

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.12.2018

Pronounced on : 28.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

**CRP.(PD).Nos.2529 & 2530 of 2018
and
C.M.P.Nos.15379 & 15380 of 2018**

In CRP.No.2529 of 2018

M/s.Raahul Foundations Private Ltd.,
rep. by its Director
Mr.A.Ravi Krishnakumar
having registered office at
No.37/17, III Main Road,
Kasturibai Nagar, Adyar,
Chennai-600 020. .. Petitioner

V.

1.S.Chandrababu

2.R.Arumugam

3.S.Venkatesan

4.R.Kumar .. Respondents

In CRP.No.2530 of 2018

M/s.Raahul Foundations Private Ltd.,
rep. by its Director
Mr.A.Ravi Krishnakumar
having registered office at
No.37/17, III Main Road,
Kasturibai Nagar, Adyar,
Chennai-600 020. .. Petitioner

1.S.Chandrababu

2.Pownammal

3.Mohanambal

4.Pushpamal

5.The Tahsildar,
Tiruporur,
Kancheepuram District.

6.The District Collector,
Kancheepuram District,
Kancheepuram.
(R2 to R6 already set ex-parte.
Hence given up.)

.. Respondents

PRAYER in CRP.No.2529 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.104 of 2018, pending on the file of the District Munsif Court, Chengalpet.

PRAYER in CRP.No.2530 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.286 of 2013, pending on the file of the District Munsif Court, Chengalpet.

For Petitioner : Mr.S.Rajasekar
(in both CRPs.)

For Respondent-1 : Mr.S.Sadasharam
(in both CRPs.)

For Respondent : Mr.S.Raghu
Nos.2 to 4 (in CRP.No.2529/2018)

While the prayer in the Civil Revision Petition in CRP.No.2530 of 2018 is to strike off the plaint in O.S.No.286 of 2013, pending on the file of the District Munsif Court, Chengalpet, the prayer in CRP.No.2529 of 2018 is to strike off the plaint in O.S.104 of 2018, pending on the file of the District Munsif Court, Chengalpet. Both the Civil Revision Petitions are filed invoking Article 227 of the Constitution of India. Since the issue involved in both the Civil Revision Petitions are predominantly one and the same, both the revisions are disposed through a common order. Since the outcome of the decision in CRP.No.2529 of 2018 would depend on the decision taken in CRP.No.2530 of 2018, I shall first address the issues involved in CRP.No.2530 of 2018.

2.The parties are addressed as per their status in the suit.

3.Heard Mr.S.Rajasekar, learned counsel for the petitioner in both the revisions and Mr.S.Sadasharam, learned counsel for the first respondent in both the revisions as well as Mr.S.Raghu, learned counsel appearing on behalf of the respondents 2 to 4 in CRP.No.2529 of 2018.

CRP.No.2530 of 2018:-

4.The Civil Revision Petition in CRP.No.2530 of 2018 seeks to strike off the plaint in O.S.No.286 of 2013, on the ground of re-

litigation and abuse of the process of law.

5.The brief facts in this revision are as follows:

a)The plaintiff namely, S.Chandrababu had originally filed the suit in O.S.No.87 of 1995 seeking for permanent injunction against the defendants 1 to 3 namely, Mohanambal, Pownammal and Pushpammal in connection with the property in Sur.No.72/3 (new Survey No.72/3-C2) measuring an extent of 75 cents in Thiruvidadanthai, Semmancheri Village, Tirupporur Taluk, Kancheepuram District (hereinafter referred to as 'suit property'), on the ground that the first respondent herein/plaintiff is the owner of the property through a Sale Deed No.2095/1982 dated 10.11.1982. While the defendants 1 to 3 are the daughters of one Mrs.Senthamarai Ammal, the plaintiff is her grandson, through her pre-deceased son, Srinivasan. The suit came to be decreed in favour of the plaintiff on 03.10.2003. The appeal in A.S.No.11 of 2003 against the decree was allowed on 16.08.2004. Thereafter, the plaintiff's Second Appeal in S.A.No.1053 of 2005 was dismissed by this Court on 05.03.2013, which judgment was also confirmed by the Hon'ble Supreme Court of India through its judgment dated 12.07.2013 passed in SLP. No.19883 of 2013.

b)After the dismissal, the plaintiff had filed another suit in

O.S.No.286 of 2013 against the same parties and impleading the

District Collector, Kancheepuram and Tahsildar, Tirupporur as defendants together with them, wherein he had sought for the relief of declaration of title over the suit property, by relying upon the Sale Deed dated 10.11.1982. Since the cause of action for the present suit in O.S.No.286 of 2013 and the earlier suit in O.S.No.87 of 1995 was one and the same, the present revision has been filed to strike off the plaint on the ground of re-litigation and abuse of the process of law.

