

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2019

Delivered on : 03.07.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD)Nos.3500 & 3501 of 2018,
C.R.P.(PD).No.2230 of 2014 &
C.R.P.(PD).No. 428 of 2019

C.R.P.(PD)No.3500 of 2018:

- 1.A.Kaleur Rahman
- 2.S.Nurnisa
- 3.A.Rabiyattul Basiria
- 4.A.Mohamed Ameer
- 5.A.Mohamed Kasim
- 6.A.Mohamadichaby
- 7.G.M.S.Ahmed Syed
- 8.A.Chech Davoud
- 9.A.Mohamed Syed
- 10.A.Zubutha Casimme Bee

...Petitioners

Vs

1.P.Kannan

2.H.Ananthi

3.D.Kasthuri

4.D.Jayseelan

5.D.Govindarajan ...Respondents

C.R.P.(PD)No.3501 of 2018:

1.G.M.S.Ahmed Syed

2.A.Zubitha Casimme Bee

3.A.Mohamed Bee

4.A.Mohamed Syed

5.A.Chech Davoud

6.A.Kaleur Rahman

7.U.Mohamed Ayisha Bee

8.A.Rabiyattul Basiria

9.S.Nurnisa ...Petitioners

Vs

1.C.Thandamizh Kumaran

...Respondent

C.R.P.(PD)No.2230 of 2014:

1.G.M.S.Ahmed Syed

2.A.Zubeida Kasimbee

3.A.Mohammedabi

4.A.Mohamed Syed

5.A.Sheik Dawood

6.A.Kaliloor Rahman

7.U.Mohammed Ayisha Beewi

8.A.Rabiadul Basria

9.S.Noorunnisa

...Petitioners

Vs

1.C.Thandamil Kumaran

2.P.Kannan @ Rishikesh

3.D.Kasthuri

4.C.Ellammal

5.R.Selvi

6.P.Sivaji

7.E.Anandhi

8.K.Valarmathi

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9.P.Leela

10.D.Jayaseelan

11.D.Govindarajan

12.R.Alexander

13.R.Muthubairavan

14.R.Muthu Manigandan ...Respondents

C.R.P.(PD)No.428 of 2019:

- 1.Union of India rep. by
the Chief Secretary of Puducherry,
Chief Secretariat, Puducherry – 605 001.
- 2.The Superintending Engineer-cum-Head of Department,
Electricity Department, Government of Puducherry,
137, Nethaji Subash Chandra Bose Salai,
Puducherry – 605 001.
- 3.The Executive Engineer-Urban O&M,
Electricity Department, Government of Puducherry,
137, Nethaji Subash Chandra Bose Salai,
Puducherry – 605 001.
- 4.The Assistant Engineer, Marapalam,
Electricity Department, Puducherry – 605 004.
- 5.The Junior Engineer-Urban O&M,
Murungapakkam, Electricity Department,
Puducherry-605 004.
- 6.The Member Secretary,
Pondicherry Planning Authority,
Jawahar Nagar, Boomianpet,
Puducherry – 605 005.

7.The Taksildar,
Revenue and Disaster Management Department,
100 Feet Road, Mudaliarpet,
Puducherry-605 001.

8.The Village Administrative Officer,
Vannankulam, Mudaliarpet,
Murungapakkam Village,
Puducherry-605 001.

...Petitioners

Vs

Thiru.C.Thandamizh Kumaran

...Respondent

Prayer in C.R.P.(PD)No.3500 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.162 of 2015 on the file of the Sub-ordinate Court, Puducherry.

Prayer in C.R.P.(PD)No.3501 of 2018: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.1923 of 2016 on the file of the II Additional District Court, Puducherry.

Prayer in C.R.P.(PD)No.2230 of 2014: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.764 of 2013 on the file of the II Additional District Munsif Court, Puducherry.

Prayer in C.R.P.(PD)No.428 of 2019: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike-off the plaint in O.S.No.2486 of 2018 on the file of the II Additional District Munsif Court, Puducherry.

C.R.P.(PD)No.3500 of 2018:

For Petitioners : Mr.C.Manishankar
Senior Counsel
for Mr.T.Vijay

For Respondent 1 : Mr.P.Kannan

For Respondents 2 to 5 : Not ready in Notice

C.R.P.(PD)No.3501 of 2018:

For Petitioners : Mr. C.Manishankar
Senior Counsel
for Mr.T.Vijay

For Respondent : Mr.S.K.Sivasankaran

C.R.P.(PD)No.2230 of 2014:

For Petitioners : Mr. C.Manishankar
Senior Counsel
for Mr.P.R.Dhilip Kumar, Menon,
karthik, Mukundan & Neelakandan

For Respondent 1 : Mr.S.K.Sivasankaran

For Respondent 2 : No Appearance

For Respondents 3 to 8 : Not Ready in Notice

For Respondents 9 to 11: Not pressed Vide Court Order
dated 15.11.2016

For Respondents 12 to 14: Not Ready in Notice

C.R.P.(PD)No.428 of 2019

For Petitioners : Mr. Vijay Narayan,
Advocate General
Assisted by Mr.Syed Mustafa,
Special Government Pleader

For Respondent : Mr.S.K.Sivasankaran

COMMON ORDER

All the four Civil Revision Petitions have been filed to strike-off the respective plaints. Since the facts are common in all the suit and the issue involved in the Civil Revision Petition is also common, this Court is passing a common order. The following are the suits that have been filed and the corresponding Civil Revision Petition numbers are also detailed herein below.

2. **O.S.No.764 of 2013** has been filed by one Thandamizh Kumaran originally against one Kannan. The said suit has been filed for a bare injunction:

a)Restraining the defendant his men, agents or any person claiming under him from interfering with the plaintiff's peaceful possession of the suit property by trespassing.

b)Restraining the defendant from creating any registered documents in respect of the suit property for mortgage, sale or lease. The corresponding Civil Revision Petition that has been filed to strike of this suit is *C.R.P.No.2230 of 2014*.

