

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.06.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP (PD) No.3461 and 4211 of 2013
and M.P.No.1 of 2013 in CRP (PD) No.4211 of 2013

Sengottuvelu

... Petitioner

Vs.

1. Arumugham

.... Respondent in
 CRP (PD) No.3461 and
 first respondent in
 CRP (PD) No.4211/2013

2. The Executive Engineer (O & M),
 TANGEDCO, Tichengode.

3. The Assistant Executive Engineer,
 (O & M), TANGEDCO,
 Mallasamudram Circle,
 Mallasamudram, Trichengode.

4. The Junior Engineer (O & M),
 TANGEDCO, Kalipatty Distribution Circle,
 Kalipatty, Namakkal District.

... Respondents 2 to 4 in
 CRP (PD) No.4211/2013

PRAYER in CRP PD No.3461 of 2013: Civil Revision Petition filed

under Article 227 of the Constitution of India to strike off the plaint in
 O.S.No.1077 of 2012 on the file of the District Munsif Court, Salem.

PRAYER in CRP PD No.4211 of 2013: Civil Revision Petition filed under Article 227 of the Constitution of India to strike of the plaint in O.S.No.809 of 2013 on the file of the Principal District Munsif, Salem.

For Petitioner : Mr.K.Selvaraj (In both CRP)

For Respondent : Mr.Arumugham (Respondent in CRP

No.3461 of 2013 and 1st Respondent
in CRP 4211 of 2013)

COMMON ORDER

The Civil Revision petitions are filed by the first defendant in O.S.No.1077 of 2012 and the defendant in O.S.No.809 of 2013 on the file of the District Munsif, Salem. The respondent/plaintiff in CRP No.3461 of 2013 and first respondent in CRP No.4211 of 2013, filed the suit in O.S.No.1077 of 2012 for (1) permanent injunction restraining the present civil revision petitioner and his men and agents from taking forcible possession of the land in S.No.7/2C measuring 0.55 cents on the strength of the decree passed in O.S.No.496 of 2011 and (2) permanent injunction restraining the defendants 2 to 4 and their subordinates from disconnecting the Service Connection No.300 provided to the bore well in S.No.7/2C. He also filed another suit in O.S.No.809 of 2013 for a permanent injunction restraining the present civil revision petitioner and his men and agents from entering

into the suit property with a view to cut down the standing trees and thereby taking forcible possession of 0.55 cents land in S.No.7/2C on the strength of the decree passed in O.S.No.496 of 2011.

2. Mr.K.Selvaraj, learned counsel appearing for the revision petitioner contended that the present revision petitioner already filed a suit in O.S.No.496 of 2001 before the I Additional District Munsif, Salem for declaration of his title to the property in S.No.7/2A of Narulayampalayam Village, Mallasamudram, Salem measuring 3.15 acres and for a permanent injunction directing the officials of Tamil Nadu Electricity Board to disconnect the service connection No.300 in S.No.7/2C and also for a permanent injunction restraining the officials of Tamil Nadu Electricity Board from installing any permanent fixtures in S.No.7/2A and a portion of land in S.No.7/2C and that the said suit was decreed. His further contention is that the first defendant in O.S.No.496/2001, who is the plaintiff in O.S.No.1077/2012 and O.S.No.809 of 2013, went upto High Court and the appeals filed by him were dismissed. He also drew the attention of this court to the judgment passed in S.A.No.326 of 2005 by this court, wherein in para 39 and 40 of the judgment, it is observed thus.:

"39. Reverting back to the case on hand, upon considering Ex.A1, partition deed, based on which, the

suit schedule property has been allotted to the plaintiff and the description of the property given in the schedule, both the courts below have found that the plaintiff has proved his title to the extent of land, measuring 3.15 Acres and the consideration of the evidence, it has also been found that the bore well has been sunk in survey No.7/2C. Electricity service connection has been effected on the basis of revenue records. As the defendant himself had no knowledge of possession of excess land and as he had not proved possession, adverse to the knowledge of the plaintiff, the lower appellate court, has rightly concurred with the decision of the lower court, declining the plea of adverse possession.

40. The first defendant was not been able to explain, as to the extent of land in his possession and enjoyment, more than the sale deed. As rightly observed, he was not able to explain about the date of acquiring possession adverse to the plaintiff and who is the true owner. On the facts and evidence, both the courts below have categorically found that the first defendant did not satisfy the test of law, as held y the Apex Court and this

court, in the decisions, stated supra, to establish adverse possession. There is absolutely no material to interfere with the concurrent findings. The documentary evidence let in by the defendant, would not lend any support to satisfy the legal requirement. "

3. He further pointed out that as per the decree and judgment in O.S.No.496 of 2011, the Executive Engineer, TANGEDCO in his proceedings in க.என்/ உ.பொ/இ த ப/ காளிப்பட்டி/கோ.கட்டு/எண்.54/பி-14 dated 25.02.2014 had clearly stated that the service connection No.187-004-300 was disconnected permanently on 21.02.2014 and the poles erected were also removed. His specific contention is that inspite of the decision rendered in O.S.No.496 of 2001, which was upheld in A.S.No.56/2004 and S.A.No.326 of 2005, the first defendant had filed O.S.No.1077 of 2012 and O.S.No.809 of 2013 with false allegations. He also drew the attention of this court to the plaint in O.S.No.1077 of 2012, wherein, in paragraph No.12 of the plaint, it is averred thus.

