



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.11.2018
DELIVERED ON : 01.02.2019

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD) Nos. 2644 & 2645 of 2016 and
C.M.P. (MD) Nos. 12434 & 12435 of 2016

C.R.P. (MD) No. 2644 of 2016

1. A.G. Shankar
2. G.S. Mani
3. A.G. Krishna

... Petitioners/Petitioners/
Defendants

Vs.

Belics John Baskaran

... Respondent/Respondent/
Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.08.2016 passed in I.A.No.226 of 2011 in O.S.No.843 of 2010 on the file of the Principal District Munsif Court, Dindigul, dismissing the I.A. filed by the petitioners for rejection of plaint on the ground of showing wrong cause of action and suppressing this Court.

C.R.P. (MD) No. 2645 of 2016

1. A.G. Shankar
2. G.S. Mani
3. A.G. Krishna

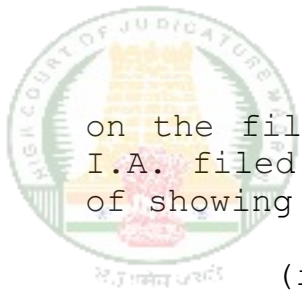
... Petitioners/Petitioners/
Defendants

Vs.

1. David Divyarajan
2. Belics John Baskaran

... Respondents/Respondents/
Plaintiffs 1 & 2

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.08.2016 passed in I.A.No.843 of 2012 in O.S.No.533 of 2009



on the file of the District Munsif Court, Dindigul, dismissing the I.A. filed by the petitioners for rejection of plaint on the ground of showing wrong cause of action and suppressing this Court.

(in both C.R.Ps.)

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For Petitioners : Mr.V.R.Venkatesan
For Respondents : Mr.A.Hariharan

C O M M O N O R D E R

O.S.No.533 of 2009 on the file of the District Munsif Court, Dindigul, was filed by Thiru.David Divyarajan and Thiru.Felix John Baskaran, seeking the relief of declaration in respect of the suit schedule property and for other reliefs. In the said suit, the Revision petitioners herein became defendants 3 to 5 later and they filed I.A.No.843 of 2012 for rejection of plaint. O.S.No.843 of 2010 was filed by Thiru.Felix John Baskaran alone against the Revision petitioners herein seeking the relief of declaration and permanent injunction in respect of the suit schedule properties. In the said suit also, the Revision petitioners herein filed I.A.No.226 of 2011 for rejection of plaint. The contesting respondents filed counter affidavits in both the Interlocutory applications. The Court below by order dated 16.08.2016 dismissed both the Interlocutory applications. Challenging the same, these Civil Revision petitions have been filed.

2. The learned counsel appearing for the plaintiffs pointed out that the impugned orders deserve to be sustained. According to him, the plaints in both the cases clearly disclose cause of action. They are not barred by limitation. The stand taken by the Revision petitioners in the petitions filed for rejection of plaint are not germane for consideration at this stage. This Court would not be justified in having a look at the defence of the defendants at this stage.

3. The learned counsel appearing for the plaintiffs placed reliance on the decisions reported in (2015) 8 SCC 331 (P.V.Guru Raj Reddy V. P.Neeradha Reddy), 1999 (1) CTC 715 (Ramachandran, D. V. R.V.Janakiraman) and 2008 (3) CTC 724(Wipro Limited V. Oushadha Chandrika Ayurvedic India (P) Limited). He also pointed out that there cannot be a partial rejection of plaint. He strongly emphasized that the stand of the defendants in written statement or in application for rejection of plaint is wholly immaterial at this stage. While exercising the power under Order 7 Rule 11 of C.P.C, only the plaint averments will have to be read as a whole. Since the power to reject the plaint is of drastic nature, the conditions precedent for exercising the said power will have to be carefully and strictly construed.



4. This Court cannot have any quarrel with the legal proposition expounded by the learned counsel appearing for the plaintiffs/contesting respondents.