3. **O.S.No.162 of 2015** is a suit filed by Kannan against one Anandhi and thirteen others for a bare injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit property. The corresponding Civil Revision Petition that has been filed to strike-off this suit is *C.R.P.No.3500 of 2018*.

4. **O.S.No.1923 of 2016** is another suit which has been filed by Thandamizh Kumaran against G.M.S.Ahmed Syed and eight others for declaring the partition deed dated 26.08.2013, registered as document No.4555 of 2013 as null and void. The corresponding Civil Revision Petition that has been filed to strike-off this suit is *C.R.P.No.3501 of*

2018.

5. **O.S.No.2486 of 2018** is yet another suit filed by Thandamizh Kumaran against the Government, Electricity Department, Tahsildar, Member Secretary, Puducherry Town Planning and Village Administrative Officer for an injunction restraining them from effecting any electricity connection or executing any other documents in respect of the suit property. The Civil Revision Petition filed to strike of this suit is *C.R.P.No.428 of 2018*.

6. The property which is the subject matter of these litigations is an extent of 12 Cawnies situate in Kombakkam Village, Mudaliarpet Commune, Puducherry comprised in S.No.25/2P Ward M Block No.3, T.S.No.1/1. with mango groves and house having the following boundaries:

North : By Kombakkam, Kombakkam Kuppam, Kuppam Pudur.

South : By Murungapakkam main road

West : By Murungapakkam – Villianur main road

East : By Papanchavadi Temple groves and Balakrishnan's land.

7. Before embarking or considering the point as to whether these suits have to be struck off from the file of the respective Courts, it is necessary to briefly allude to the facts contained in the plaint in each of the suits. For ease of understanding Thandamizh Kumaran the plaintiff in O.S.No.764 of 2013 is referred to as Thandamizh Kumaran, the original defendant in O.S.No.764 of 2013 is referred to as Kannan and defendants 2 to 10 as revision petitioners and defendants 11 to 22 as defendants 11 to 22.

Narration of the facts of each of the suits:

O.S.No.764 of 2013:

8. Thandamizh Kumaran would submit that seventy years prior to the filing of the suit the French Government had given lands to his maternal grandfather one Periyanna Gounder. The said Periyanna Gounder has been in possession and enjoyment of the same since then.

9. The plaint would further proceed to state that by a legal process thereafter the property was handed over by Periyanna

Gounder to Thandamizh Kumaran who was a grandson through his daughter (*There is no reference to the kind of document under which this transfer had taken place from Periyanna Gounder to the plaintiff*).

10. Thereafter for over twenty years Thandamizh Kumaran has been enjoying the property. In order to prove his long possession the plaintiff had enclosed the Birth Certificate, Voters list, Driving licence, FMB Sketch, etc.,

11. Thandamizh Kumaran would further go on to state that on 23.06.2010, Kannan (*the original plaint contained only one defendant*) made ready an agreement to run a Herbal Farm and Research Centre in 14 Acres of the property by paying a sum of Rs.70,000/- which was a sum of Rs.5,000/- per Acre (*the plaint is onceagain silent about the nature of the document under which 14 Acres had been handed over by the plaintiff to the defendant, whether it is by way of lease, agreement of sale or mortgage*). He would further state that till the date of the filing of the suit, that is on 15.04.2013, Kannan had not taken any steps whatsoever to establish the Herbal Farm.

12. He would go on to state that under the agreement Kannan had undertaken not to disturb the fish tank put up in the property as also the enjoyment of the three houses by Thandamizh Kumaran's relatives in the suit schedule property. He would further contend that contrary to this undertaking Kannan had committed a breach and he was trying to evict the Thandamizh Kumaran's relatives from the property and had also destroyed the fish tank.

13. The specific case of Thandamizh Kumaran is that on 23.03.2013, Kannan had trespassed into the property, destroyed the Fish Tank and dumped red soil and stones in the pathway. He would therefore plead that since on 23.03.2013, there has been an attempt to trespass into the suit property he was left with no other alternative except to file the present suit.

14. The plaint in O.S.No.764 of 2013 was amended consequent to the application in I.A.No.218 of 2013, being allowed by the II Additional District Munsif, Puducherry, by her order dated 13.03.2014. I.A.No.218 of 2013 was a petition that was filed under the provisions

of Order I Rule 10 read with Section 151 of the Code of Civil Procedure to implead proposed parties 2 to 22 as defendants to the suit. The revision petitioners were arrayed as defendants 2 to 10 and the others as defendants 11 to 22. Consequent to the application being allowed an amended plaint has been filed on 18.03.2014.

15. Such an amendment has been done without taking out an application to amend the plaint as a consequence to the order impleading defendants 2 to 22. Not only had Thandamizh Kumaran impleaded the revision petitioners and defendants 11 to 22 without filing an application for amendment but had also amended portions of Paragraph Nos.5 and 6 and also amended the prayer so as to read that the relief is sought for against all the defendants, i.e, against the revision petitioners and defendants 11 to 22 as well. In the original plaint it was only against Kannan that the relief was claimed. That Thandamizh Kumaran has not moved an amendment application is evident from the fact that the amended plaint does not reflect the number of the Interlocutory Application under which the amendment has been carried out.

O.S.No.162 of 2015:

16. This suit has been filed by Kannan, against the petitioners herein and four others who are relatives of Thandamizh Kumaran. The defendants in this suit are defendants 2, 3, 5, 6, 7, 8, 9, 10, 11, 15, 18, 19 in O.S.No.764 of 2013.

17. This suit is filed for a bare injunction in respect of the possession and enjoyment of Kannan of the suit property. In the plaint Kannan would first describe all the defendants therein as tenants in respect of the suit property and proceed to state that he is in lawful possession and enjoyment of the property and cannot be evicted except by due process of law.