6.The learned counsel for the petitioner submitted that the earlier suit in O.S.NO.87 of 1995, seeking for permanent injunction was based on the Sale Deed dated 10.11.1982, allegedly executed by Senthamarai Ammal in favour of the plaintiff. When the second appeal came to be filed before this Court, there was a specific finding therein, stating that the Sale Deed dated 10.11.1982 is not true and valid and thereby, the appeal filed by the plaintiff came to be dismissed and subsequently, the judgment and decree in the Second Appeal was also confirmed by the Hon'ble Apex Court. According to the learned counsel for the petitioner, since the plaintiff seeks to claim declaration of title in his favour in the subsequent suit, on the strength of the Sale Deed dated 10.11.1982, which document has already been decided as not true and valid by the High Court and confirmed by the Hon'ble Apex Court, the plaintiff is precluded from re-litigating the same issue, by way of a fresh suit.

The learned counsel would further submit that the second suit is an abuse of process of law and therefore, seeks for striking off the plaint.

7.The learned counsel for the plaintiff, per contra, submitted that, the relief sought for in the suit in O.S.No.286 of 2013 and O.S.No.87 of 1995 are totally different. According to the learned counsel, since the relief sought for in O.S.No.87 of 1995 is only for bare injunction based on possession of the suit property coupled with his title under the Sale Deed dated 10.11.1982 and the relief sought for in O.S.No.286 of 2013 is one for declaration of title with respect to the suit property, the question of re-litigation or res-judicata would not arise. The learned counsel would further submit that the parties in both the suits are not the same, since the official respondents and the revision petitioner have also been made as defendants in the subsequent suit in O.S.No.286 of 2013. By referring to the judgment of this Court in S.A.No.1053 of 2005, the learned counsel submitted that the findings therein with regard to the Sale Deed dated 10.11.1982 are without any reasons based on legal evidence and hence amounts to *obiter-dicta*. It is also his submission that since the present suit is a title dispute, the parties should be permitted to establish their case through oral and documentary evidences and as such, the present revision invoking Article 227 of the Constitution of India is not maintainable. By way

of an alternative submission, it is contended that even assuming that the suit is a re-litigation, which is barred by the *Principles of Res-Judicata*, an alternative remedy for rejection of plaint under Order 7 Rule 11 of the Civil Procedure Code is available and therefore, this Court should not invoke its supervisory powers under Article 227 of the Constitution of India.

8. In support of their respective submissions, both the learned counsels relied upon various decisions, which I shall address later.

9. The points that arise for consideration in the present Civil Revision Petition are as follows:

a) *Whether the second suit in O.S.No.286 of 2013 amounts to re-litigation?*

b) *Whether the second suit would amount to an abuse of process of law?*

c) *Whether the plaint in the second suit can be struck off by this Court by invoking its power of superintendence under Article 227 of the Constitution of India?*

10. Point 1 :-

In order to explore as to whether the second suit in O.S.No.286 of 2013 would amount to re-litigation in view of the

earlier suit in O.S.No.87 of 1995, it would be appropriate to address certain relevant facts of the case, as evidenced in paragraph 17 of the findings of this Court in the judgment in Second Appeal No.1053 of 2005 dated 15.03.2013, arising out of the Original Suit in O.S.No.87 of 1995:

"During the life time of Senthamarai Ammal, out of the entire 1 acre 6 ½ cents, 31 cents were acquired by the Government. Thereafter, the plaintiff has engaged one Poonchulai to maintain the property. It is the further submission that Ex.A3 patta has been issued in favour of the plaintiff. According to him, even as per the admission of the second defendant, all the three daughters of Senthamarai Ammal, have taken 12 cents each and that they have obtained respective pattas. When individual patta has been granted to the defendants under Ex.A4, the plaintiff has objected to the same. The case of the appellant is that he has purchased 75 cents under the registered sale deed dated 10.11.1982. Whereas, the respondent has contended that Senthamarai Ammal had never executed any sale deed in favour of the plaintiff. It is the case of the respondents that Senthamarai Ammal had one son named Srinivasan and three daughters, who are the respondents. Husband of Senthamarai Ammal died, leaving behind, Senthamarai Ammal and three daughters. Srinivasan died after the death of his father and therefore, the respondents have contended that

