

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.06.2018

Delivered on: 14.06.2019

CORAM

THE HONOURABLE THIRU JUSTICE P.VELMURUGANC.R.P.(PD) No.1695 of 2018

and

CMP Nos.9319 & 9320 of 2018

1. K.V.Ponnusamy
2. Elango
3. Kandasamy

... Petitioners/Defendants

- Vs -

Marakutty

.... Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India
praying to strike of the suit in O.S.No.625 of 2018 on the file of the learned II
Additional District Munsif, Coimbatore.

For petitioners : Mr.M.S.Krishnan
Senior Counsel
for M/s.Sarvabhauman Associates

For respondent : Mr.S.Arjun

ORDER

This Civil Revision Petition has been filed to strike of the suit in O.S.No.625
of 2018 on the file of the learned II Additional District Munsif, Coimbatore.

2. The Revision Petitioners are the defendants and the respondent is the plaintiff in O.S.No.625 of 2018 on the file the II Additional District Munsif, Coimbatore. The respondent/plaintiff filed a suit for injunction restraining the revision petitioners herein/defendants therein, their men and agents from in any way interfering with the peaceful possession and enjoyment of the suit property stating that the respondent/plaintiff is the absolute owner of the suit property by virtue of the settlement deed dated 29.03.2018 bearing document No.3310/2018. The suit property originally belongs to one K.Marichamy as per the compromise decree made in O.S.No.1490 of 2015 passed by the learned First Additional Subordinate Judge, Coimbatore dated 30.10.2015. Subsequently, the said Marichamy had settled the suit property in favour of his wife M.Amsaveni by virtue of the registered settlement deed dated 09.06.2016 bearing document No.4595/2016. The said Amsaveni in turn gifted the suit property in favour of the respondent/plaintiff. From the date of the settlement, the respondent/plaintiff has been in possession and enjoyment of the suit property by cultivating the same. When the predecessor K.Marichamy enjoyed the property by mortgaging the suit property with one A.Ponnusamy, by virtue of a mortgage deed dated 29.02.2016 bearing document no.1680/2016, which shows that he was the absolute owner and enjoyment of the suit property. The patta also stands in the name of the donor of the plaintiff and the Village Administrative Officer also given the ownership certificate. During the enjoyment of the donor of the plaintiff, the defendants gave much pressure on the said donor to sell away the suit property at a throw away price. Knowing well the suit property was settled in favour of the

plaintiff, the defendants started demanding the plaintiff to sell the suit property in their favour for real estate business. Since the demand of the defendants was unjustifiable, the plaintiff refused to do so. Enraged at the said refusal, the defendants 2 and 3, on the instigation of the first defendant, on 21.04.2018 and 23.04.2018 made attempts to trespass into the suit property and occupy the same. The plaintiff was able to manage the situation with the help of his neighbors. The defendants 2 and 3 openly threatened the plaintiff with dire consequences, for transferring the property to their name. Therefore, the respondent/plaintiff was constrained to file the suit against them for bare injunction.

3. The case of the petitioners/defendants is that the respondent herein bases his claim on a settlement deed, which is said to have been executed by his sister Amsaveni, who is the wife of one Marichamy. After she appearing in the suit in O.S.No.87 of 2018, in which, one of the relief that was sought for was to have the settlement deed executed by Marichamy in favour of Amsaveni. The said Marichamy had filed a suit in O.S.No.1311 of 2013 claiming partition of the property, which is subject matter of the present suit, besides other properties, in which, his specific pleading is that there was no partition between Rayappa Gounder, Thirumala Gounder and Venkatachala Gounder. After seeing the written statement filed by the first petitioner and others in O.S.No.1311 of 2013, the said Marichamy yet again filed a collusive suit in O.S.No.1490 of 2015 against his sisters and others on 08.10.2015 for partition amongst Rayappa Gounder,