18. He would contend that 14 years prior to the filing of the suit that is in the year 2001, he had entered into lawful possession and enjoyment of the suit property and could be evicted only by due process of law (*in the suit O.S.No.764 of 2013, the specific pleading is that on 23.06.2010, there is an agreement between him and Thandamizh Kumaran for running an Herbal farm*). It is the further

case of Kannan that the defendants therein are utter strangers to the suit property and they were attempting to trespass into the suit property on 14.10.2015. Hence the suit. In the documents that have been filed in the said plaint, a lease agreement and annual rent receipts from 2000 to 2010 has been filed, after the year 2010 there are no rental receipts.

O.S.No.1923 of 2016

19. This is a suit which is once again filed by Thandamizh Kumaran against the petitioners herein. The suit is filed for declaring that a partition deed dated 26.08.2013, registered as document No.4555 of 2013 is null and void. The said Thandamizh Kumaran would contend that on 04.10.1991, Periyanna Gounder had executed a Will bequeathing the suit property on him (*in the suit O.S.No.764 of 2013 the very same plaintiff had not mentioned the date of the Will and further even in the list of documents the date of the Will has not been given though document No.6 is shown as Will*).

20. He would, in this suit, state that the suit lands were originally uninhabitable, therefore, none of his relatives raised any dispute about

the will executed in his favour by his grandfather who died on 27.12.1994. Therefore he would contend that he had also exercised his ownership by leasing out the property.

21. After the prices around the suit land had increased manifold, the defendants were not very happy and started creating false documents. On 25.03.2013, the defendants have created a false release deed and thereafter they had also moved bricks into the property for putting up construction there upon (*in the suit O.S.No.764 of 2013 the contention was that Kannan was dumping bricks, stones and soil in the property*). The plaintiff would submit that on 26.08.2013, the revision petitioners had created a false partition deed dated 26.08.2013 pending the suit O.S.No.764 of 2013 and the partition deed dated 26.08.2013 was hit by *lis pendens*. Therefore he had come forward with the said suit.

O.S.No.2486 of 2018:

22. This is also a suit which is filed by Thandamizh Kumaran. This suit is filed against the Government and the public authorities which included the Electricity Board. In this case he would plead that

he had also filed another suit in O.S.No.2310 of 2014 seeking an injunction restraining any person from creating documents with reference to the suit property. Thandamizh Kumaran would contend that since the status quo order had been granted in O.S.No.764 of 2013 there was no question of obtaining electricity or any other documents through the Electricity Board. Therefore the suit.

Interlocutory Applications in O.S.No.764 of 2013:

23. From a perusal of the records, it would clearly show that various applications have been moved in the suit O.S.No.764 of 2013, which appears to be a precursor for all the subsequent suits. In the suit O.S.No.764 of 2013 the following interlocutory applications have been filed:

a) I.A.No.171 of 2013 filed for a bare injunction in which status quo was ordered on 14.08.2013. The status quo order was passed prior to the revision petitioners and defendants 11 to 22 being impleaded as parties in the suit.

b) I.A.No.218 of 2013 was filed for impleading revision petitioners and defendants 11 to 22 as parties. The reason for seeking to implead them is the execution of the release deed by the parties. Kannan has given his no objection to the impleadment and ultimately the said application was allowed.

c) I.A.No.371 of 2013 in I.A.No.171 of 2013 in O.S.No.764 of 2013, is an application filed for contempt in view of the disobedience of the order passed by the II Additional District Munsif, Puducherry in I.A.No.171 of 2013 dated 14.08.2013.

d) I.A.No.290 of 2014 in O.S.No.764 of 2013 is filed for an ad interim injunction restraining the revision petitioners and defendants 11 to 22 except Kannan from interfering or encumbering the suit property till the disposal of the suit. This application was dismissed on the ground that Thandamizh Kumaran had not let in any evidence to prove title.

e) I.A.No.94 of 2016 in O.S.No.764 of 2013 is filed to issue directions to defendants 2 and 3 as well as their erstwhile counsel

Edward Kumar to appear before the Court as witness.

f) I.A.No.557 of 2018 in O.S.No.764 of 2013 filed by Kannan for appointing a receiver to maintain the property. This application was dismissed.

24. When the implead petition was filed, the proposed defendants, particularly the revision petitioners had filed C.R.P.No.2230 of 2014 for striking of the plaint. By an order dated 05.10.2017, this Court was inclined to dismiss the revision only on the ground that it was premature as the revision petitioners had not been impleaded as parties. Thereafter when the parties were impleaded by orders in I.A.No.218 of 2013, a Review application in C.R.P.No.2230 of 2011 was filed and this Court by order dated 06.02.2019, was pleased to allow the Review Application and the Civil Revision Petition has been restored to the file which is now the subject matter for consideration by this Court.

25. The revision petitioners herein who were parties to the suit O.S.No.764 of 2013, O.S.No.162 of 2015 and O.S.No.1923 of 2016,

have not been impleaded as parties in the suit O.S.No.2486 of 2018. The revision petitioners have filed their written statement in the suit O.S.No.764 of 2013 which forms the basis of the defense in all the suits.

Defense put forward by revision petitioners/defendants 2 to 10:

26. It is the case of the revision petitioners that the property measuring an extent of 6 Hectares and 16 Ares comprised in Cadastre Nos.190, 191, 130 ½ part, 188, 189, 192, 195, 196, 197, 206, 206 B of Murungapakkam Revenue Village, was allotted to the share of Firdasse Bivy @ Zohara Biby wife of Mr.G.Mohamed Said under a partition deed dated 24.06.1954 (*However under the partition deed it is allotted to the share of Ahmadasaib, the minor son of Firdasse Bivy and further there is no mention about the survey numbers*). Out of the said extent, 60 Ares and 50 Centiares was acquired by the Government from Firdasse Bivy along with her tenant Periyanna Gounder (*Thandamizh Kumaran's grandfather*) as interested persons. The land acquisition culminated in the filing of the L.A.O.P.No.305 of 1988 on the file of the Principal District Judge, Puducherry. The

compensation was awarded only to Firdasse Bivy as land owner.

