot claim exclusive possession over the properties owned by the temple. Even as per the custom and usage prevailing in the village, none of the villagers could claim exclusive possession over any piece of land. Further, once a tenant was always tenant and the tenants are totally estopped from denying the title of the temple.

7. According to the first respondent, the suit properties are minor inams comprising 128 pangus, corresponding to 8 Karais of 16 pangus each. The lands situated in Pandaravadai village of



Papanasam taluk had been granted for the benefit of the first respondent temple. Before the Settlement Officer, the first respondent claimed ryotwari patta, whereas the villagers representing each pangus were claiming patta on the basis of kudiwaram interest. According to the first respondent, the grant made in favour of the temple as Sarvamanyam, which clearly indicates that the temple has got Iruwaram rights. Therefore, it could easily be inferred that the villagers representing the pangus were only cultivating tenants with no occupancy rights and further the village was also governed by the system known as Amani tenure.

8. The case of the first respondent is that the Settlement Tahsildar, Settlement Officer, Inam Abolition Tribunal and the Special Appellate Tribunal are only statutory forums under the Act and they can go into the question of granting patta in favour of the parties based on their claims. But the outcome of those statutory enquiries cannot in any way abdicate the rights of the first respondent temple with regard to the title over the properties.

9. According to the first respondent, the statutory forums simply rejected the claim of the first respondent without going into the tenor of the enactment and therefore, the order passed by the statutory forums were not final and conclusive and it does not in any way incapacitate the temple to assail the findings in a civil suit. The civil court de hors the decision of the Tribunal can go into the question whether the temple possess Iruwaram rights and ryotwari patta was granted to the right person. The jurisdiction of the competent civil court to go into the question of title in a properly constituted comprehensive suit is not ousted due to efflux of time. Therefore the civil court has got every jurisdiction to entertain the civil suit for declaration of title and also for other reliefs. Though settlement proceedings were ended in favour of the Karaiyeedudars, the exclusive patta has not been granted in favour of any individual so far.

10. The system of Karaiyeedu was still prevailing in the village and all the pangudars were only tenants under temple. Now the temple authorities came to know that some of the villagers have gone to the extent of selling the properties absolutely owned by the temple detrimental to the interest of the temple. According to the first respondent, the second respondent has issued general notices in the village for the purpose of granting individual patta. Hence, the first respondent has filed the suit for declaration and for injunction.

11. The defendants 1 and 2 seek to struck off the suit by contending that earlier, the competent authorities under Inam Abolition Act have considered the matter in depth and perused the document produced by Karaipangudars and came to the conclusion that Karaipangudars were entitled to Kudivaram right and the temple was entitled to Melwaram rights. In its order, the Settlement Tahsildar specifically mentioned that Karaipangudars paid only Melwaram to the



temple and the temple was not entitled to Kudiwaram rights. The Karaipangudars cannot be vexed twice by the temple, firstly before the authorities under the Inam Abolition Act and subsequently before the Civil Court.

12. It was contended that the first respondent temple has not produced any document to show that it had leased out the land to the Karaipangudars and the temple is the landlord and also Karaipangudars were cultivating tenants. Even before a temple was granted Melwaram rights, the Karaipangudars were the owners of Kudiwaram and hence by no stretch of imagination the temple cannot claim both warams.

13. According to the defendants 1 and 2, the first respondent has not even stated who was in possession of the suit properties and admittedly, the first respondent was not in possession of the suit properties. All the individual Karaipanguadars were not added as party defendants in the suit and they are necessary and proper parties to the suit. The patta issued by the Settlement authority in favour of Karaipangudars was in recognition of their earlier Kudiwaram rights in the properties. Therefore, Karaipangudars right over the properties cannot be questioned by the first respondent. Since the settlement proceedings were over long back, the suit for declaration filed beyond three years was barred by time. Hence, the defendants 1 and 2 have filed the revision seeking to struck off the plaint.

