

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.564 of 2018
and
C.M.P.No.3040 of 2018

1.K. Rajan Mehra
2.K.Ravi Mehra

...Petitioners

(cause title accepted vide Court order dated 02.02.2018 made in
C.M.P.No.1825 of 2018 in C.R.P.No.(SR).5104 of 2018 by DKKJ)

(Vide Court order dated 02.02.2018 made in C.M.P.No.1824 of
2018 in CRP.No.(SR).5104 of 2018 by DKKJ)

Vs

1.V.Thulasimani
2.M.Bhuvaneshwari

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India to dismiss and strike off the suit in
O.S.No.1383 of 2011 on the file of the learned II Additional
District Munsif, Coimbatore.

For Petitioners : Mr.V.M.G. Ramakkannan

For Respondents: Mr.N.Manokaran for R1
No appearance for R2

ORDER

The above Civil Revision Petition is filed by the defendants 2 and 3 to strike off the suit O.S.No.1383 of 2011 on the file of the learned II Additional District Munsif, Coimbatore.

2.The facts in brief are narrated in the form of dates and events as follows:

13.05.1979
(Doc.No.1337/1979) : Partition between the legal heirs of Periya Pappu @ K.N.Muthusamy and Chinna Pappu @ Ramasamy.

B schedule therein was allotted to the share of the plaintiff V.Thulasimani, D/o.Periya Pappu @ K.N.Muthusamy.

01.10.1984 : Plaintiff executed a power of attorney to her brother Muthukrishnavel.

20.02.1996 : Power of attorney given to Muthukrishnavel

was cancelled.

- 20.02.1996 : Plaintiff executed a power of attorney to her brother's wife M.Bhuvaneswari/1st defendant.
- 01.06.1999 : Power of attorney given to the 1st defendant was cancelled.
- 13.10.2005 : After cancellation of the power of attorney the 1st defendant executed a fraudulent sale deed to the 2nd defendant through his brother/power agent/3rd defendant.
- .2011 : Plaintiff filed O.S.No.1383 of 2011 for declaration of her title and to declare the Sale Deed dated 13.10.2005 as null and void and for permanent injunction.
- 28.10.2011 : Defendants 2 and 3 filed their written statement.
- 05.12.2017 : Suit was listed for trial. Adjourned at the request of the defendants.
- 12.12.2017 : Suit was not called on the ground that the bundle was misplaced.
- 19.01.2018 : Defendants 2 and 3 filed the above C.R.P.No.564 of 2018 to strike off the Plaint.
- 09.04.2018 : Plaintiff filed a memo before the trial Court

complaining that the bundle has not been located.

18.06.2018 : plaintiff has filed a complaint before the learned Principal District Judge, Coimbatore.

28.08.2018 : Plaintiff has filed a complaint before the learned trial Judge to permit her to reconstitute the bundle with the help of the available copies.

11.09.2018 : Notice in C.R.P.No.564 of 2018 has been served on the counsel for the plaintiff.

3. When the matter was posted for trial, the revision petitioners namely, the defendants, have come forward with the present application. The basis upon which the above petition is filed in three fold;

(1) that the suit is barred by limitation

(2) that there is an abuse of process of law on account of the fact that the plaintiff would contend that the power of attorney was given to her brother and subsequently to the sister-in-law of the 1st defendant, was only for the purpose of

maintaining the property whereas the power of attorney executed the Agreement of Sale *and*

(3)that after coming to know about the filing of the suit, the plaintiff has executed a power of attorney in favour of her son on 28.07.2011.

4.According to the revision petitioners/defendants 2 and 3, the above facts constituted an amounts to abuse of process of law by which the Plaint deserves to be struck off. The learned counsel for the revision petitioners would rely upon the following Judgments:

(1)In ***Southern and Rajamani Transport Private Limited rep. by its Director, V.R. Venkataswamy, No.270, Goods Shed Road, Madurai-625 001 and 33 others v. R.Srinivasan and 3 others*** reported in ***2010 (4) CTC 690***, wherein this Court at Paragraphs 27 to 29 and 34 and 35 has held as follows:

"27. In Madras Gymkhana Club, represented by its Hon'y Secretary, The Island Grounds, Anna Salai,

Chennai-600002 and others Vs. K.C.Sukumar (2010 (1) CTC 199) "this Court has taken a similar view as taken by the Honourable Apex Court for invoking [Article 227](#) of the Constitution of India."

