



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27.02.2019

DELIVERED ON : 05.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.2254 of 2015

and

M.P. (MD) No.1 of 2015

Pappa @ Shanthi

.. Petitioner

Vs.

Vijaya

.. Respondent

Prayer : This Civil revision petition is filed under Article 227 of Indian Constitution, to call for the records and set aside the fair and executable order dated 26.06.2015 passed in I.A.No.85 of 2015 in O.S.No.19 of 2015 on the file of the learned District Munsif cum Judicial Magistrate No.I, Usilampatti.

For Petitioner : Mr.T.R.Jeyapalam

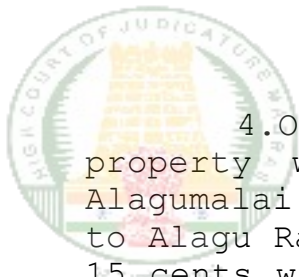
For Respondent : Mr.B.Prahalad Ravi

ORDER

Heard Mr.T.R.Jeyapalam, learned counsel appearing for the petitioner and Mr.B.Prahalad Ravi, learned counsel appearing for the respondent.

2.This petition has been filed against the order passed in passed in I.A.No.85 of 2015 in O.S.No.19 of 2015 dated 26.06.2015 on the file of the learned District Munsif cum Judicial Magistrate No.I, Usilampatti.

3.The petitioner is the defendant and the respondent is the plaintiff in the suit. The respondent herein have filed a suit in O.S.No.19 of 2015 before the learned District Munsif cum Judicial Magistrate No.I, Usilampatti for a prayer of declaration and injunction. In that suit, this petitioner has filed a petition in I.A.No.85 of 2015 to reject the plaint under Order 7 Rule 11 of C.P.C., and that petition was dismissed by the trial Court. Against the dismissal order, the petitioner has come forward with this revision petition.



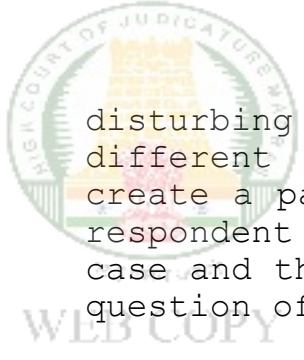
4. On the side of the petitioner, it is stated that the entire property with an extent of 1.25 cents originally belonged to Alagumalai Thevar. Out of the property, northeast 5 cents was sold to Alagu Raja, another 6 cents was sold to Chinnamayan and southeast 15 cents was sold to Rani and out of 15 cents, Rani sold 5 cents to Velu Servai and 5 cents to Mayakkal and on the eastern side of the property, Vathalagondur Road is available and the petitioner purchased the balance 99 cents on the western side.

5. On the side of the petitioner, it is stated that in the sale deed of Alagu Raja and Chinnamayan, southern boundary of the property is mentioned as Alagumalai thevar's property and that in the sale deed of Rani also, the northern boundary is shown as the property of Alagumalai Thevar and that the only access for the petitioner to reach Vathalagondur Road is through the suit property and that after the sale to the petitioner, the vendor Alagumalai Thevar and the other purchasers colluded together and they executed a rectification deed wherein the southern boundary of Alagu Raja's property is rectified as that of Rani and the northern boundary of the property of Rani is rectified as the property of Alagu Raja so that the petitioner cannot have access to her own property.

6. On the side of the petitioner, it is stated that the petitioner filed a suit in O.S.No.153 of 1999 against the respondents for a prayer of declaration and injunction and to set aside the rectification deed. After contest, the suit was decreed in favour of the petitioner and the description of the suit property in O.S.No.153 of 1999 will clearly reveal that the property belongs to the petitioner.