14. I heard Mr.M.Ajmal Khan for M/s.Ajmal Associates, learned Senior Counsel appearing for the petitioners, Mr.V.Chandrasekar, learned counsel appearing for the first respondent and Mrs.VPM.Vaishnavi, learned Government Advocate appearing for the respondents 2 and 3 and also perused the materials available on record.

15. The learned Senior Counsel for the petitioner submitted that the trial Court ought not to have numbered the plaint as the suit was barred by the principle of res judicata. He would submit that the trial Court mechanically numbered the plaint without considering the earlier order of the settlement authorities. The learned Senior Counsel submitted that when the religious institution was held to be not entitled to patta on the ground that it was not the owner of the Kudiwaram right in the settlement proceedings, the very same religious institution cannot ignore the binding decision of the Authority under the Act and re-agitate the same before the Civil Court.

16. The learned Senior Counsel vehemently argued that since the settlement proceedings were over long back, the suit for declaration and injunction filed by the first respondent is hopelessly barred by limitation and the plaint in question is one of the rarest of rare cases in which power under Article 227 of the Constitution of India can be used to struck off the plaint. In



support, the learned Senior Counsel relied upon the following decisions:

- (i) The Member Concern Department of Post Government of India, Ministry of Communication, rep. by its Chief Post Master General v. Annapoorni and others, reported in 2005-4-L.W. 206.
- (ii) Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai, through its Secretary and another v. Selvaraj Sundar and another, reported in 2009 (2) CTC 57.
- (iii) Southern and Rajamani Transport Private Limited v. R.Srinivasan and others, reported in 2010 (4) CTC 690.
- (iv) R.M.Subbiah v. S.Ramakrishnan and others, reported in 2012 (1) CTC 659.

17. Per contra, the learned counsel for the first respondent submitted that the first respondent temple is the absolute owner of the suit properties and as per the custom and usage prevailing in the village, none of the villagers could claim exclusive possession over any piece of land. He would submit that the persons who were in possession of the lands are only tenants and they cannot claim any exclusive right over the lands.

18. According to the learned counsel, the outcome of statutory enquiries cannot in any way abdicate the rights of the first respondent temple qua title over the suit properties and the orders passed by the statutory forums were not final and conclusive and it does not in any way incapacitate the temple to assail the findings in a civil suit. In fact the judgment of the Tribunal was not res judicata in strict sense. The learned counsel would further submit that the decision of the Tribunal was only for the purpose of enactment and that there was no legal impediment to file a civil suit claiming declaration that the Devasthanam was entitled to Iruwarams despite the decision of the forums constituted under the Minor Inams Abolition Act.

19. The learned counsel next contended that though the settlement proceedings were ended in favour of Karaiyeedudars, no patta was granted in favour of any individual and in fact, all pangudars are only tenants under the temple. Since the first respondent temple was under the administrative and supervisory control of the Department and being a religious institution, the temple was not barred from filing a suit for declaration and consequential injunction before the competent Civil Court.

20. It appears that earlier, on 14.01.1968, a suo motu enquiry was taken up by the Settlement Tahsildar (Statutory Enquiries), Thanjavur in R.P.No.1094/M1/PPN in respect of the lands mentioned in the schedule for the grant of ryotwari patta and notices were issued to all concerned, including the Tahsildar, Papanasam and the Assistant Commissioner, HR & CE, Kumbakonam in



respect of the properties comprising 128 Pangus situated in Pandaravadai village, Papanasam Taluk.

21. By an order dated 13.6.1968, the Settlement Tahsildar observed as under:

"7. In and end I find that from the several documents now placed before me there is clinching evidence to show the petitioners had owned Kudikani rights in the suit lands through their predecessors in title even before they were granted in Inam to the Temple, and what was granted to the Temple could only be melwaram only. I therefore hold that the petitioners have made out a clear case that they are lawfully entitled to kudiwaram rights on or before the appointed day so as to be entitled to patta under Section 8(1) of the Act and that the claim of the Devasthanam fails. As the inam character of the lands stands abolished on the appointed day, I order under Section 11(2)(b) of the Act the issue of a ryotwari patta jointly in the names of Abdul Majeed S/o.Kadir Batcha and others in respect of the lands set out in the schedule below as items 1 to 41."