Senthamarai Ammal used to affix her thumb impression and that she was in the care and custody of the second defendant and that the plaintiff had not taken care of Senthamarai Ammal. The plaintiff has not examined any witness to prove the sale deed dated 10.11.1982. Further, it is not the case of the plaintiff that Senthamarai Ammal lived with him. The appellant has not produced any kist receipts for the suit property, excepting two receipts. The other two receipts filed by him are in respect of house tax. On analysis of evidence, this Court is inclined to accept the evidence of the defendants/respondents that the sale deed dated 10.11.1982, said to have been executed by Senthamarai Ammal is not true and valid."

11. When the plaintiff had filed an appeal as against the aforesaid judgment, the Hon'ble Apex Court had dismissed the appeal by its order dated 12.07.2013 in Special Leave to Appeal (Civil) No.19883 of 2013. Thus, the findings of this Court extracted above has reached a finality.

12. After two months, the plaintiff had instituted the present suit in O.S.No.286 of 2013 before the learned District Munsif, Chengalpet, seeking for the relief of declaration of title over the same suit property, in which, the District Collector and the Tahsildar

were impleaded as defendants along with the defendants 1 to 3 and the petitioner herein.

13.The plaint averments in O.S.No.286 of 2013 reveals that the plaintiff has placed reliance on the Sale Deed dated 10.11.1982, allegedly executed by Mrs.Senthamarai Ammal in favour of himself and his brother Delhi Babu. Thus, he claims title over the suit property through the Sale Deed dated 10.11.1982, a copy of which was also produced along with the plaint as a document under Order 7 Rule 14(1) of CPC. In the cause of action pleaded in the plaint, reliance was placed on the day when the defendants attempted to interfere with the petitioner's possession and enjoyment of the suit property and further, in paragraphs 5 and 7 of the plaint, a reference is made to the judgment of this Court passed in S.A.No.1053 of 2005 dated 15.03.2005 and it is stated therein that the plaintiff had preferred a Special Leave to Appeal before the Hon'ble Supreme Court of India and indicating as if the same is pending.

14.When the issues in the earlier suit in O.S.No.87 of 1995 were framed, one additional issue was to the effect, that as to whether Mrs.Senthamarai Ammal is empowered to execute the Sale Deed dated 10.11.1982 in favour of the plaintiff and whether the said Sale Deed is valid? Though this additional issue was decided in

favour of the plaintiff, the First Appeal filed against the same, went against the plaintiff. In the second appeal filed by the plaintiff before this Court, the following substantial question of law was framed.

"In a suit for bare injunction, when prima facie possession on the date of the suit alone would be a relevant and legal material to be taken into account, has not the lower appellate court committed an error of law in reversing the judgment of the trial Court, going into the question of title?"

15.This Court, while deciding the substantial question of law involved in the Second Appeal, had analyzed both the oral and documentary evidences of the Courts below. By observing that the plaintiff had not examined any witness to prove the Sale Deed dated 10.11.1982 and that Senthamarai Ammal was always in the care and custody of the second defendant had accepted the evidence of the defendants 1 to 3 and held that the Sale Deed dated 10.11.1982 said to have been executed by Senthamarai Ammal is not true and valid.

16.When the issue before the trial Court in O.S.No.87 of 1995 as well as the substantial question of law before this Court in S.A.No.1053 of 2005 touched upon the validity of the Sale Deed

dated 10.11.1982 and held that the Sale Deed is not true and valid, I am unable to comprehend as to how the trial Court, in the instant suit in O.S.No.286 of 2013, could frame any issue to re-determine the validity of the alleged Sale Deed dated 10.11.1982. Since the only averment in the plaint in O.S.No.286 of 2013 for the plaintiff to establish his claim of title over the suit property, is based on the Sale Deed dated 10.11.1982, it is not only improbable but also impossible for the trial Court to determine the issue with regard to the relief of declaration, without rendering a finding on the validity of the Sale Deed dated 10.11.1982.