27. Thereafter, Firdasse Bivy was left with the remaining extent of 5 Hectares 49 Ares and 50 Centiares comprised in R.S.No.25/1, 25/2 part, T.S.No.1/1, Ward-M, Block No.3 of Murungapakkam revenue Village, Puducherry. Firdasse Bivy died intestate on 23.01.1998 leaving behind her surviving defendants 2 to 4 in the suit O.S.No.764 of 2013 and her daughter Abidaby @ Alaviya. Abidaby died leaving behind her legal heirs defendants 5 to 10.

28. The revision petitioners therefore succeeded to the said property. Initially, they were enjoying the property by leasing it out and one Rasu Gounder had taken the property on lease for the period of three years from 07.02.1964. Thereafter in 1967, Thandamizh Kumaran's grandfather Periyanna Gounder took the property on lease till his death. On the death of Periyanna gounder his son Rajendran was cultivating the land and till his death was paying rents to Firdasse Bivy and after his death the lease was neither extended nor offered on lease to any other person.

29. In order to take possession of the lease property the revision petitioners entered into a settlement with Rajendran's wife and children and they had settled on the 11th defendant an extent of 11,088 Sq.ft., the 12th defendant with 1,890 Sq.ft, the defendants 13, 20, 21 and 22 with 13,080 Sq.ft. and 14th defendant with 10,900 Sq.ft. After the settlement deed in their favour, the legal heirs of Rajendran thereafter relinquished the remaining extent in favour of the legal heirs of Firdasse Bivy after which the revision petitioners have constructed a compound wall and have been in peaceful possession of the same since then.

30. Thandamizh Kumaran is the grandson of Periyanna Gounder born to his daughter, the 12th defendant in suit O.S.No.764 of 2013. The 12th defendant, acknowledging the ownership of the legal heirs of Firdasse Bivy, had relinquished all her interest in the property after receiving a gift of 1,890 Sq.ft. under a registered settlement deed dated 25.03.2013. The defendants would therefore submit that the suit itself is a collusive suit and does not in any manner bind them. The very fact that the Kannan had no objection for a grant of status quo in the suit would itself demonstrate the collusion between the

parties more particularly when in another suit the Kannan claims exclusive right. Therefore, the sum and substance of the defense was that the plaintiff was not in possession of the property and persons who had no title to the property could not maintain the suit.

Submissions:

31. Mr.C.Manishankar, Senior counsel arguing on behalf of the petitioners' in C.R.P.No.3500 & 3501 of 2018 would contend that the suit O.S.No.764 of 2014 which is the precursor for the other suits is nothing but an abuse of process of Court. He would contend that the suit has been filed for a bare injunction and Thandamizh Kumaran has not been able to state as to how he and his predecessor in title have obtained title to the suit property or have been in possession there of.

32. The learned senior counsel would draw the attention of the Court to the plaint in O.S.No.764 of 2013, where the said Thandamizh Kumaran has traced his title through two documents, one in favour of his Grandfather by the French Government and another document under which the property had been handed over to the plaintiff.

33. In tracing title to the property Thandamizh Kumaran has not made any reference to the Will and only a passing reference has been made to the Will without giving the date of the Will. The date of the Will has also not been described in the list of documents found in the plaint. The counsel would therefore contend that the Will is nothing but a fabricated document.

34. The learned counsel would further draw the attention of the Court to the fact that the plaintiff in O.S.No.764 of 2013 Thandamizh Kumaran had contended that he had entered into an agreement with Kannan on 23.06.2010 and that till the date of the filing of the suit no steps had been taken by Kannan to set up the Herbal Farm and only on 23.03.2013, Kannan had attempted to trespass into the suit property.

35. Therefore the learned counsel would contend that from a reading of this plaint, it is clear that the defendant Kannan had not entered into possession of the suit property till 2013 when the suit was instituted and his attempt to enter had also been thwarted by the plaintiff. That coupled with the order of status quo, that Thandamizh

Kumaran had obtained in I.A.No.171 of 2013 would clearly establish that the said Kannan is not in possession of the suit property.

36. He would further argue that in this background the suit O.S.No.162 of 2015 has been filed by Kannan for an injunction. In the said suit, the said Kannan had come forward with a pleading that he had been put in possession of the property 14 years prior to the filing of the suit that it is in the year 2001 and that too on 14.10.2015 the revision petitioners and defendants 11 to 22 had attempted to trespass into the property. This by itself is a separate cause of action but however Thandamizh Kumaran has chosen to implead them in the suit O.S.No.764 of 2013 without seeking to amend either the cause of action or relief in the said plaint.

37. In the list of documents that has been filed along with the plaint the said Kannan had filed a lease agreement dated 15.04.1999. Even going by the plaint in O.S.No.162 of 2015, the lease if any should have been only in the year 2001 and not 1999. The lease agreement dated 15.04.1999, which has been filed as a 2nd document in O.S.No.162 of 2015 would read that the lease is for a period of 12

years and that the annual rental is a sum of Rs.700/-. The agreement also permits the said Kannan to carry on the cultivation. The property in question is described as 12 Acres in T.S.No.1/1 and no boundaries have been provided.

38. The learned Senior Counsel would contend that Thandamizh Kumaran has filed a lease agreement dated 16.06.2010 as document No.5 along with the plaint. The said agreement has been entered into between Kannan and Thandamizh Kumaran. The agreement reads that the said Kannan has been put in possession of the property and the agreement was a period of three years. The agreement further recites that the value per Acre has been fixed @ Rs.5,000/- and for 14 Acres at Rs.70,000/-. However the agreement does not spell of the rent in respect of the property.