22. Aggrieved by the above said order, the first respondent temple preferred C.M.A.No.176 of 1970 before the Inam Abolition Tribunal (Subordinate Judge), Thanjavur. By an order dated 08.05.1981, the Tribunal has dismissed the appeal.

23. Challenging the order of the Tribunal, the first respondent temple filed S.T. Appeal No.4 of 1982 before this Court. By an order dated 3.11.1988, a Division Bench of this Court, dismissed the appeal holding that the petitioners herein had kudiwaram rights.

24. The main grievance of the petitioners is that the first respondent had failed to produce any document to show that the first respondent temple was enjoying both the Warams and presumption under Section 44 of the Act was successfully rebutted by Karaipangudars by producing relevant documents before the Settlement Officer and the Settlement Officer was convinced that only Karaipangudars were enjoying the Kudiwaram rights. Since the finding has got the seal of approval by the Inam Abolition Tribunal and the same was also upheld by the High Court, question of the first respondent's entitlement for both the Warams cannot be re-agitated in the Civil Court especially after 24 years.

25. On the other hand it is the say of the first respondent that the Settlement Tahsildar, Settlement Officer, Inam Abolition Tribunal and the Special Appellate Tribunal (High Court) were only statutory forums under the Act and they can go into the question of granting patta in favour of the parties based on their claims. But the outcome of those statutory enquiries cannot in any way abdicate the rights of the first respondent temple qua title over the properties.



26. The learned Senior Counsel for the petitioners contended that the present suit is abuse of process of Court and therefore, the petitioners are entitled to file a Civil Revision Petition seeking to struck off the plaint.

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27. In Member Concern Department of Post Government of India, Ministry of Communication, rep. by its Chief Post Master General v. Annapoorni and others, supra, this Court held that 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 process of the Court.

28. In Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai, through its Secretary and another v. Selvaraj Sundar and another, supra, this Court held that provisions of Order 7, Rule 11 CPC are not exhaustive, however Court has got inherent powers to see that vexatious litigations are not allowed to consume time of the Court and accordingly, Court can reject the plaint, if allegations in plaint reveals an abuse of process of law.

29. In Southern and Rajamani Transport Private Limited v. R.Srinivasan and others, supra, this Court held that alternative remedy under CPC is not a bar to invoke the jurisdiction under Article 227 of the Constitution of India. In paragraph 32, this Court held as under:

"32. It has already been assorted the circumstances under which Article 227 of the Constitution of India can be invoked by a High Court. In the instant case, a grave injustice has been done to the revision petitioners/defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 by way of impleading them as parties to Original Suit No.3 of 2010, even though there is no nexus betwixt them and the first respondent /plaintiff. Of course it is true that an efficacious relief is available under Order 7 Rule 11 of the Code of Civil Procedure, 1908. But at the same time, since miscarriage of justice as well as injustice have been caused to the revision petitioners / defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37, their approach by way of filing the present civil revision petition to the High Court so as to ventilate their grievance is legally maintainable. Therefore, viewing from any angle, the entire argument advanced by the learned counsel appearing for the first respondent/plaintiff is sans merit, whereas the argument advanced by the learned Senior Counsel appearing for the revision petitioners /defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 is really having subsisting force."

30. In R.M.Subbiah v. S.Ramakrishnan and others, supra, this Court held that normally plaint cannot be rejected, while exercising power under Article 227 of the Constitution, however, 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 was ordered to be struck off under Article 227 of the Constitution of India.

31. Article 227 of the Constitution of India can be invoked by every High Court under the guise of superintendence, on the following grounds:

- (a) to prevent abuse of process of law
- (b) to prevent miscarriage of justice
- (c) to prevent grave injustice
- (d) to establish both administrative as well as judicial power of High Court.