17.The learned counsel for the plaintiff had submitted that the findings in the Second Appeal with regard to the Sale Deed dated 10.11.1982 are without any reasons based on legal evidence, hence amounts to *obiter dicta*. I am unable to endorse such a submission for the reason that such a decision by this Court in its judgment in the Second Appeal that the Sale Deed dated 10.11.1982 is not true and valid was after analysing the evidence and accepting the evidence of the defendants 1 to 3. Therefore, such findings can never be termed to be '*obiter-dicta*'. Furthermore, the issue with regard to the validity of the sale was framed as an additional issue in the previous suit in O.S.No.87 of 1995 and the substantial question of law before this Court also revolved on the validity of the Sale Deed. Hence, it can only be concluded that the trial Court,

before whom the suit in O.S.No.286 of 2013 is pending, cannot reappraise the findings of the High Court on the validity of the Sale Deed. Above all, since the basis for the cause of action in both the suits are one and the same, the subsequent suit is also hit under the doctrine of *Res-Judicata* as enshrined in Section 11 of CPC.

18. In the light of the above findings, I am of the view that the petitioner herein has initiated the subsequent suit in O.S.No.286 of 2013 for re-litigating the issue on the validity of the Sale Deed dated 10.11.1982, which is impermissible and barred in view of the provisions of Section 11 of CPC. This point is answered accordingly.

19. Point 2:

Whether the subsequent suit would amount to an abuse of the process of law?

Now that, I have found that the second suit amounts to re-litigating the issue on the validity of the Sale Deed dated 10.11.1982, the consequential question would be as to whether such re-litigation would amount to an abuse of process of law? For this proposition, the learned counsel for the petitioner relied upon the decision of this Court in ***The Member Concern Department of Post, Government of India, Ministry of Communication rep. by its Chief Post Master General, Anna Salai, Chennai-600 002 V. 1.Ms.Annapoorni and 4 others*** reported in **2005 (4)**

LW 206 and submitted that the subsequent suit filed by the plaintiff is a vexatious proceedings, which would amount to an abuse of process of law. In the decision cited by the learned counsel for the petitioner, this Court had analyzed various decisions of the Hon'ble Apex Court and had held that re-litigation would amount to an abuse of process of law. The relevant portions of the said decisions reads as follows:

"26. One of the examples cited as an abuse of the process of 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 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 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. The court should also be satisfied that there is no chance of the suit succeeding.

27. In the case of Greenhalgh v. Mallard [19147 (2) AER 255] the court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court, held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexation and an abuse of the process of court.

30. In cases where the parties do not come with clean hands, the Supreme Court has held that the Plaint is to be ordered to be struck off and could be thrown out at any stage of the litigation. We may usefully refer to the following passage in the decision reported in S.P.chengalvaraya Naidu V. Jagannath (AIR 1994 SC 53 = 1994 (1) SCC 21=1994-1-LW 21)

"...The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with

clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation. ..."

31. In the case reported in Smt. Patasibal and others Vs. Ratanlal (JT (1990) 3 SC 68), the Supreme Court has held thus:-

"...The trial Court should not proceed when there is no controversial issue but the trial Court failed to perform its duty and proceeded to issue summons without carefully reading the plaint. Since the plaint suffers from that fatal defect, the mere issuance of summons by the trial Court did not require that the trial should proceed even when no triable issue is shown to arise; permitting the continuance of such a suit is tantamount to licensing frivolous and vexatious litigation, which cannot be done. The Supreme Court has also held that it is not necessary to adopt the technical course of directing the trial Court to make the consequential order of rejecting the plaint."
(Emphasis supplied)

33.As against the re-litigation, expressing the disapproval and ordering striking off the plaint in the decision reported in *K.K.Swaminathan V. Srinivasagam* [2004 (1) LW 250], referring to the decision of the Supreme Court in *K.K.Modi's* case, cited *supra*, and other cases, this Court has ordered striking down of the plaint and held

... In cases of this nature, it is not as if the Court is powerless or its hands are tied merely because the matter comes to the notice of the court in the revisional Jurisdiction under Sec.115 CPC. The investiture of power u/s.115 CPC is of superintendence and visitorial....Not fettered to deal with such situations. Where there is clear abuse of process of court, the Court has to view such conduct seriously and the same is to be halted to save precious time of the public and the court being wasted. In the recent decision of the Supreme Court reported in *K.K.Modi ..vs.. K.N.Modi* (1998) 3 SCC 573 elaborately considering the abuse of process of the Court, the Supreme Court has held that the Court has power to stop such frivolous and vexatious proceedings. The Supreme Court has only cautioned that such power is to be exercised with circumspection ...