"The plaintiff respectfully submits that since, this Hon'ble Court was pleased to find that the plaintiff alone is in possession of 0.55 cents and the plaintiff being cultivating the same for a long period, but negative the plea of

"Adverse Possession", the plaintiff has filed appeal before the Hon'ble Additional Subordinate Judge, Salem in A.S.No.56 of 2004, the appeal also dismissed on 28.01.2005. Then the plaintiff preferred 2nd appeal to the Hon'ble High Court in S.A.No.326/2005 wherein the plaintiff has brought to the notice of the Hon'ble High Court that the suit filed by the first defendant for bare declaration without the prayer for possession is not maintainable and among the other question of laws, the plaintiff has appealed the question of law regarding the maintainability of the suit as:-

5. Whether the courts below were right in granting the relief of declaration without any relief with regard to the relief of possession in respect of the portion of the suit property which even according to the plaintiff is in the possession of the appellant viz. the first defendant in the suit"

However, the Hon'ble High Court was also declined to accept the plea of adverse possession pleaded by the plaintiff and on 20.12.2011 dismissed the appeal, but the above said question of law has been left unanswered by the Hon'ble High Court. Therefore, the decree for declaration regarding

the title of the first defendant alone has confirmed by the courts below and the plaintiff continuous his possession over the portion of 0.55 cents till date. It is very pertinent to note that the admitted fact is that the plaintiff is in possession of the entire 2.17 acres of land as conferred under S.No.7/2C (including 0.55 cents) even on the date of filing the suit by the 1st defendant in O.S.No.496/2001 and in fact, the 1st defendant has clearly and categorically admitted the fact of possession in his plaint in O.S.No.496/2001 itself.

His contention is that the first defendant in O.S.No.496 of 2013, (plaintiff in O.S.No.1077 of 2012 and O.S.No.809 of 2013), without filing special leave petition before the Honourable Supreme Court, had filed suits in O.S.No.1077 of 2012 and O.S.No.809 of 2013 and that the same would not only amount to second round of litigations but also would amount to abuse of process of law. He therefore, prayed for striking off the plaints O.S.No.1077 of 2012 and O.S.No.809 of 2013

4. He also relied on the decision in ***N.Babu Vs. S.Shanmugam and 2 others reported in 2013(1) CTC 180***, in which, a single judge of this court had held that a plaint in a subsequent suit, in case of re-litigation

should be struck off by the court at the earliest instance, as the same would amount to abuse of process of court and should not be encouraged. He also relied on the decision in *Mani alias Nagamani and others Vs. P.Ramakrishnan reported in 2018(4) MLJ 182 = 2019(2) MadWN (Civil) 172* and contended that the power of the High Court under Article 227 of the Constitution of India involves a duty on the part of the High Court to keep all the courts within its jurisdiction and prevent any abuse of process of court.

5. Per contra, the learned counsel appearing for the respondent relied on the decision of Single Bench of this court in *T.K.Chithran and another Vs. C.Samsari @ Chithran and others reported in CDJ 2015 MHC 2275* and contended that the High Courts cannot, at the drop of a hat, in exercise of its powers of superintendence under Article 227 of the Constitution of India, interfere with the orders of tribunals or courts inferior to it and in cases, where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court. His specific contention is that when the civil revision petitioner did not exhaust the remedy under Order VII Rule 11 CPC, exercise of power under Article 227 of the Constitution of India would only make the High Court convert itself into an appellate court and appreciate

or evaluate the facts by itself and draw inference.

6. In the instant case already a decree was passed in O.S.No.496 of 2001 against the plaintiff in O.S.No.1077 of 2012 and O.S.No.809 of 2003, in respect of the very same property and the matter went up to the High Court in S.A.No.326 of 2005. This court had clearly held that the present revision petitioner is the owner of the suit property and the suit was decreed as prayed for by him. The appeal in S.A.No.326 of 2005 filed by the first defendant in O.S.No.496 of 2001 was dismissed. Admittedly, no Special Leave Petition was filed before the Supreme Court and the judgment of this court has become final. Now, the plaintiff in O.A.No.1077 of 2012 and O.S.No.809 of 20113 (the first defendant in O.S.No. 496 of 2011) has filed the suits contending that this court did not properly assess the evidence and did not answer the question of law, whether the courts below were right in granting the relief of declaration without any relief with regard to the relief of possession in respect of the portion of the suit property, which even according to the plaintiff is in the possession of the appellant. As already observed, the plaintiff in O.S.No.1077 of 2012 did not file any appeal against the judgment of this court in S.A.No.326 of 2005.