39. The learned senior counsel would further argue that the reading of the fair order in I.A.No.171 of 2013 in O.S.No.764 of 2013, which was the application for a grant of ad interim injunction would clearly show that the suit in O.S.No.764 of 2013 is an abuse of process of Court and an attempt to create a non existent right. In the counter

to the said application, Kannan would allege that the said application cannot be proceeded with till the disposal of I.A.No.218 of 2013 for impleading defendants 2 to 22. In the said application notice has been served on the proposed parties and till such time as the petition in I.A.No.218 of 2013 was not disposed off no orders can be passed in I.A.No.171 of 2013 in O.S.No.764 of 2013, and the same deserves to be dismissed. Having taken such a stand in the counter, however during the enquiry Kannan had submitted that he has no objection to a status quo order being granted. Therefore this clearly proves the collusion between the parties. Having accepted that he is not in possession of the property Kannan has filed O.S.No.162 of 2015 claiming to be in possession which once again is an abuse of process of Court.

40. The learned senior Counsel would thereafter attack the suit O.S.No.1923 of 2016, which is a suit filed by Thandamizh Kumaran for declaring the partition deed entered into between the revision petitioners as null and void. He would argue that without establishing his title to the property Thandamizh Kumaran cannot maintain the suit O.S.No.1923 of 2016. That apart the suit O.S.No.1923 of 2016 is

nothing but a relitigation of the suit in O.S.No.764 of 2013 which is evident from a portion of the pleading therein:

“மேலும் C.தண்டமிழ் குமரன் அவர்களுக்கு மட்டுமே அவர்களது தாய்வழி பாட்டனார் ஆன திருவாளர் பெயண்ணக் கவுண்டர் அவர்களுக்கு சர்வ சுதந்திர பாத்தியமான தனிப்பட்ட சொத்தான அடியிற்கண்ட வழக்கு சொத்தினை கடந்த 04.10.1991 தேதியில் முறைப்படியும், சட்டப்படியும் வழக்குரைஞரைக் கொண்டு உயிற்சாசனப் பத்திரம் எழுதி வைத்துவிட்டார். அது மேற்படி பெரியண்ணக்கவுண்டர் ஆயுள் காலத்திற்கு பிறகு தானாகவே அமுலுக்கு வந்துவிட்டது அதாவது, 27.12.1994 தேதியில் இருந்து நடைமுறைக்கு வந்துவிட்டது. மேற்கண்டவைகளை நிரூபணம் செய்வதற்காக வாதியின் உயில் சாசனம் பிராது ஆவணம் 1 ஆகவும், மேற்படி பெரியண்ண கவுண்டர் இறப்பு சான்றிதழ் பிராது ஆவணம் 2 ஆக தாக்கல் செய்யப்பட்டுள்ளது.

This according to the learned Senior counsel is nothing but a relitigation and therefore on this ground also the suit O.S.No.1923 of 2016 deserves to be dismissed.

41. Mr.Vijay Narayan, learned Advocate General appearing on behalf of the Government of Puducherry in C.R.P.No.428 of 2019 which has been filed by the Government of Puducherry is a petition

filed to strike of the suit in O.S.No.2486 of 2018. He would contend that the suit O.S.No.2486 of 2018 is barred under Section 145 of the Electricity Act, 2003. A reading of Section 145, herein below extracted will show that the Civil Court has no Jurisdiction to entertain the suit of a nature as pleaded in O.S.No.2486 of 2018:

"145.Civil Court not to have Jurisdiction.-No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an Appellate Authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

42. Therefore the learned Advocate General would submit that the suit deserves to be struck off. That apart, he would argue that though the prayer is for an injunction restraining the Department from giving electricity connection the affected party namely the School has

not been made party to the proceedings and on the ground of non-joinder of necessary parties also the suit deserves to be struck off.

43. Mr.S.K.Shivashankaran, learned counsel appearing on behalf of the plaintiff Thandamizh Kumaran would contend that the partition deed which has been put forward by the revision petitioners does not relate to the suit property. Further the lease receipts which has been produced by them also does not pertain to the suit property and there is no document on the side of defendants 2 to 22 to show that they have been in possession after 2013.

44. The counsel would further argue that if the revision petitioners were the exclusive owners of the suit property there was no necessity for them to execute deeds in favour of the children and wife of Rajendran (*defendants 11 to 22*) and neither was there any necessity to obtain a release from them. Further during the pendency of the suit the revision petitioners have executed a sale in favour of Amalorpavam Educational Welfare Society on 25.06.2018 and further in the sale deed that has been executed in favour of the said Society the revision petitioners have made a false statement by contending

that there is no litigation pending in respect of the property subject matter of the sale.

45. The learned counsel would therefore submit that the revision petitioners have no right, title or interest on the property and further considering that Thandamizh Kumaran filed documents to show his title to the property and the possession of the property the suit cannot be struck off at this stage and parties should be permitted to lead evidence to substantiate their case.

46. Kannan @ Hrushikesh who appeared as Party in Person has more or less adopted the arguments of the learned counsel appearing for Thandamizh Kumaran.

47. The Submissions made by the revision petitioners in a nutshell are as follows:

a) Thandamizh Kumaran who has no title to the suit property has filed a suit for bare injunction in respect of the suit property.

b) Kannan whose tenancy itself is suspect is claiming a right on the basis of a lease agreement entered into between himself and

Thandamizh Kumaran. The date of the lease keeps varying from 23.06.2010, 16.06.2010 and 15.04.1999.

c) The subsequent suit O.S.No.1923 of 2016 is barred by the provisions of Order II Rule 2 of the Code of Civil Procedure.

d) The suit O.S.No.2486 of 2018 is barred by the provisions of Section 145 of the Electricity Act, 2003.