32. It is settled that if a party has initiated a vexatious or frivolous litigations in order to harass the other party, the Court can nip the attempt in the bud itself, irrespective of the stage of such proceedings. In the instant case, nothing has been produced to show that the present litigation is a totally unnecessary one, which was initiated with a view to harass the other side and more particularly, it is an abuse of process of Court.

33. On a reading of the plaint averments, it is seen that the first respondent claimed Iruwaram rights. On the other hand, in the grounds, the petitioners have stated that the competent authorities in the earlier proceedings observed that Karaipangudars were entitled to Kudiwaram right and the first respondent temple was only entitled to Melwaram rights. It has also been stated in the grounds that in its order, the Settlement Tahsildar clearly mentioned that Karaipangudars paid only Melwaram to the temple and the temple was not entitled to Kudiwaram rights. In the grounds, it has been stated that even before the first respondent temple was granted Melwaram rights, the Karaipangudars were the owners of Kudiwaram and therefore, by no stretch of imagination the first respondent temple cannot claim both Warams.

34. On a careful reading of the proceedings before the Settlement Tahsildar, Inam Abolition Tribunal as well as the order of the High Court in S.T.A.No.4 of 1982, it is seen that the first respondent temple owns Melwaram right and the petitioners and others had kudiwaram rights. Thus, it is clear that ownership of the properties have not been decided in those proceedings.

35. The learned counsel for the first respondent submitted that the jurisdiction of the competent Civil Court to go into the question of title in a suit was not ousted due to efflux of time and therefore, the Civil Court has got jurisdiction to entertain the suit for declaration of title and also other reliefs. He would submit that there was a cause of action to file the civil suit. The cause of action for filing of the suit has been described by the first respondent in paragraph 8 of the plaint and the same reads as under:



"8. Now the temple authorities came to know that some of the villagers have gone to the extent of selling the properties absolutely owned by the temple detrimental to the interest of the temple. Further the third defendant has also issued general notices in the village for the purpose of granting individual patta. There was a ad rush for getting the patta for the lands absolutely owned by the plaintiff temple. Anyhow the defendants 2 and 3 have not taken any steps to grant individual patta. In order to put an end to the menace the plaintiff temple once for all decided to file the suit to declare that right of the temple before the competent civil court taking into account the catena of decisions rendered by the High Court as well as the by the Supreme Court. Therefore, the plaintiff temple has no other option except to file a comprehensive sive for declaration and also for injunction. The plaintiff temple has also filed an application for temporary injunction restraining the Karaipangudars from alienating the properties described hereunder. Any such alienation during the pendency of the suit is affected by the principles of lis pendens and it will not in any way bind the plaintiff temple."

36. Thus, the first respondent has clearly stated the cause of action for filing the suit in question. The petitioners cannot contend that the suit is hit by the principles of res judicata, as the earlier proceedings, referred to supra, are in relation to grant of ryotwari patta, whereas in the present suit on hand, the first respondent temple seeks to declare the title of the suit properties in favour of them and the title of the suit properties can be decided only after the trial. Therefore, the present suit proceedings was not hit by the principles of res judicata and the first respondent is entitled to maintain the suit in question.

37. In Central Govt. Employees' Welfare Housing Organization v. Consolidated Civil Constructions (I) Ltd., reported in 2012 (1) MWN (Civil) 633, this Court has held that when plaint discloses a cause of action, it could not be rejected on the ground that averments are not sufficient to prove the facts stated therein, for the purpose of obtaining the relief claimed in the suit, under Order 7 Rule 11 CPC.

38. The petitioners have invoked the supervisory jurisdiction of this Court to struck off the plaint, without filing petition under Order 7, Rule 11 C.P.C. before the trial Court. It is to be noted that the first respondent has instituted the suit in the year 2012, but the present Revision has been filed by the petitioners only in the year 2016 after a delay of four years. If really, the petitioners don't want to defend the suit, they ought to have taken steps to file appropriate petition to reject the plaint immediately after they entered appearance in the suit.