7. On the side of the petitioner, it is stated that the respondent filed an appeal in A.S.No.139 of 2009 against the decree in O.S.No.153 of 1999. The appeal was dismissed confirming the decree in O.S.No.153 of 1999. After nine years, the plaintiff has filed this suit and that the respondent has not disclosed the earlier suit in the plaint and after suppressing the earlier decree, this suit is filed and that the description of the suit property was mentioned in the rectification deed and that the rectification deed was already declared as null and void and the petitioner filed a petition under Order 7 Rule 11 of C.P.C., under the ground of re-litigation and on the ground of abuse of process of law and that the lower Court dismissed the petition merely on the ground that re-litigation does not come within the purview of res judicata and wrongly dismissed the petition.

8. On the side of the respondent, it is stated that the suit was filed for declaration and injunction over the property of 10 cents. After filing of the written statement, the petitioner filed a petition for rejection of the plaint on the ground of res-judicata and that there is no pleadings in the written statement. The earlier suit filed by the petitioner was for 99 cents out of 1 acre 25 cents. In the earlier suit, the petitioner has admitted that the property is the property of the respondent and as the petitioner is



disturbing the pathway, this suit is filed and that the property is different in both the suits and that the petitioner is trying to create a pathway in the middle of the property that belonged to the respondent and the plea of res-judicata cannot be raised in this case and that after the filing of the written statement, there is no question of rejection of the plaint.

9. On the side of the petitioner, it is stated that the northern boundary of the suit property is the property of the petitioner. To prevent the petitioner from using her pathway, a rectification deed is prepared by Alagu Raja and the respondents. The rectification deed was already declared as null and void by the Court and there is no second appeal against the Judgment of the first Appellate Court. The petitioner is not questioning the right of the respondent over the 10 cents of the land but questioning only the boundary mentioned in the rectification deed. Suppression of the earlier suit amounts to fraud and that this facts are not discussed in the order of the trial Court and prayed the order to be set aside.

10. The learned counsel appearing for the petitioner would rely upon the Judgment passed by this Court in the case of **Nesammal and another v. Edward and another** reported in **1998 (II) CTC 537**, which reads as follows:

"8. Apart from the above decisions, the trial Court is also bound to see that the valuable time is not taken away by proceeding the trial in the vexatious litigation, which is clearly abuse of process of Law, In fact, in the decision reported in T. Arivandandam v. T. V. Satyapal and another, the Honourable Supreme Court held that it is also duty bound not to take such cases. In para 7 of the Judgment, Their Lordships held that, "We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party. We more than regret the circumstances that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India, we hope will activate this obligation. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of. Another moral of this unrighteous chain litigation is the gullible grant of



ex parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy.

WEB COPY

11. In view of all these decisions the argument of the counsel for the petitioners that unless the conditions are satisfied under Order 7, Rule 11 of Code of Civil Procedure, the plaint cannot be rejected is without any basis. The provisions of Order 7, Rule 11 are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the court. In appropriate cases, directions can be given by this court as well as the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law. In this case all the grounds are made out and the very same plaintiff who got defeated in the litigation has agitated the very same issue by filing the present plaint. I appreciate the stand taken by the lower court in rejecting the plaint at the threshold.

12. The revision is also not maintainable since the order rejecting the plaint is a decree under the Code of Civil Procedure. Even if the plaint is rejected on some other grounds not covered by Order 7, Rule 11 Code of Civil Procedure, the remedy is only an appeal under Section 96 of Code of Civil Procedure. The same is so declared in the decision reported in *R. Shanmughavelu Pillai v. R. Karuppannan Ambalam*, AIR 1976 Mad. 289."

11. The learned counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of *K.K.Modi v. K.N.Modi and others* reported in (1998) 3 Supreme Court Cases 573, which reads as follows:

"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."

12. The Judgment passed by this Court in the case of **Basantmal Javaaji v. Shreya Nas Nahar** reported in (2008) 2 MLJ 51 is cited by the learned counsel for the petitioner.