48. Counter by the respondents to these contentions in a nutshell are as follows:

a) The title of Firdasse Bivy to the suit property is questionable since the schedule in the partition deed does not relate to the suit property.

b) The lease receipts do not relate to the suit property.

c) The execution of a release deed by the children and wife of Rajendran, the son of Periyanna Gounder in favour of the revision petitioners would presuppose an existing right upon defendants 11 to 22 over the suit property.

d) The parties have to establish their right, title or interest to the property by letting in evidence, which can be done only if the suit is proceeded particularly in view of the fact that the documents under

which the revision petitioners claim title does not relate to the suit property.

Discussion:

49. Before proceeding to discuss C.R.P.No.2230 of 2014, C.R.P.Nos.3500 and 3501 of 2018, I propose to first deal with the revision petition in C.R.P.No.428 of 2018, which is the Civil Revision Petition that has been filed by the Government of Puducherry seeking to strike off the plaint in O.S.No.2486 of 2018 which has been filed by Thandamizh Kumaran for an injunction restraining the Electricity Board from effecting electricity connection or executing any other documents there in respect of the suit property in favour of the purchaser from the revision petitioners.

50. The cause of action for filing the above suit is the filing of O.S.No.764 of 2013 and the suit O.S.No.1923 of 2016, both on the file of the II Additional District Munsif, Puducherry. It is further contended that the planning permission granted by Puducherry Planning Authority, the approval for running CBSE School has been accorded to the School and donations are being sought by the School for putting

up construction in the suit property all forming a cause of action for filing the above suit. The injunction that is sought for is to restrain the Electricity Board from providing electricity service connection to the suit property.

51. As rightly pointed out by the learned Advocate General Section 145 of the Electricity Act, 2003, herein after called the Act (*Which has been extracted supra*) clearly bars the Jurisdiction of the Civil Court from granting any injunction in respect of an action to be taken by the Authority under this Act. The bar contemplated under Section 145 of the Act is two fold:

a)The first part of the Section deals with suits or proceedings being filed in respect of any matter which an assessing officer is required under Section 126 or an Appellate Authority under Section 127 or the adjudicating officer under the Act is empowered to do.

b)The second limb of the Section deals with any action being instituted in any Court or before any authority with reference to any action taken or proposed to be taken in pursuance to any powers conferred under this act.

Therefore, a reading of the above section makes it clear that not

only is the suit or proceedings before the Civil Court barred in respect of the matters under Section 126 or Section 127 or before the adjudicating officer under the Act, but the suit or proceedings before the Civil Court is also barred if an injunction is sought for to prevent or to direct any action to be taken by any authority under the Act. The grant of electricity connection is the act which is done by the authorities under the said Act therefore the suit for a bare injunction restraining them from granting the connection clearly falls within the bar of Section 145 of the Electricity Act, 2003.

52. The Honourable Supreme Court in the decision reported in **1997 (5) SCC 120 – Punjab State Electricity Board and another Vs. Ashwani Kumar** at paragraph No.8 has held as follows:

"8. The question then arises whether the Civil Court would be justified in entertaining the suit and issue injunction as prayed for? It is true, as contended by Shri Goyal, learned Senior Counsel, that the objections were raised in the Written Statement as to the maintainability of the suit but the same were given up. Section 9 of the CPC provides that the Civil Court shall try all suits of civil

nature, subject to pecuniary jurisdiction, unless their cognizance is expressly or by necessary implication barred. Such suit would not be maintainable. It is true that ordinarily, the Civil Court has jurisdiction to go into and try the disputed questions of Civil nature, where the fundamental fairness of procedure has been violated. The statutory circulars adumbrated above do indicate that a fundamental fairness of the procedure has been prescribed in the rules and is being followed. By necessary implication, the cognizance of the Civil cause has been excluded. As a consequence, the Civil Court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) Act and the Instructions issued by the Board in that behalf from time to time as stated above."

53. Further the plaintiff who seeks an injunction against the Electricity Board from granting electricity connection has not chosen to implead the affected party namely the Amalorpavam Educational

Welfare Society or their vendors. It is clearly a case of non joinder of the necessary parties and also an attempt on the part of the plaintiff to obtain an order behind the back of the owner of the property which is nothing but an abuse of process of law.

54. As regards the suit O.S.No.764 of 2013, there are several anomalies in the plaint in question. The plaintiff does not mention the nature of the agreement under which the tenant had been inducted into the property. That apart, the suit has been filed in respect of an extent of 12 Cawnies, whereas the plaint would state that Kannan has entered into an agreement with reference to 14 Acres. Though the suit is for an injunction in respect of the 14 Acres of land in the agreement filed as document No.2 along with the plaint, the boundary description given is the same as they are given for the entire extent of 12 Cawnies.

55. Thandamizh Kumaran while tracing his title in the plaint O.S.No.764 of 2013 would contend that the French Government had handed over the property to his Grandfather. However, no assignment deed has been filed by him. That apart, he has stated that by a legal

document property was handed over to him by his grandfather. However it is only in the passing that mention is made about the Will. However, details like date, has not been given and even in the list of documents the date column is left blank along side the said Will which is listed as Document No.6.

56. Thandamizh Kumaran would submit that the agreement between him and the defendant was entered into on 23.06.2010, whereas in the list of documents an agreement dated 16.06.2010 has been indicated. It appears that an attempt is being made on the part of Thandamizh Kumaran to create a document to show some semblance on the right over the suit property. This view is further fortified by the fact that O.S.No.1923 of 2016 has also been filed to declare the partition deed dated 26.08.2013 as null and void.

57. Though Thandamizh Kumaran has filed I.A.No.218 of 2013 in O.S.No.764 of 2013 to implead the revision petitioners on the basis of their obtaining release deed from the children of Rajendran, the son of Periyanna Gounder, the plaintiff has not sought to amend the suit O.S.No.764 of 2013 but has waited for three years and thereafter filed

O.S.No.1923 of 2016. The plaintiff has knowledge about the said transactions as early as in the year 2013 itself but had not approach the Court and further the plaintiff has not chosen to seek the relief of declaring the release deed as null and void. That apart the suit has not been valued properly.