28. The learned Senior Counsel appearing for the revision petitioners/defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 has also accentuated the Court to look into the following decisions:

(i) In *A.Sreedevi Vs. Vicharapu Ramakrishna Gowd (2005 (5) CTC 748)* this Court has held that "[Article 227](#) of the Constitution of India can be invoked to prevent abuse of process of law and such a plea can be raised in Revision Petition without approaching trial Court."

(ii) In *Tamilnadu Handloom Weavers Cooperative Society rep.by its Managing Director Vs. S.R.Ejaz rep. by its power Agent Muralidhar T.Balani (2009 5 LW 79)* this Court has held that "the suit itself is abuse of process of law and filed with the sole intention of defeating the order passed by the Supreme Court and the trial Court having apprised of such facts, failed to act at once, this Court is entitled to exercise the supervisory jurisdiction under [Article](#)

227 of the constitution of India to axe the suit in the initial stage itself.

29. From the cumulative reading of the decisions referred to supra, it is easily discernible that 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.*

...

34. It has already been pointed out that 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 in Original Suit No.3 of 2010 and further the Principal District Court, Pudukottai has also done equal and clear injustice to them by way of taking the plaint on file in Original Suit No.3 of 2010. Under the said circumstances, the plaint filed in Original Suit No.3 of 2010 on the file of the Principal District court, Pudukottai is liable to be struck off in respect of the revision petitioners/defendants 1, 2, 3, 5, 6, 8 to 24 and 26

to 37.

35. In fine, this civil revision petition is allowed without cost. Connected Miscellaneous petition is closed. The plaint filed in Original Suit No.3 of 2010 on the file of the Principal District Court, Pudukottai is ordered to be struck off with regard to the revision petitioners /defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37. The Principal District Court, Pudukottai is strictly directed to look into the matter and take necessary action against the staff concerned."

(2) In the case of **N.A. Chinnasamy and another vs. S. Vellingirinathan** in **C.R.P.(PD).No.923 of 2013**, this Court has held as follows:

26. Similarly, the Hon'ble Supreme Court has held, referring *N.Balakrishnan v. M.Krishna Murthy*, reported in 1998 (7) SCC 123 thus :

"Unending period of launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy."

...

28. In *RM.Subbiah v. S.Ramakrishnan & others*,

reported in 2012-1-LW 437, this Court (K.VENKATARAMAN, J), has 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.

...

30. In [Dindigul Pettai Sathangudi Shatriya Nadar Uravinmurai v. Selvaraj](#), reported in 2009 (2) CTC 57, this Court (S.PALANIVELU, J), has held that provisions of Order VII 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.

31. In [Seeni alias Sundarammal v. Ramasamy Poosari](#), reported in 2000 (III) CTC 74, this Court (A.RAMAN,J), has held that process of Court should

not be misused or abused but shall be used bonafidely and properly. The Court should prevent improper use of litigative process. The question whether litigation is frivolous or abuse of process has to be judged from the angle of interest of justice and public policy. As the litigation had abused process of Court, it was held that High Court, while exercising its power of superintendence can step in, where there is blatant violation of process of Court.

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54. In the result, the Civil Revision Petition preferred under [Article 227](#) of the Constitution of India is allowed and consequently, the plaint pertaining to the suit in O.S.No.920 of 2012 pending on the file of Subordinate Court, Coimbatore, is ordered to be struck off and consequently, connected miscellaneous petition is closed. Considering the facts and circumstances, the respondent / plaintiff is directed to pay cost of Rs.25,000/- (Rupees Twenty five thousand only) to the petitioners / defendants, within eight weeks from the date of receipt of a copy of this order, for filing the vexatious and frivolous suit and committing abuse of process of court."