7. A perusal of the entire plaint in O.S.No.1077 of 2012 and O.S.No.809 of 2013 clearly shows that it is second round litigation. The parties, the subject matter and the issues involved in the earlier suit in O.S.No.496 of 2001 and the present suits in O.S.No.1077 of 2012 and O.S.No.809 of 2013 are one and the same. Further more, the Executive Engineer, TANGEDCO had also issued a proceedings க.என்/ உ.பெ/இ 2 ப/ காளிப்பட்டி/கோ.கட்டு/எண்.54/பி-14 dated 25.02.2014 contending that as per the decree and judgment made in O.S.No.496 of 2001, the service connection 187-004-300 was disconnected. One of the prayers in O.S.No.1077 of 2012 is that the officials of TANGEDCO should be restrained by way of a permanent injunction from disconnecting the Service Connection No.300 in S.No.7/2C. Another prayer in O.S.No.1077 of 2012 is that the civil revision petitioner must be permanently enjoined from taking forcible possession of 0.55 cents of land in S.No.7/2C on the strength of the decree passed in O.S.No.496 of 2001, wherein a decree was passed holding that the civil revision petitioner is the absolute owner of 0.55 cents in S.No.7/2C. The filing of two suits by respondent is a clear abuse of process of court.

8. In the decision in *M.V.Jayavelu Vs. E.Umapathy reported in 2011-1-MWN (Civil) 113*, after relying upon the judgment of the Honourable Supreme Court reported in *Azhar Hussain Vs. Rajiv Gandhi*

reported 1986 (Supp) SCC 315, held as follows:-

"The provisions of Order VII, Rule 11 are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the court. In appropriate cases, directions can be given by this court as well as the court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law."

9. In the judgment reported in 2011(2) MWN (civil) 363, the learned Judge of this court elaborately dealt with the question relating to abuse of process of Court and after relying upon the decision reported in **K.K.Modi Vs. K.N.Modi (1998 (3) SCC 573)**, **Ranipet Municipality, represented by its Commissioner and Special Officer, Ranipet Vs. M.Shamsheerkhan (1998(1) CTC 66)** and **Tamil Nadu Handloom Weavers' Co-operative Society Vs. S.R.Ejaz rp. by his Power Agent, Muralidhar T.Balani (2009 (5) CTD 710 : 2009(5) LW 79)**, held that the revision filed to strike off the plaint without filing application under Order VII, Rule 11, when it is a clear case of abuse of process of law and when the present suit, is a clear attempt of re-litigation is maintainable.

10. In the judgment reported in ***K.K.Swaminathan Vs. Srinivasagam (2003(4) CTC 347)***, this court held that one of the most abuse of process of court is re-litigation and it is contrary to justice to re-litigate the same issue which has already been tried and decided earlier against a person.

11. The power under Article 227 of the Constitution of India is extraordinary discretionary power which can be exercised to strike off the proceedings, that are frivolous, vexatious and fraudulent, at the initial stage itself. The power to strike off the plaint can be exercised even if the defendant did not file an application to reject the plaint under Order VII Rule 11 C.P.C. The scope of power under Article 227 of the Constitution of India is to prevent waste of time of court as well as to prevent hardship and harassment to the other side.

12. Considering the above facts in entirety, it reveals that the present suits in O.S.No.1077 of 2012 and O.S.No.809 of 2013 filed by the respondent in CRP No.3461 of 2013 and first respondent in CRP No.4211 of 2013 respectively are clear abuse of process of law and hence the same are liable to be struck off.

13. In the result,

(1) The CRP No.3461 of 2013 is allowed. No costs. The plaint in O.S.No.1077 of 2012 is struck off.