Thirumalai Gounder and Venkatachala Gounder from the suit property was allotted to his father Rayappa Gounder. The properties that had been allotted to Rayappa Gounder under the oral Partition has been omitted to be included in the Partition suit in O.S.No.1311 of 2013. The suit in O.S.No.1490 of 2015 is filed on 08.10.2015 and a compromise decree was passed on 30.10.2015, whereas the first hearing of the suit was fixed only on 30.11.2015. The said Marichamy has thereafter, settled the property to his wife Amsaveni on 09.06.2016 and she in turn settled the property on the respondent on 29.03.2018. The said Amsaveni had entered appearance in the suit in O.S.No.87 of 2018 filed by the petitioners on 27.02.2018 in which, the relief sought for is the settlement deed executed in her favour as null and void and thereafter, on 29.03.2018, she settled the property on her brother/the respondent herein. The suit in O.S.No.625 of 2015 has totally suppressed the pendency of the suit in O.S.No.1311 of 2013 and O.S.No.87 of 2018 especially when the respondent's settler is a party and shown as defendants in both the suits. The suit subject matter of the revision is based on a bunch of fraudulent acts which does not confer any right on the respondent. The person, under whom the respondent claim a right, has filed a suit for partition in respect of a larger extent of which the present suit property is a part and the same is pending adjudication and the respondents so called predecessor in title is yet to have his right declared. The Collusion between the respondent and the Revenue officials is so evident inasmuch as the mutation of the revenue records had been done without notice to the petitioners and the legal heirs of Thirumalai Gounder particularly, when the original patta stands in their names. Therefore,

the defendants filed the present revision to strike of the plaint on the ground of suppression of earlier suit filed by Marichamy and the same has to be allowed.

4. The learned counsel for the petitioners would submit that during the pendency of the suit filed by Marichamy, he settled the property in favour of his wife under the settlement deed dated 09.06.2016 bearing document No.4595/2016. The settlee Amsaveni was a party to the suit and after service of summons, she suppressed the fact and in turn further, settled the suit property in favour of her brother/the present respondent/plaintiff. Suppressing all the facts, the respondent/plaintiff had filed the subject matter of suit in O.S.No.625 of 2018, which is liable to be strike off. The learned counsel relied on the judgment of this Court in the case of **P.S.K.Kanagaraj and 3 others Vs. Kamaraj and another** reported in **[1997-3-L.W.909]**. Once the plaintiff has suppressed the fact and not disclosed the entire fact, the powers under Article 227 of the Constitution of India have to be invoked.

5. The learned counsel for the respondent would submit that originally the suit property belongs to one Marichamy by way of compromise decree dated 30.10.2015 made in O.S.No.1490 of 2015. Further, he settled the property to his wife Amsaveni on 09.06.2016 and the said Amsaveni settled the property in favour of the respondent/plaintiff on 29.03.2018. The patta also stands in the name of the respondent/plaintiff. The learned counsel relied on the following

(i) K.Ponnamal Vs. V.Thayanban [2012 (1) MWN (Civil) 701]

(ii) Amaravathy Cranes and Structural Pvt. Ltd & another Vs. Rajendra Raja and others [2013 (2) CTC 756]

There are enabling provisions in Civil Procedure Code under Order 6 Rule 16 for striking off Order 7 Rule 11 of CPC for rejecting the plaint. When the petitioners have an alternate remedy to approach the Civil Court, they cannot approach this Court straight away by invoking Article 227 of the Constitution of India.

6. Heard the learned counsel for the petitioners and the learned counsel for the respondent and also perused the materials available on record.

7. Admittedly, the respondent/plaintiff filed the suit against the revision petitioners in O.S.No.625 of 2018 on the file of the learned II Additional District Munsif Court, Coimbatore. After filing of the suit, the respondent filed the present revision before this Court to strike off the plaint in O.S.No.625 of 2018 on the ground that they have suppressed the earlier suits and also the owner of the properties has not been shown as parties in the suit. The predeceased Marichamy has filed the suit for partition and the same is pending. During pendency of the said suit, the said Marichamy has filed a collusive suit in O.S.No.1490 of 2015 against his sisters and others on 08.10.2015 for partition. Hence, they have not shown as the owner of properties. Based on the false compromise decree, which was fraudulently obtained by him, he settled the property in favour of his wife-Amsaveni. The said Amsaveni, in turn settled the