(3) In the case of ***Elangovan v. Sulochana and two others*** in ***C.R.P.(PD).Nos.1747 and 3856 of 2012***, this Court in Paragraphs 23, 25, 38 and 54 has held as follows:

23. On account of this reason, it was argued that the original owner Mr.A.Kannan was not a party to the sale deed Ex.B2, which was sought to be declared as null and void and therefore, the plaintiff, who was the subsequent power agent of the original owner Kananan, had to value the suit property under Section 25(d) of the Tamil Nadu Court Fees and *Suits Valuation Act* for the relief of declaration to declare the document as null and void. But, this contention was negated in the above cited case and ultimately the second appeal was dismissed confirming the judgment and decree of the First Appellate Court viz., Sub-Court, Mayiladuthurai. In this connection, this Court has observed as follows:

83. Generally, there exists a conception that where a sale deed is sought to be declared as null and void, fee shall be computed in accordance with Section 25(d) of the Tamil Nadu Court Fees and *Suits Valuation Act* 1955, provided he is not a party to the document impugned. Section 40(1) of

the Tamil Nadu Court Fees and Suits Valuation Act envisages that in a suit for cancellation of a decree for money or other property having a money value or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject matter of the suit, and such value shall be deemed to be if the whole decree or other document is sought to be cancelled, the amount or value of the property, for which the decree was passed or other document was executed if a part of the decree or other document is sought to be cancelled, such part of the document or value of the property.

84. On coming to the instant case on hand though the plaintiff is not a party to the Sale Deed, Ex.B2 dated 21.03.2007, he indirectly wants to assert his title as well as to declare that he is the absolute owner of the suit properties by virtue of his sale deed dated 26.03.2007(Ex.A.10) and therefore he is bound by the decree which may be passed in the suit.

85. Since the document under Ex.B2 is valued at Rs.12,56,250/-, the plaintiff ought to have

valued the suit and computed the Court fee under Section 40(1) of the Tamil Nadu Court -fees and *Suits Valuation Act*, 1955 and not under *Section 25(d)* of the Act.

86. Clause (d) of Sec.25 of Tamil Nadu Court Fees and *Suits Valuation Act*, 1955 does not per se make any distinction between the person who is a party and the person who is not a party to the document (sale deed) which is sought to be declared as null and void. Even a person, who is a party to a sale deed or any document can seek a decree for declaration either to declare the same as null and void or to declare that it will not bind upon him, or for cancellation.

87. The phrase Null and Void as per *Black's Law Dictionary* (10th Edition) Page 1235, is a common redundancy. The word Null connotes the meaning having no legal effect; without binding force as it is defined in *Black's Law Dictionary* in the very page. As it is defined at page 1580, the meaning of the phrase set aside is "annul or vacate".

...

25.M.Srinivasan.J., a learned Judge of this Court as he then was, in paragraph No.2 of the said

judgment has observed that a perusal of the plaint clearly shows that the plaintiff has adopted a camouflage and instead of directly praying for a declaration of her half share in the properties or directly asserting that she has got one half share in the suit property and preventing the defendants from alienating the properties, has prayed for a declaration that the alienation affected by the defendants is null and void, which is only on the basis that the plaintiff is entitled to one half share in the properties. The plaintiff therein had filed an interlocutory application in I.A.No.508 of 1995 for interim injunction during the pendency of the suit. The defendant had contested the application stating that the Court had no jurisdiction to entertain the suit.

...

38. The Court has observed that:

"There can be no doubt whatever that for purpose of determining the court fee payable, it is the substance of the relief that a plaintiff prays for that has to be taken into account and not the technical form of the prayer. It is to be otherwise, mere astuteness and ingenuity of the person drafting the plaint will have the effect of not only camouflaging

and disguising the real relief which a plaintiff claims in a suit but also nullifying and defeating the provisions of law dealing with the payment of court fee based on the nature of the relief litigants seek in a court of law."

...

54.Keeping in view of the above facts, this Court is of view that the Civil Revision Petitions are deserved to be allowed Accordingly, the civil revision petitions are allowed and the impugned orders dated 07.07.2012 are set aside. The petition in I.A. No.123 of 2012 in O.S.No.161 of 2011 is allowed. Ultimately, the plaint in O.S.No.161 of 2011, on the file of the learned District Munsif, Madurantakam, is rejected."

The learned counsel for the petitioners therefore would pray for striking off the Plaint.