58. A perusal of the proceedings in O.S.No.764 of 2013 would indicate how one application after the other is being filed to keep the lis alive and the collusion between the plaintiff in O.S.No.162 of 2015 and the plaintiff in O.S.No.764 of 2013 is clearly evident from the fact that when Thandamizh Kumaran had not succeeded in obtaining an order of injunction against the revision petitioners, Kannan had instituted the suit O.S.No.162 of 2015 on the file of the II Additional District Munsif, Puducherry for a bare injunction.

59. Another pointer to this collusion is the fact that the plaintiff in O.S.No.764 of 2013 has taken out an application in I.A.No.94 of 2016 in O.S.No. 764 of 2013 to summon defendants 2 and 3 and their erstwhile counsel to adduce as witness. This was dismissed on 18.10.2016. The 1st defendant in the suit O.S.No.162 of 2015 has

simultaneously taken out a similar application in I.A.No.358 of 2015.

60. Another the fact which has been brought to the notice of the Court is that after the implead application had been allowed no application had been filed for amending the plaint. However Thandamizh Kumaran has chosen to suo moto amend portions of the plaint, the short and long cause title as well as relief portions without obtaining the orders from the Court and it is unfortunate that the learned II Additional District Munsif, Puducherry has received the amended plaint without there being an order permitting the amendment. This is evident from the fact that nowhere in the amended plaint the I.A. number and the date of the order has been provided.

Conclusion:

61. A perusal of the schedule to the plaint would indicate that the property which is the subject matter of the various litigations is situate in R.S.No.25/2P, T.S.No.1/1 of Kombakkam Village, Mudaliarpet Commune, Puducherry, measuring an extent of 12 Cawnies. Whereas the Land Acquisition proceedings would indicate

that the predecessor in title of the revision petitioners was the owner of the lands comprised in T.S.No.1/2, though the resurvey number is shown as 25/2. In the proceedings of the settlement officer dated 29.10.2018 the property belonging to Firdasse Bivy has been described as lands measuring an extent of 5 Hectares 49 Ares and 50 Centiares, comprised in R.S.No.25/1 and 25/2 part in T.S.No.1/1. Admittedly, the grandfather of Thandamizh Kumaran has been in possession of the property, albeit as a tenant under Firdasse Bivy, it is seen that the revision petitioners have obtained a release from the legal heirs of Rajendran. Therefore it shows a semblance of the right that the legal heirs of the deceased Rajendran over the suit property which has to be go into during trial. Further in the partition deed dated 24.06.1954 to which the revision petitioners trace title the properties have been allotted to Ahamad Said, the minor son of Firdasse Bivy.

62. The above Civil Revision Petitions have been filed invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India to strike of the various plaint detailed herein above. It is under the provision of the Code of Civil Procedure that

parties can ask for: (a) Striking of pleading and (b) Rejection of plaint. Order VI Rule 16 of the Code of Civil Procedure deals with the former, namely, striking of the pleadings and Order VII Rule 11 of the Code of Civil Procedure with the latter. Order VI Rule 16 deals with striking of portions of pleadings which includes both the plaint as well as the written statement. The circumstances under which a pleading can be struck off has been encapsulated there and the provision reads as follows:

"[16. Striking out pleadings:

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.]"

63. The Provisions of Order VII Rule 11 of the Code of Civil Procedure deals with the rejection of the plaint in toto and the circumstances under which a plaint can be rejected is contained therein and reads as follows:

"11. Rejection of plaint

The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law ;*
- (e) where it is not filed in duplicate;*
- (f) where the plaintiff fails to comply with the provisions of rule 9.*

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the

Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

64. Therefore from a reading of the above provisions it is evident that under the provisions of Order VI Rule 16 portions of the pleadings, be it a plaint or the written statement, can be struck off by the Court provided the circumstances contemplated therein is in existence. The High Court exercising its Jurisdiction under Article 227 of the Constitution of India is also empowered to strike out the pleadings while exercising its supervisory jurisdiction. However while exercising the said jurisdiction the Courts have to exercise utmost restraint and be circumspect and it is only where the continuance of the pleading would be a travesty of justice or by refusing to interfere it would result in prolonging the lis then the Higher Court should venture to consider striking off the pleading or rejecting the plaint.

65. The provisions of Order VII Rule 11 of the Code of Civil Procedure can also be invoked by the High Court exercising its Supervisory jurisdiction where, prima facie, a reading of the plaint would reveal that there is no cause of action or that the suit is barred by any law. With the March of law and the increase in several

frivolous and vexatious litigation additional grounds by way of judicial pronouncements have been added to strike off/reject plaint. They are:

- a) On the ground of relitigation.
- b) Abuse of process of law. and;
- c) Fraud.

The Honourable Supreme Court in the Judgement reported in ***AIR 1977 SC 2421 – T.Arivanandam Vs. T.V.Satyapal***, had opened the avenue for judicial interference in these cases. This was once again reiterated in the judgement reported in ***AIR 1998 SC 1297 – K.K.Modi Vs. K.N.Modi***.

66. In the case on hand, no doubt the suit O.S.No.764 of 2013 is the forerunner. However the subsequent suit namely O.S.No.1923 of 2016 has been filed to declare the partition deed dated 26.08.2013 as null and void and it is seen that the partition deed has come into existence during the pendency of the suit O.S.No.764 of 2013. Therefore it cannot be said that the cause of action for filing the suit O.S.No.1923 of 2016 existed when the suit O.S.No.764 of 2013 was pending. Further it is seen that the revision petitioners, during the pendency of the suit has sold the suit property under a sale deed

dated 25.06.2018 in favour of the Amalorpavam School. As discussed above there are allegations and counter allegations, all are which has to be proved by both parties and therefore striking of the proceedings at this stage would not be in the interest of Justice.

