

C.R.P (PD).No.2693 of 2018
&
C.M.P.No.15961 of 2018

P.T.ASHA, J.,

The above matter was posted under the caption "For Being Mentioned" to rectify an error crept in in 5th line of Paragraph No.7, wherein it has been mistakenly stated as "that the property has been acquired from his ancestors". The sentence should read as "that the property is the self acquired property of his father".

In the same paragraph, in 17th line the Writ Petition number has been wrongly mentioned as "W.P.No.6608 of 2018" instead of "W.P.No.6606 of 2018". The errors shall be rectified and a fresh order copy shall be issued.

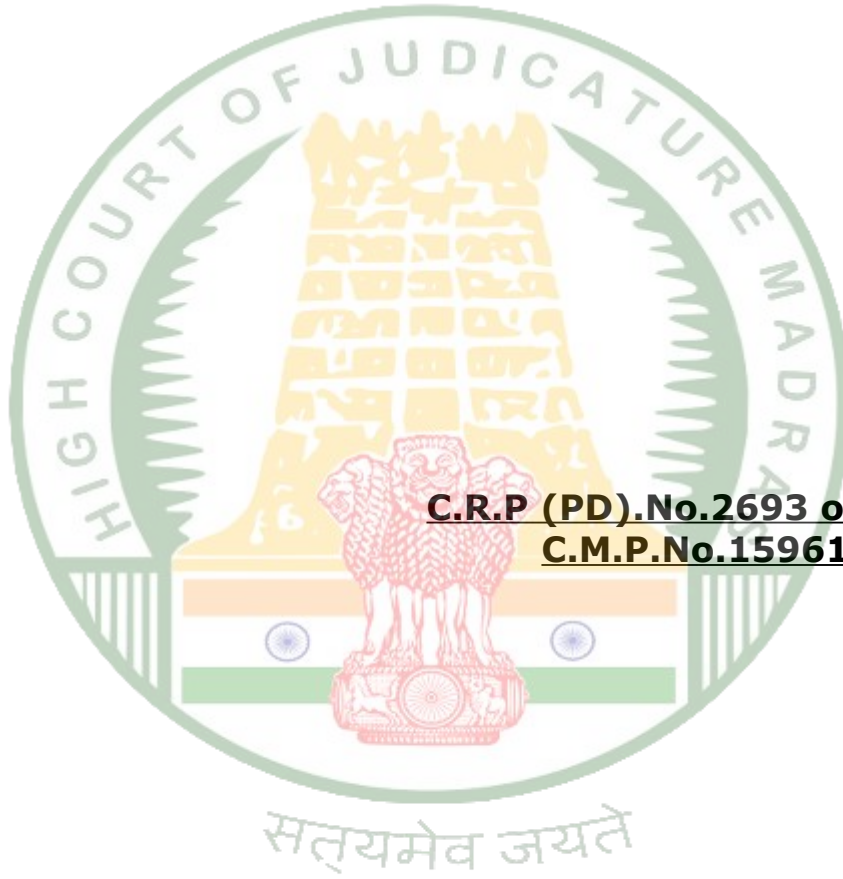
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**C.R.P (PD).No.2693 of 2018 &
C.M.P.No.15961 of 2018**

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. PD No.2693 of 2018

and

CMP No.15961 of 2018

V. Mahesh

...

Petitioner

versus

1. R. Dilli Babu

2. P. Renuka

3. R. Shankar

4. R. Balraj

5. R. Raja

6. Bhagyalakshmi

...

Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to strike off the plaint in O.S. No.28 of 2018 on the file of Sub-Court at Madhuranthakam.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.A. Kumara Raja

for RR2, 3 and 5

No appearance for RR4 and 6

ORDER

The above Civil Revision Petition is filed by a third party, who is yet

to be impleaded in the suit in O.S. No.28 of 2018 on the file of the Sub Judge, Madurantakkam to strike off the plaint on the ground that the same is nothing but an abuse of process of law and a deliberate attempt to deprive the petitioner of the property that he had purchased from the 4th defendant in the suit.

2. The case of the revision petitioner is that despite knowing that the sale has been effected in his favour, the plaintiff has deliberately not arrayed him in the suit and had also not sought any relief for declaring the sale in his favour as null and void.

3. The plaint is also totally silent about the settlement that has been effected in favour of the defendant 2 and 4 by their late father Radhakrishnan. The very tenor of the plaint is nothing but an attempt to collude and take away the property that has been purchased by the revision petitioner.

4. The learned counsel relied upon the following judgments :

2006 SCC Online Mad 1191 (2007) (V.N. Subramaniyam versus A. Nawab John and others), wherein paragraph No.15 is held as under :-

15. As regards the locus standi of the revision petitioner to question the orders passed in the Interlocutory Applications, before his impleadment in view

of Or. 1 R. 10 (5) read with Section 21 of the Limitation Act, it is to be stated that pursuant to the devolution of interest to him from the first defendant pendente lite on his purchase Section 21(2) of the Limitation Act only will apply to this case and Section 21 (1) will not be applicable and therefore the revision petitioner is entitled to challenge as though he was a party from the date of the suit. This proposition of law is fortified in the judgment of the Hon'ble Supreme Court in Velamuri Venkata Sivaprasad V. Kothuri Venkateshwaralu and others, reported in AIR 2000 SC 434 = 2000 1 L.W. 96.