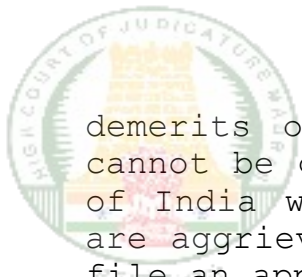
39. In Ganapathy Subramanian vs. S. Ramalingam and others, reported in 2007 (3) LW 515, this Court held that supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. In paragraph 16, this Court held as under:

"The supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. Mere filing of a suit by the respondents and taking the suit on the file by the trial Court cannot be regarded as an act on the part of the trial Court to transgress its jurisdiction or its bound. Of course, the party who files the suit might have filed the suit suppressing material facts or made up the suit to his convenience for seeking the relief which is not otherwise entitled to, But that fact has to be considered by the trial court during the relevant point of time. There is no impediment or embargo for the petitioner to put forth his contentions before the trial court to strike off the plaint at the threshold. As this Court is relegating the petitioner to go before the trial Court for the relief, the Court has restrained itself from going into the facts of the case, as any observation made by this Court would have a bearing on the suit, which is pending before the trial court. Of course, the petitioner is also having an effective remedy in the Code of Civil Procedure itself to have the suit struck off and he could very well avail that remedy. On the above said reasoning, I am not inclined to grant the relief as prayed for in the revision."

40. In C.R.P.PD (MD) No.2233 of 2014, dated 3.2.2015 (C.Valliappan v. H.Syed Abuthakir and another), the learned Single Judge of this Court held that the merits of the case cannot be gone into in a revision under Article 227 of Constitution of India when the same are matter of evidence. If the petitioner is aggrieved by the institution of the suit, it is open to him to file an application under Order VII Rule 11 CPC. It was further held that when the petitioner can establish that the suit will come under any of the six limbs set out under Order VII Rule 11 CPC, he/she may ask the Court to reject the plaint on the grounds enumerated therein.

41. In V.Krishnamoorthy v. Balakrishnan, reported in 2011-2-LW 45, this Court held that High Court can refuse to exercise jurisdiction under Article 227 of the Constitution of India, based on the alternative remedy, the relief under Order 7, Rule 11 CPC, for rejection of plaint before the trial court.

42. From the facts and circumstances of the case, it is clear that Article 227 of the Constitution of India can be exercised only when an order is passed without jurisdiction, or perverse, etc. From the above set of facts, the Court cannot consider the merits and



demerits of the case without trial. The merits of the case also cannot be gone into in a revision under Article 227 of Constitution of India when the same are matter of evidence. If the petitioners are aggrieved by the institution of the suit, it is open to them to file an application under Order 7, Rule 11 CPC.

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43. At the cost of repetition, it is reiterated that the fact of maintainability and/or res judicata canvassed by the petitioners cannot be decided by this Court in this revision, which involves dealing with merits and demerits of the case by the trial Court. Therefore, this Court is of the considered view that Article 227 of the Constitution of India cannot be invoked, as there is no order passed in the suit and as stated supra, the fate of the case has to be decided only after trial. Therefore, the petitioners cannot fight shy of contesting the suit and ask for rejecting the plaint invoking Order 7, Rule 11 CPC. As stated supra, there are contentious issues to be decided in the suit and the suit is not an abuse of process of law. More over, nothing has been produced to show miscarriage of justice as well as injustice caused to the petitioners by filing the present suit.

44. In view of the foregoing discussion, the Civil Revision Petition cannot be sustained and is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

After pronouncing the judgment, it is reported by the learned counsel for the petitioner that the suit was already disposed of in the month of July 2018 and the same is recorded.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To
The Principal Sub Judge,
Kumbakonam.

+1CC to M/s.Ajmal Associates, Advocate, SR.No.88278

C.R.P. (MD) (PD) No.2543 of 2016 and
CMP (MD) No.11960 of 2016
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VSV
ES/SKN/RSK/SAR 3/15.11.2018/11P/3C