34.The repeated filing of number of litigations, facts and other circumstances demonstrably show clear abuse of process of the

Court and the plaint in O.S.No.724 of 2003 is to be ordered to be struck off. However, considering the conduct of the respondents in filing number of litigations, it is necessary to infuse the sense of responsibility in the mind of the respondents, by directing to pay cost in wasting the time of the Postal Department by entangling them in number of litigations and also the judicial time. In the circumstances of the case, it is just and necessary to direct the respondents to pay a cost of Rs.20,000/- (Rupees Twenty Thousand Only)-(Rs.10,000/- payable to the revision petitioner/postal department and Rs.10,000/- payable to the Tamil Nadu State Legal Services Authority, Chennai)."

Thus, the above laid ratio is on the basis of various other decisions, whereby, it is held that a re-litigation is a clear abuse of process of law, which requires the plaint to be struck off.

20.In the aforesaid decision, reported in **2005 (4) LW 206**, the learned Judge of this Court had placed reliance on the decision of the Hon'ble Apex Court in **K.K.Modi Vs. K.N.Modi and others** reported in **1998 (3) SCC 573**, among other decisions and it would be appropriate to rely on the findings made in **K.K.Modi's case (supra)** also.

"42.Under Order 6 Rule 16, the Court may, at any state of the proceeding, order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the court.

Mulla in his treatise on the Code of Civil Procedure. (15th Edition, Volume II, page 1179 note 7) has stated that power under clause (c) of Order 6 Rule 16 of the Code is confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder Courts have inherent power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of Court on the basis of what is stated in the plaint.

43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase "abuse of the process of the court" thus: "This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation..... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

44. One of the examples cited as an abuse of the process of 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 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 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. The court should also be satisfied that there is no chance of the suit succeeding.

45. In the case of Greenhalgh v. Mallard [19147 (2) AER 255] the court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court, held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. In such

circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexation and an abuse of the process of court.

*46. In **McIlkenny v. Chief Constable of West Midlands Police Force and another** [1980 (2) AER 227], the Court of Appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to re-litigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel."*

The above findings of the Hon'ble Apex Court as well as this Court are self explanatory to the effect that re-litigation amounts to an abuse of process of law.

21. Furthermore, the plaint averments in O.S.No.286 of 2013 mentions as if the Special Leave to Appeal filed before the Hon'ble Supreme Court of India against the judgment of this Court passed in S.A.No.1053 of 2005 dated 15.03.2005, is pending. Contrary to

such an averment in the plaint, it is found that the appeal before the Hon'ble Apex Court had come to be dismissed on 12.07.2013 itself, which fact has been suppressed by the plaintiff. Thus, the plaintiff had attempted to impress on the trial Court, while the suit was instituted, as if the appeal before the Hon'ble Supreme Court was pending and that the finding of the High Court in the Second Appeal is yet to reach its finality. As discussed earlier, the findings of this Court in the Second Appeal that the Sale Deed dated 10.11.1982 is not true and valid, is the crucial aspect involving the entire case. While that being so, when the plaintiff had attempted to impress the trial Court in the subsequent suit that such a finding is challenged before the Hon'ble Supreme Court and is pending, reveals the mala-fide intention of the plaintiff to misguide the trial Court. On this aspect also, it can only be concluded that the plaintiff had not come to the trial Court with clean hands in the subsequent suit. In the light of the decision of the Hon'ble Apex Court cited above and the observations made by this Court in the foregoing paragraphs, I am of the considered view that the second suit, which amounts to re-litigation is an abuse of process of law. Point-2 is answered accordingly.

22.Point-3:

Whether the plaint in the second suit can be struck off by this

Court by invoking its power of superintendence under Article 227 of

the Constitution of India?

23.The learned counsel for the defendants 1 to 3 submitted that the subsequent suit is a title dispute and hence, the parties should be permitted to establish their case through oral and documentary evidences and as such, the present revision invoking Article 227 of the Constitution of India is not maintainable. Alternatively, he also submitted that even assuming that the subsequent suit amounts to re-litigation, the alternative remedy for rejection of plaint under Order 7 Rule 11 CPC is available and therefore, this Court should not invoke its power of superintendence under Article 227 of the Constitution of India.

24.Inspite of the findings rendered by this Court in S.A.No.1053 of 2005 and confirmed by the Hon'ble Apex Court, the plaintiff/first respondent herein has chosen to file the subsequent suit by placing reliance on the very same Sale Deed dated 10.11.1982, which aspect has been held to be re-litigation and an abuse of process of law, in the foregoing paragraphs.