1999 - 2 - L.W. 757 (Rani Mohanraj and another versus P. Rajarathinam), wherein in paragraphs 20 and 22 is held as under :

20. On going by the averments in the plaint, it is clear that the present suit is purely vexatious and the attempt of respondent is only to retain the goods

admittedly belonging to minor. The intention is not bona fide. If a proceeding is filed for collateral purpose or spurious claim being made for litigation, the same will amount to abuse of process. Frivolous or vexatious proceedings may also have the same result. If the proceedings are absolutely groundless, Court is entitled to stop the same at the threshold. Reason why Court is given such power is that the machinery of Court should not be improperly used as a means of vexation and oppression in the process of litigation. **Once Court is satisfied that there is no chance for succeeding in the Court, Court is duty-bound to see that such proceedings are not to be allowed to continue. Court has power to stop the proceedings summarily and prevent the time of public and Court being wasted. (See : 1998 3 S.C.C. 573 K.K. Modi v. K.N. Modi.**

22. In view of my finding that suit itself is filed with an oblique motive and with an intention to retain the assets belonging to minor. When Natural guardian is alive and the effect of the suit also will amount to preventing police officers from discharging their statutory duties, the same

shall not be allowed to be continued. It is only in the interest of justice respondent should be prevented from further prosecuting suit. Entertaining complaint and investigating the same is the duty of police officers. That is not to be prevented by granting injunction whether permanent or temporary. When suit is barred by law, lower court should have considered the same before entertaining the same.

2002 (1) TLNJ 13 (S. Viswanathan versus M/s. Sri Muruga Agencies), represented by its Partner, R. V. Ramasamy, the relevant paragraph is as under :

The next question is whether the facts and circumstances warrant interference by this Court under Article 227 of the Constitution of India. It is true that the said power of interference must be exercised only in rare cases and I felt doubtful at the time of hearing the arguments. But after I went through the series of facts as mentioned above and the outrageous conduct on the part of the plaintiff in collusion with the tenants, I feel that if this Court declines to interfere even in a case of this type, the very administration of justice would be rendered a

mockery. If parties are allowed to play hide and seek and hood-wink the process of law, people will lose faith in the Courts. If a legitimate relief and decree obtained are rendered only a piece of paper and cannot be executed and the law breaker is given a green signal to continue his high handed activity, it will badly reflect only ineffective administration of justice and result in loss of confidence in the Courts. Section 9 C.P.C. does not give liberty to parties who do not act bonafide and if the High Court does not interfere on the ground that the suit should go through its normal course, it will not be possible to execute any decree. It is all the more distressing to hear accusation of collusion and fraud against the affected party and legalistic arguments to sustain such blatant illegal actions and clear abuse process of Court.

In the result, both the revisions are allowed with exemplary costs of Rs.10,000/- of which Rs.5,000/- shall be paid to the Tamil Nadu Legal Services Authority. The plaint in O.S. No.280 of 2000 on the file of the District Munsif Court, Udumalpet, will be struck off and the suit shall stand dismissed.

MANU SC/0559/2003 (Surya Dev Rai versus Ram Chander Rai and ors), wherein in paragraph 21, it has been held as follows :

21. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by Sub-articles (2) and (3) of Article 227 with which we are not concerned hereat. It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paying the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in

certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.

MANU TN/2127/2013 (N.A. Chinnasamy and others versus S. Vellingirinathan), the relevant paragraphs are as under :

47. It is a settled proposition of law that to exercise the superintending power under Article 227 of the Constitution of India and to struck off plaint, this Court should come to a conclusion, that the suit is an abuse of process of law, based on the plaint averments and the admission made by the plaintiff and to decide the same, the provision under Order VII Rule 11 CPC has also got relevancy.

51. It cannot be disputed that plaint could be struck off only in the rarest of cases, when there is clear abuse of process of law and Court, however, the same has to be decided only based on the pleadings and the admission made by the plaintiff and not based on the written statement and when the court comes to a conclusion that there is no possibility for the plaintiff to succeed and filing such a suit is also an abuse of process of law and the Court. In this Revision, all these aspects are available against the respondent / plaintiff, hence this Court has no hesitation to invoke Article 227 of the Consitution and struck off the plaint, to meet the ends of justice.

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5. Per contra, Mr.N. Nagusah, learned counsel appearing on behalf of the plaintiff would submit that there has not been any deliberate attempt to shut out the revision petitioner, since the plaintiff immediately on coming to learn about the purchase of the land by the revision petitioner has taken

steps to implead him as a party defendant in the suit. In fact, it is the revision petitioner, who is opposing the said application.