5.Per contra, Mr.N.Manokaran, learned counsel appearing for the respondents would contend that the Sale Deed in favour of the revision petitioners/defendants 2 and 3 has taken place nearly six years after the power of attorney was cancelled. He would further argue that the Power agent is none other than the

sister-in-law of the revision petitioners and she was adequately informed about the cancellation. Be that as it may, the issue can be agitated in the Court below and the suit has been listed for trial. The learned counsel would submit that for seven long years, they did not move any application to reject the Plaint but has chosen to file this application when the suit is ripe for trial.

6. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondents and perused the material on record.

7. There is no quarrel on the proposition of this Court that under Article 227 of the Constitution of India this Court can set right the wrong if there is an abuse of process of law or in cases where there is a re-litigation or where the provision of law have been thrown asunder. In the instant case, the main contention is that the suit is barred by limitation which is the question of fact as well as law. The same can be agitated in the Court below and

the trial Court has to frame an issue with reference to the limitation. The other factor which has to be borne in mind is that the revision petitioner has filed an application to strike off the Plaint when the suit has been posted for trial. The defendants for seven long years have not taken steps. That apart, the issue as to whether the sale in favour of the defendants 2 and 3 is valid, since the sale has been effected after the cancellation of the power as early as on 01.06.1999, has to be tried and evidence has to be let-in in the instant case, the Plaint can not be struck off by this Court exercising the jurisdiction under Article 227 of the Constitution of India.

8.Considering the fact that the suit is ripe for trial, the learned II Additional District Munsif, Coimbatore, is directed to complete the trial on or before 30.06.2019 and in case, the learned Judge has not framed the issue with reference to limitation, the same shall be now framed and the parties are directed to start trial.

This Civil Revision Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

12.03.2019

Index : Yes/No
Internet : Yes/No
mps

To

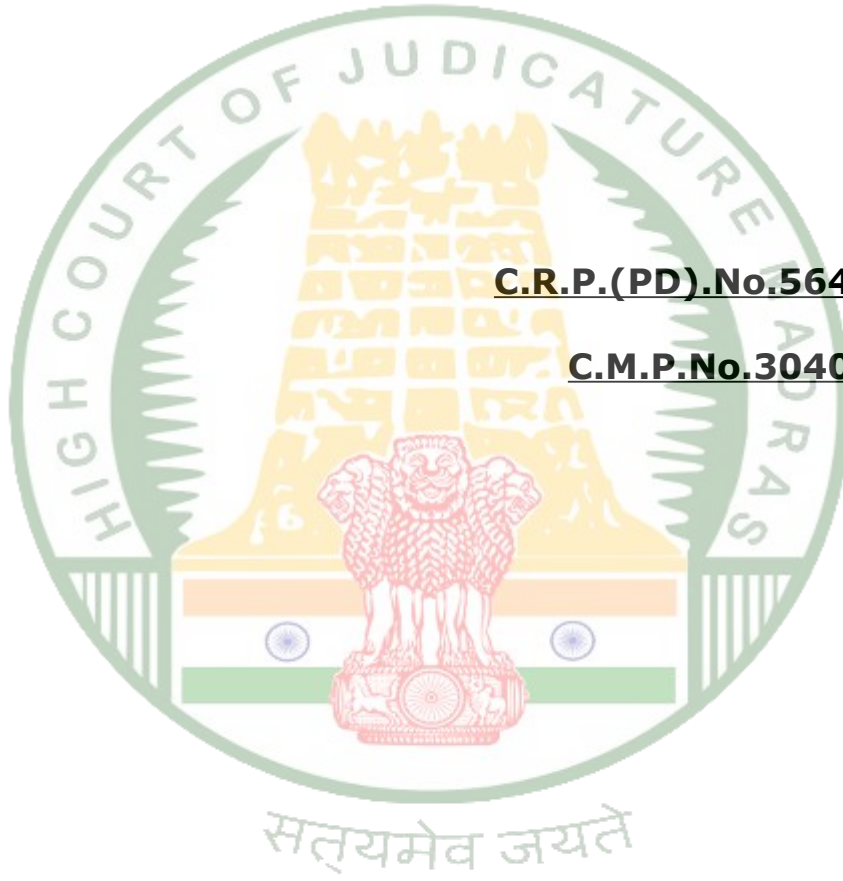
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