25.It is no doubt true that when the subsequent suit is barred by any other law, Order 7 Rule 11 of the CPC., could have been alternatively invoked. But when it is realized by this Court that the subsequent suit is not a mere re-litigation but a gross abuse of

process of law on a frivolous cause of action, this Court would be justified in invoking its powers of superintendence under Article 227 of the Constitution of India. When the plaintiff have chosen to agitate his claim earlier upto the Apex Court by keeping the litigation pending for almost 18 years (between 1995 to 2013) and has now commenced his second round of litigation, rejecting the present revision in view of the alternative remedy available under Order 7 Rule 11 of CPC., would not be justifiable.

26.The petitioner herein is the purchaser of the suit properties through two Sale Deeds dated 19.07.2013 respectively and through another Sale Deed dated 19.08.2013, from the settlees of the defendants 1 to 3. In other words, when the earlier suit in O.S.No.87 of 1995 had reached its finality through the order of the Hon'ble Supreme Court in SLP. No.19883 of 2013 dated 12.07.2013 and after the petitioner had purchased the properties through Sale Deeds dated 19.07.2013 and 19.08.2013 respectively, the plaintiff had thereafter filed the second round of litigation on 17.09.2013 in O.S.No.286 of 2013.

27.At this juncture, if the petitioner is called upon to invoke the alternative remedy available under Order 7 Rule 11 CPC., it would only pave way to the petitioner to further prolong the litigation. Above all, from all the aforesaid discussions, it is clearly

established that the plaintiff has no chance to succeed in the suit proceedings and the trial Court also will not be in a position to formulate an effective issue in the suit in view of the earlier findings of this Court in the Second Appeal, which has been discussed elaborately in the foregoing paragraphs. In view of the fact that this re-litigation amounts to an abuse of process of law, this Court would be well within its powers to invoke its extra-ordinary power under Article 227 of the Constitution of India. The decision of this Court reported in **2005 (4) LW 206** which has already been extracted above, also endorses this view. Hence, this point is also answered against the plaintiff/first respondent herein.

28.I shall now deal with the decisions relied upon by the learned counsel for the plaintiff/first respondent herein.

29.The learned counsel for the first respondent relied upon the decision in **Shalini Shyam Shetty and another V. Rajendra Shankar Patil** reported in **2010 (8) SCC 329** to substantiate that revision under Article 227 of the Constitution of India to strike off the plaint is not maintainable. The ratio laid down in this judgment by the Hon'ble Apex Court does not however relate to revision petitions filed under Article 227 of the Constitution of India but to writ petitions filed under Article 226 of the Constitution of India.

The learned counsel placed reliance on the following paragraphs:-

"64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases High Courts, in a routine manner, entertain petition under [Article 227](#) over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown, that a private individual is acting in collusion with a statutory authority.

66. We may also observe that in some High Courts there is tendency of entertaining petitions under [Article 227](#) of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev* (supra) and in view of the recent amendment to Section 115 of the Civil Procedure Code by Civil Procedure Code ([Amendment](#)) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 of CPC has

been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law."

The above observations clearly indicates that the Hon'ble Supreme Court had depreciated the High Courts from entertaining petitions under Article 227 of the Constitution of India as Writ Petitions. The following observations in the same decisions clarifies such a proposition.

"15.It was urged before this Court that petitions under Article 227 of the Constitution are filed against orders of Civil Court and even in disputes between landlord and tenant. Under the Bombay High Court Rules, such petitions are called writ petitions.

16.This Court is unable to appreciate this submission. First of all this Court finds that the petition which was filed before the High Court was a pure and simple writ petition. It was labeled as Writ Petition No.7926 of 2008 (page 75 of the SLP paper book). In paragraph 6 of the writ petition it had been categorically stated:

"That no efficacious remedy is available to the petitioners than the present petition under Article 226 of the Constitution of India. (page 89 of SLP paper book)"

17. In the prayer portion also a writ of certiorari has been prayed for in the following terms:

"(a) That this Hon'ble Court be pleased to issue a writ of certiorari and/or any other writ, order or command and call upon the papers and proceedings of Appeal No.314 of 2007 together with Exh.8 in RAE Suit No.146 of 2001 and also R.A.D. Suit Stamp No.61 of 2001 (Suit No.6/8 of 2001) and after going through the legality, validity and propriety of the said Appeal and the said other matters, this Hon'ble Court be pleased to quash and/or set aside the judgment and decree dated 11th September, 2008 passed by the Hon'ble Appeal Court in Appeal No.314 of 2007 of the Petitioners and allow the same in toto".

Therefore, the petition filed before the High Court was a writ petition.