6. He would further contend that while striking out /rejecting the plaint, the Court should only consider the averments contained in the plaint and a reading of the the plaint in O.S. No.28 of 2018 would clearly demonstrate the cause of action that has been set forth by the plaintiff. He would further contend that the allegations which have been raised by the revision petitioner have to be tested by putting the parties into the box and the revision petitioner cannot seek to short circuit the proceedings by taking out an application for striking out the plaint, especially when complex issues are to be considered. The same argument has been adopted by the learned counsel appearing for the respondents 2, 3 and 5.

7. After hearing the parties and perusing the documents, it is seen that a settlement deed, had been executed by the late father of the defendants one Radhakrishnan in favour of the 4th respondent on 23.06.2014, which is a registered one and in which the father would contend that the property has been acquired from his ancestors. It is also seen that the father executed the settlement deed in favour of respondents 3 & 5. In the settlement deed of 09.06.2015, he has referred to the settlement and the sale that has been executed in favour of the petitioner

and daughter Renuka Devi. Therefore, it is on the basis of these documents that the revision petitioner has purchased the suit property from the 4th respondent on 22.12.2014 and he has also been exercising rights of ownership over the properties which has been purchased by him namely 60 cents in the suit schedule property. It is also seen that when he attempted to fence the property the plaintiff has prevented him and as a result of which, he had approached this Court for granting police protection to proceed with the putting up of the fence. This Court in its order dated 13.06.2018 in WP No.6608 of 2018 had refused to give a blanket order of police protection but has however, permitted the revenue authorities for survey to demarcate the land, for which, necessary direction for police protection.

8. The learned counsel for the petitioner would submit that despite such an order they are unable to proceed with the survey of the land, because the plaintiff and the defendants in the suit are preventing the said exercise and have also put up the poles despite pendency of the suit and therefore, the revenue officials are unable to survey the property. However, considering the fact that the issue involved in the suit is with reference to the nature of the property i.e. ancestral property or self acquired property of late Radhakrishnan, for which evidence has to be let

in, this Court is of the opinion that the plaint cannot be struck off at this nascent stage and the parties claim to have to establish their cases. Hence, this is a case where parties claim to have entered into the property by way of settlement deed given for the reasons best known to them. The suit is of the year 2018, but however, considering the fact that it is only the 5th respondent / revision petitioner herein, who is pitted against the other defendants and plaintiff, the implead petition which has been filed in I.A No.352 of 2018 shall stand allowed, as the counsel appearing for the revision petitioner has no objection for the same. The written statement shall be filed immediately and the suit shall be finally disposed of, before 31.08.2019, since, the only issue which is involved in the suit is as to whether the property is self acquired property of Mr. Radhakrishnan or his ancestor's property.

9. The Civil Revision petition stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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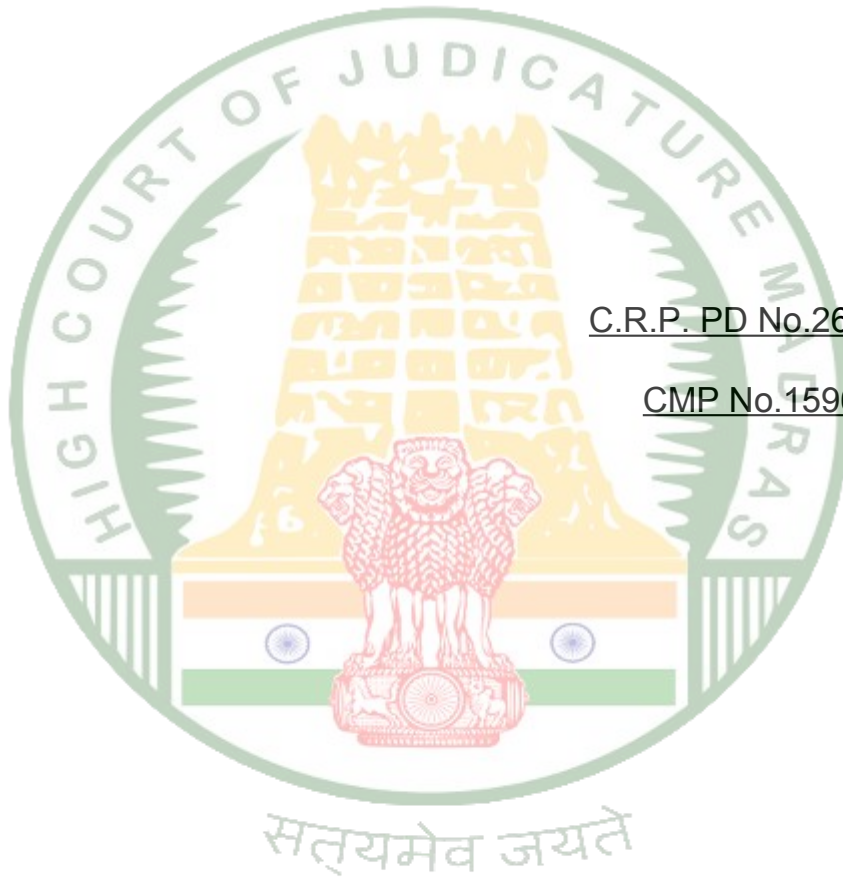
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To

The Sub-Court at Madhuranthakam.

P.T. Asha, J.

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