property in favour of her brother/the respondent herein. Admittedly, the partition suit in O.S.No.1490 of 2015 is pending, the said Marichamy has some right over the suit property. Further, it has been stated that the settlement deed executed in favour of Amsaveni is null and void. The questions as to (i) whether the settlement is null and void; (ii) whether the said Marichamy has any right over the suit property, can be decided by the Competent Court only after full fledged trial. Assuming that the petitioners has the valid ground to reject the plaint, they can approach to strike off the plaint by invoking Order 6 Rule 16 of CPC and they cannot straightaway file the present revision before this Court, when alternative remedy is available. The citation referred to by the learned counsel for the petitioners is not applicable to the facts of the present case in hand.

8. In such circumstances, this Court is of the view that in order to avoid conflicting of decision all the suits can be tried together in one Court. Hence, the learned II Additional District Munsif, Coimbatore, is directed to transfer the entire records in O.S.No.625 of 2018 to the file of the learned First Additional Subordinate Judge, Coimbatore, to be tried along with O.S.No.1311 of 2013. After receiving the suit documents, the learned First Additional Subordinate Judge, Coimbatore is directed to give an opportunity to the revision petitioners/defendants to file a written statement. Thereafter, the learned First Additional Subordinate Judge, Coimbatore is directed to dispose of the connected suits on merits and in accordance with law.

9. With the above observations and directions, this Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are also closed.

14.06.2019

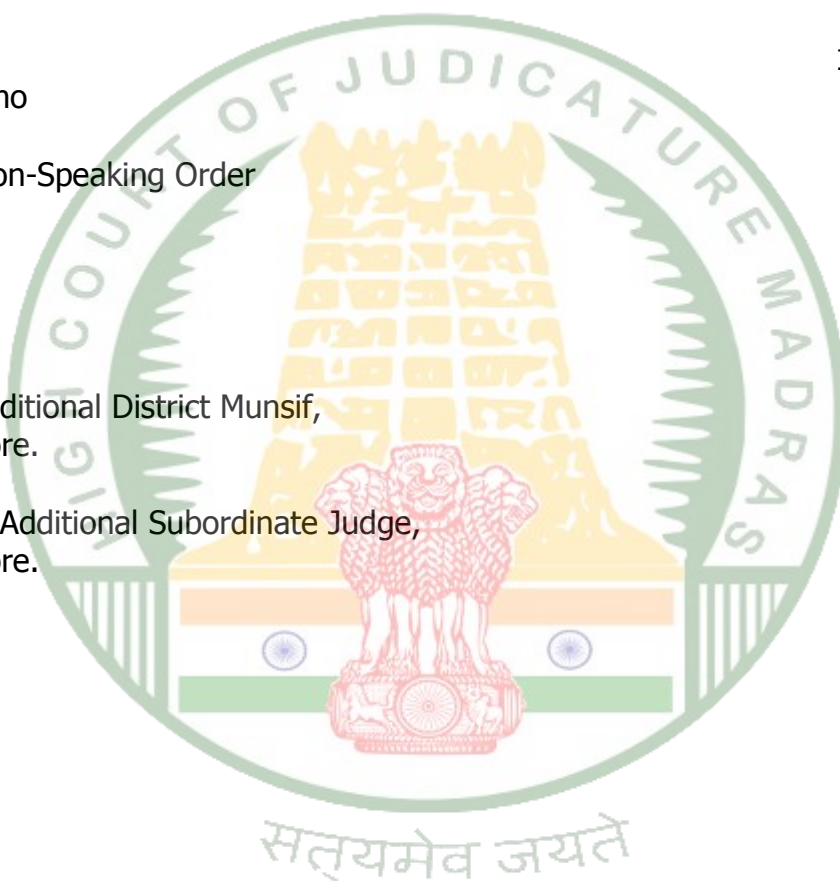
Index: Yes/no

Speaking/Non-Speaking Order

KMI

To

1. The II Additional District Munsif,
Coimbatore.
2. The First Additional Subordinate Judge,
Coimbatore.



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P.VELMURUGAN, J.

KMI



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