13. On the side of the respondent, it is stated that issue can be decided only after the trial and the plea of res judicata can be decided only after contest of the trial. The learned counsel appearing for the petitioner relied on the Judgment passed by this Court in the case of R.J.K. Thilak v. R. Sivakumar and others in



C.R.P. (MD) No. 2235 of 2012, which reads as follows:

"As rightly held by the trial Court, the issue involved in the present suit have to be decided only after the conduct of trial. That apart the trial Court also observed that the fifth defendant has not produced the judgment and decree passed in O.S.No.499 of 1997. As rightly pointed out the plea of resjudicata can be decided only after the conduct of trial."

14. It is seen that the suit property is mentioned as CDEF in the rough sketch attached with the plaint. The case of the plaintiff is that the entire property in survey no.176/17 is 1 acre 25 cents. Out of which one Rani has purchased 15 cents from Alagumalai Thevar. Alagu Thevar sold 6 cents in favour of Chinna Mayan. In the sale deed of Chinnamayan dated 20.01.1987, the southern boundary of Chinnamayan's property was stated as the property of Alagumalai Thevar. In the sale deed of Rani dated 01.08.1987, the northern property of Rani was stated as the property of Alagumalai Thevar. Alagumalai Thevar sold 5 cents to one Alaguraja and he sold the balance 99 cents to the petitioners on 09.06.1993. Rani sold 10 cents. Out of the 15 cents to one Mayakkal on 15.07.1996. In that sale deed, the north and east boundaries are stated as the property of this petitioner. On 17.07.1996 again Rani executed a sale deed in favour of Vijaya for 5 cents showing the boundary as belonged to this petitioner.

15. Later after 12 years, Alagumalai Thevar executed a rectification deed in favour of Rani on 31.05.1999 showing the northern boundary as the property of Chinnamayan. The petitioner filed a suit in O.S.No.153 of 1999 to declare the rectification deed as null and void and the suit was decreed. The first appeal in A.S.No.139 of 2009 was dismissed. No second appeal was filed by the respondent.

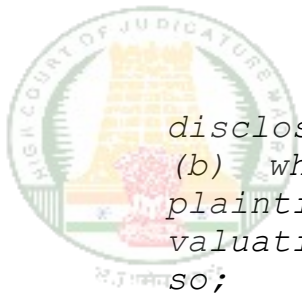
16. The case of the petitioner is that the petitioner has filed a suit for declaring the rectification deed as null and void and got a decree now the respondent is claiming title on the basis of the rectification deed and mentioning the northern boundary as the property of chinnamayan on the basis of the rectification deed with a motive to deprive the rights of the petitioner to have access to her property and this amounts to res-judicata and prayed that the suit is to be rejected.

17. It is seen that already a case was filed by the petitioner in the year 1999 against the respondent and the petitioner has got a decree in her favour. The appeal filed by the respondent also was dismissed and there is no second appeal against that Judgment.

18. The Order 7 Rule 11 of Civil Procedure Code reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

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 fixed by the Court fails to do so;

(c) where the relief claimed is properly valued but the plaint is written 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 there 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 form correcting the valuation or supplying the requisite stamp-paper, 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.]"

19.This petition did not come under the Provisions stated in Order 7 Rule 11 of C.P.C. In the above circumstances, there is nothing wrong in the order passed by the trial Court. The petitioner can raise the question of res-judicata by amending the written statement and the petitioner is hereby permitted to file an additional written statement raising the question of res-judicata within a period of one month from the date of receipt of copy of this order and the trial Court is directed to frame an issue on the ground of res-judicata and then to decide the case as per law.

20.With the above observation, this Civil Revision Petition is dismissed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

Sub Assistant Registrar(CS)



To
The District Munsif cum Judicial Magistrate No.I,
Usilampatti.

WEB COPY

+1CC to M/s.T.R.JEYAPALAM, Advocate in SR-59503
+1CC to M/s.B.PRAHALAD RAVI, Advocate in SR-59703

C.R.P. (PD) (MD) No.2254 of 2015

mrn
PK/12.04.2019 : 8P/4C

05.04.2019