18. Now coming to the Bombay High Court Rules, this Court finds that in Chapter I Rule 2B of the Bombay High Court (Appellate Side) Rules, 1960 (hereinafter referred to as rules) it is provided:

"2-B. Petitions/applications under [Article 226](#) an/or 227 of the Constitution of India, arising out of/or relating to an order of penalty or confiscation etc. passed under any special statute All petitions/applications under [Article 226](#) an/or 227 of the

Constitution of India, arising out of or relating to an order of penalty or confiscation or an order in the nature thereof an order otherwise of a penal character and passed under any special statute shall be heard and decided by a Division Bench hearing Writ Petitions."

It does not appear from the said Rules that petitions under Article 227 are called writ petitions. What has been provided under the said Rules is that petitions under Article 227 filed in respect of certain category of cases will be heard by a Division Bench hearing writ petitions. That is merely indicative of the forum where such petitions will be heard." ... (emphasis supplied)

In the present case, we are dealing with revision petitions under Article 227 of the Constitution of India and not writ petitions and therefore, this citation may not be relevant.

30. The learned counsel for the plaintiff/first respondent herein also relied upon a decision in **Radhey Shyam and another V. Chhabi Nath and others with Jagdish Prasad V. Iqbal Kaur and others** reported in **2015 (5) SCC 423**, for the same proposition. This decision again is not on such a ratio as pointed out by the learned counsel. As a matter of fact, the Apex Court in its decision in **Radhey Shyam's case** has held that control of working of the Sub-ordinate Courts in dealing with their judicial orders is exercised by way of appellate or revisional power of

superintendence under Article 227 of the Constitution of India and had only differentiated the jurisdiction of the High Courts under Article 226 and 227 in the said judgments.

31.In the decision cited by the learned counsel in ***Raj Kumar Bhatia V. Subhash Chander Bhatia*** reported in ***AIR 2018 SC 100***, the Apex Court had held that it was impermissible for the High Court to set aside an order granting amendment of written statement under Order 6 Rule 17 CPC., by exercising its supervisory jurisdiction under Article 227 of the Constitution of India. Apparently, that is not the case in hand and hence the findings does not suit the present facts.

32.For the purpose of establishing the ground that the powers under Article 227 of the Constitution of India cannot be invoked when there is an alternative remedy under Order 7 Rule 11 CPC., the learned counsel for the plaintiff/first respondent herein relied upon the decision in ***T.K. Chithran and another V. C.Samsari 2 Chithran and others*** reported in ***2015 (3) CTC 485*** as well as in the other unreported decisions namely, ***1)Dr.Arun V. Dr.D.Manivannan & another [CRP (MD)(PD) No.563 of 2015 dated 16.02.2017]; 2)M.Ramasamy V. Sarojini & 2 others [CRP (PD) No.1532 of 2017 dated 24.04.2017]; 3)G.Ramasubbaiah V. L.Babukumar [CRP(PD)(MD) No.1042***

of 2017 dated 25.05.2017]; 4) Soundarajan V. Sudharshan Vembutty & 13 others [CRP (PD) SR.No.62267 of 2017 dated 22.11.2017]; 5) Karuppan and 9 others V. Poomalai & another [CRP(MD) No.2131 of 2018 dated 26.01.2018]; 6) S.Kaliyamoorthy and 2 others V. K.Marimuthu [CRP(MD)(PD) No.2151 of 2018 dated 01.10.2018].

33. In all these aforesaid decisions, the ratio laid was that the powers under Article 227 of the Constitution of India has to be exercised sparingly and only in appropriate cases where judicial conscience of this Court dictates it to act lest a gross failure of justice would occur. In these decisions cited, the learned Single Judges of this Court had placed reliance on various decisions of the Hon'ble Apex Court for this ratio that the powers under Article 227 of the Constitution of India requires to be exercised sparingly.

34. In my view, the facts involved in the present revisions are a classic example where the process of law has been abused and hence could be considered as the rarest of rare cases where the powers under Article 227 of the Constitution of India could be invoked for striking off the plaint. This analogy is also reiterated in all these decisions of the Madras High Court, cited by the plaintiff. In view of the same, these decisions also will not help the respondent to seek for rejection of the revision petitions on the

ground of availability of alternative remedy.

35. For all the foregoing reasons, I am of the considered view that this Civil Revision Petitioner is entitled to succeed.