67. The Honourable Supreme Court in the decision reported in **(2010) 2 MLJ 198 (SC) – Abdul Razak (D) through L.Rs. and others Vs. Mangesh Rajaram Wagle and others** had discussed the power of the Court to strike of pleadings. The Honourable Supreme Court after considering earlier Judgements of the Apex Court had observed as follows:

"17. Normally, a Court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The Court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair

trial of the suit or the court is satisfied that suit is an abuse of process of the Court. Since the striking off pleadings has serious adverse impact on the rights of the concerned party, the power to do so has to be exercised with great care and circumspection."

68. The Honourable Supreme Court in an earlier Judgement reported in **2006 (13) SCC 353 - Sathi Vijay Kumar Vs. Tota Singh and others** had held as follows:

"At the same time, however, it cannot be overlooked that normally a Court cannot direct parties as to how they should prepare their pleadings. If the parties have not offended the rules of pleadings by making averments or raising arguable issues, the Court would not order striking out pleadings. The power to strike out pleadings is extraordinary in nature and must be exercised by the Court sparingly and with extreme care, caution and circumspection [vide [Roop Lal v. Nachhatar Singh](#), (1982) 3 SCC 487 : AIR 1982 SC 1559; [K.K. Modi v. K.N. Modi](#), (1998) 3 SCC 573 : AIR 1998 SC 1297; [United Bank of India v. Naresh Kumar](#), (1996) 6 SCC 660 : AIR 1997 SC 3]."

In the instant case the main defense canvassed is that Thandamizh Kumaran has no title to the property and is not in possession thereof. The counter to this defense is that the revision petitioners have no title to the property. The question of the subsequent suits being hit by the provisions of Order II Rule 2 of the Code of Civil Procedure or a relitigation may not arise as the partition deed among the revision petitioners and the release and settlement deeds have also come into existence after the filing of O.S.No.764 of 2013. These are issues which have to be proved by both parties.

As an upshot of the above discussions this Court proceeds to pass the following order:

69. The plaint in O.S.No.2486 of 2018 which is the subject matter of C.R.P.No.428 of 2019 is struck off as the same is clearly barred by the Provisions of the Section 145 of the Electricity Act, 2003 and which has been dealt with elaborately at Paragraph No.51 supra. Consequently, **the Civil Revision Petition in C.R.P.No.428 of 2019 is allowed.**

68. The Civil Revision Petitions in **C.R.P.Nos.3500 & 3501 of 2018 & C.R.P.No.2300 of 2014 are dismissed.** Considering the fact that the issue involved in all the suits are the same this Court is suo moto transferring the suits O.S.No.764 of 2013 and O.S.No.1923 of 2016 pending on the file of the II Additional District Munsif Court, Puducherry, to be tried along with the suit in O.S.No.162 of 2015, pending on the file of the Principal Sub-ordinate Court, Puducherry. The Principal Sub-ordinate Judge, Puducherry shall proceed to dispose of the suits within a period of six months from the date of receipt of a copy of this order.

03.07.2019

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Index : Yes/No
Speaking order/non-speaking order

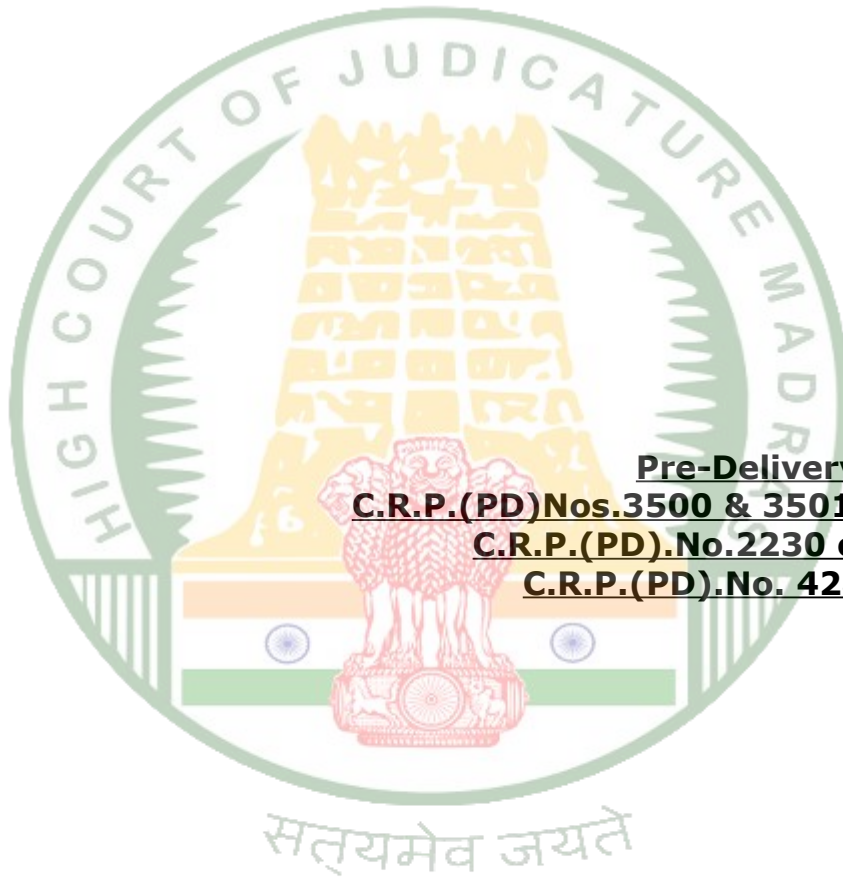
To
1.The II Additional District Munsif Court,
Puducherry.

2.The Sub-ordinate Court,
Puducherry

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P.T.ASHA, J.,

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Pre-Delivery order in
C.R.P.(PD)Nos.3500 & 3501 of 2018,
C.R.P.(PD).No.2230 of 2014 &
C.R.P.(PD).No. 428 of 2019

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