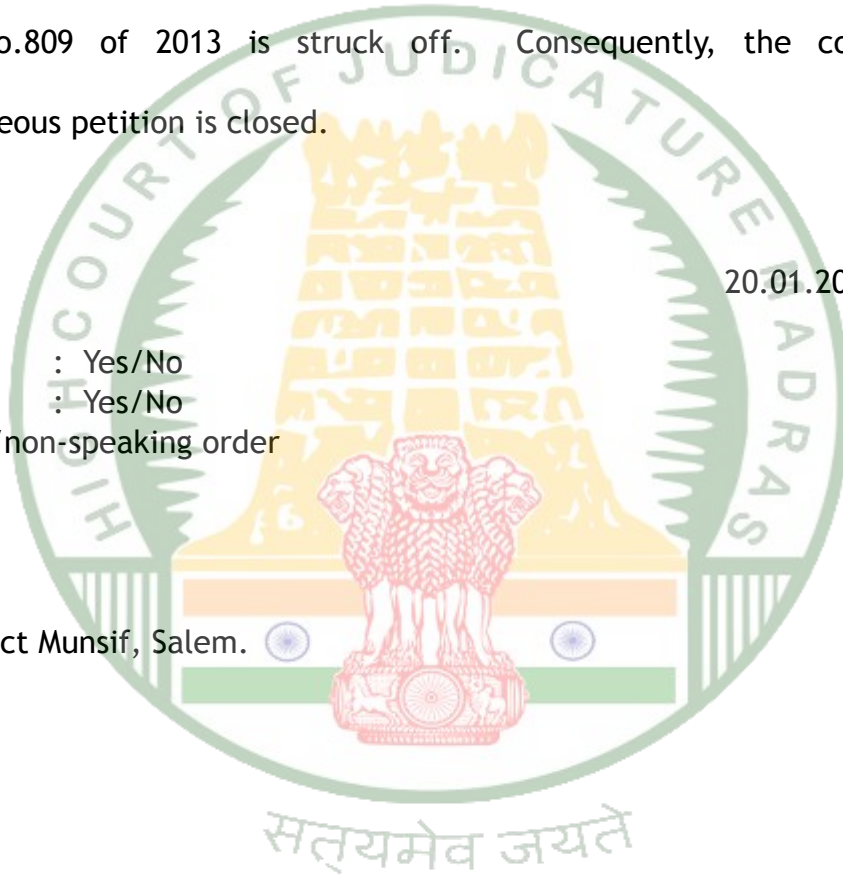
(2) The CRP No.4211 of 2013 is allowed. No costs. The plaint in O.S.No.809 of 2013 is struck off. Consequently, the connected miscellaneous petition is closed.

20.01.2019

Index : Yes/No
Internet : Yes/No
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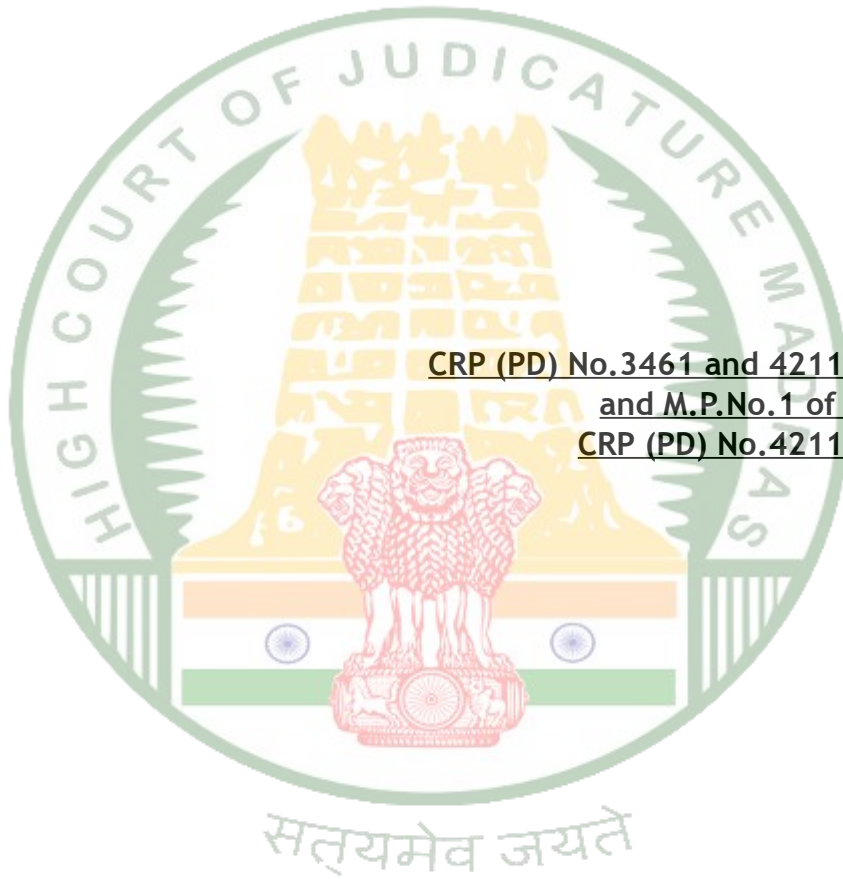
To

The District Munsif, Salem.



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R.HEMALATHA,J.
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CRP (PD) No.3461 and 4211 of 2013
and M.P.No.1 of 2013 in
CRP (PD) No.4211 of 2013

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