CRP.No.2529 of 2018:-

36. The prayer in the present revision is to strike off the plaint in O.S.No.104 of 2018 which has been filed by the plaintiff/first respondent herein, seeking for the relief of declaration that the Sale Deeds dated 19.07.2013 and 19.08.2013 respectively, executed in favour of the petitioner herein as null and void.

37. The first respondent herein is the plaintiff in the said suit and the civil revision petitioner is the fourth defendant in the suit. The children of the defendants 1 to 3 in O.S.No.286 of 2013 are the vendors of the petitioner herein, in whose favour, the suit properties were settled by their respective mothers.

38. The plaintiff, by relying upon the Sale Deed dated 10.11.1982, claims title over the suit properties and therefore has sought for declaring the sale deeds executed in favour of the petitioner as null and void. In the plaint averments, he had also stated about the pendency of the suit in O.S.No.286 of 2013 filed by

him for declaration of title over the suit properties.

39. In the findings rendered by me in CRP.No.2530 of 2018, I have clearly and categorically held that the plaintiff/first respondent herein cannot maintain the suit in O.S.No.286 of 2013, since it amounts to re-litigation and abuse of the process of law. Consequently, the present plaint in the suit in O.S.No.104 of 2018, is also liable to be struck off, since the trial Court cannot effectively adjudicate the issues when the plaint in O.S.No.286 of 2013 seeking for the plaintiff's declaration of title itself has been struck off in this order.

40. In fine, the Civil Revision Petitions in CRP.Nos.2530 & 2529 of 2018 stands allowed. Consequently, the plaint in O.S.No.286 of 2013 and O.S.No.104 of 2018, both pending on the file of the learned District Munsif, Chengalpet are ordered to be struck off. Connected Miscellaneous Petition is closed. No costs.

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28.02.2019

Index : Yes

Order : Speaking

DP

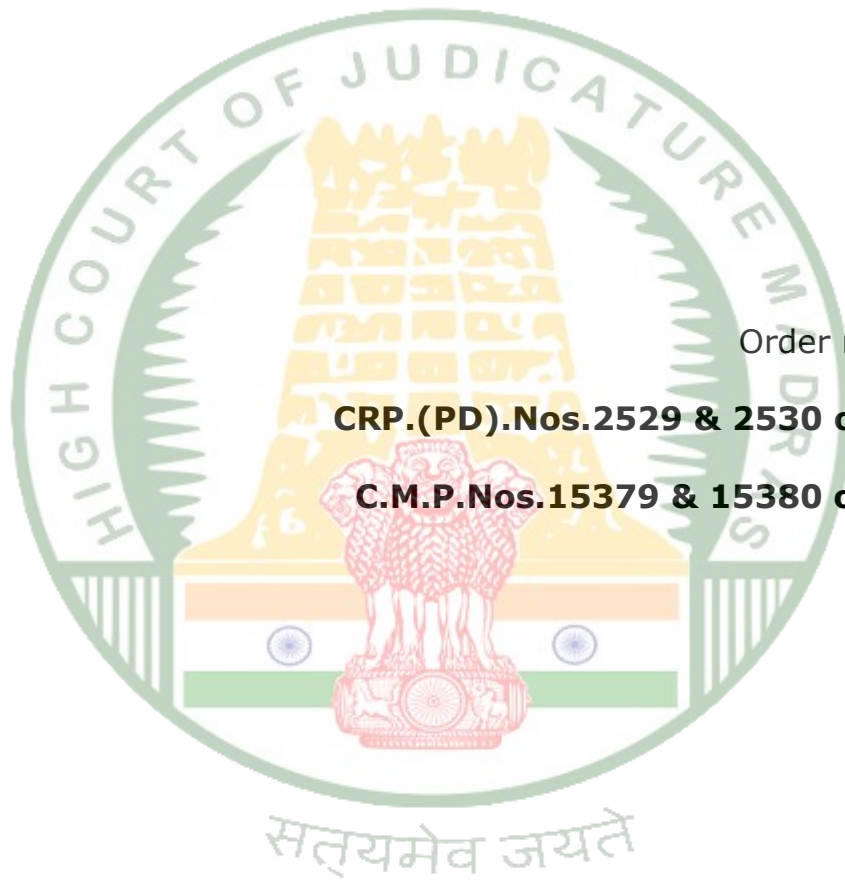
To

<http://www.judis.nic.in>

The District Munsif Court,
Chengalpet.

M.S.RAMESH, J.

DP



Order made in

**CRP.(PD).Nos.2529 & 2530 of 2018
and
C.M.P.Nos.15379 & 15380 of 2018**

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28.02.2019