5. It is not as if a dispute has cropped up between the parties for the first time. The plaintiffs herein are the sons of one Sandhiyagu. The suit property is situated in A.Vellodu Village, Dindigul District. The family of the Revision petitioners owned 182 Acres in the said village. They were Inam lands. They were notified and taken over by the Government on 15.02.1965 following the promulgation of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963. It is seen from the materials on record that the settlement Tahsildar No.II, Madurai, vide proceedings in SR.No.929/M.I.Act/DGL/67 dated 28.03.1968 granted ryotwari patta for the lands in question under Section 8(1) of the Act in favour of the Revision petitioners herein. This was challenged before the Inam Abolition Tribunal, Madurai. The Tribunal remanded the matter to the settlement Tahsildar for fresh enquiry. Thereafter, the settlement Tahsildar by order dated 06.06.1973 ordered to issue pattas for the lands in question in favour of the Revision petitioners herein. Though this order dated 06.06.1973 was not challenged by the aggrieved parties before the civil Court and had become final, during U.D.R, pattas were issued in favour of certain individuals to the exclusion of the Revision petitioners. Therefore, the Revision petitioners appealed to the Director of Survey and Settlement on 14.01.1991 who vide order dated 28.10.1992 directed the District Revenue Officer, Dindigul, to transfer the patta in favour of the Revision petitioners herein in consonance with the earlier order dated 06.06.1973 issued by the settlement Tahsildar. Accordingly, the Tahsildar, Dindigul vide proceedings in 9546/94 dated 26.07.1996 ordered issuance of patta in favour of the Revision petitioners. But the changes were not carried out. Both the Revision petitioners as well as the respondents/plaintiffs filed Writ petitions before the Madras High Court on different occasions. While the first Revision petitioner filed W.P. No.17457 of 2004, the aggrieved individuals including Thiru.S.David, respondent herein filed W.P.No.2956 of 2004. Several proceedings took place before the revenue authorities which culminated in the proceedings of the Commissioner of Land Administration, Chepauk, Chennai, in D.Dis.K4/37381/06 dated 11.12.2007. After hearing the rival parties, the Commissioner of Land Administration, noted that Thiru.S.David, S/o.Sandhiyagu, is having a house in Survey No.37/1A. The particulars regarding others was also likewise noted. The operative portion of the order passed by the Commissioner of Land Administration reads as under:

"The respondents have claimed that an extent of 54 acres belongs to them as per the orders of the Settlement Tahsildar dated 08.06.1973. It is seen that the revision petitioners have constructed houses in different survey numbers for a total extent of 10.59 acres approximately.



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Considering the fact that the revision petitioners have fully depended on the sult lands for their livelihood, and their economic status, it is absolutely necessary to mouth the orders of the DRO, Dindigul. In the impugned order the DRO, Dindigul has dismissed the revision petition filed by revision petitioners on the grounds that they have neither purchased nor obtained the lands by means of any gift deeds from the pattadars (respondents) is acceptable. Even though, the registry is in the names of respondents, considering the long possession and enjoyment by the revision petitioners, they may be provided with patta limited to the extent in which houses were built.

Therefore the Collector, Dindigul, is hereby directed to inspect the lands personally and to take appropriate action to issue individual patta to the revision petitioners only for the extent, in which houses have been built and the remaining extent should be registered in the name of respondents. Accordingly, the revision petition is disposed of."

6. This was put to challenge at the instance of Thiru.A.G.Shankar in W.P.(MD)No.1121 of 2008. Thiru.S.David along with 15 others filed W.P.(MD)No.1411 of 2008 questioning the said order and seeking issuance of pattas in their names. The Writ petitions were taken up for disposal on 22.02.2010. Thiru.A.G.Shankar decided to give up the claim against all the private respondents except Thiru.S.David, S/o.Sandhiyagu who was shown as 35th respondent. An offer was made to give the land to an extent of 0.29 cents as ordered by the Commissioner of Land Administration in his proceedings dated 11.12.2007 to Thiru.S.David. He expressed his willingness to execute a sale deed. The learned counsel appearing for Thiru.S.David accepted the said proposal given by Thiru.A.G.Shankar and prayed for appropriate direction to be issued to inspect the property and issue new patta to the 35th respondent to an extent of 0.29 cents. In view of the agreement arrived at between the parties, the following direction was passed by the High Court.

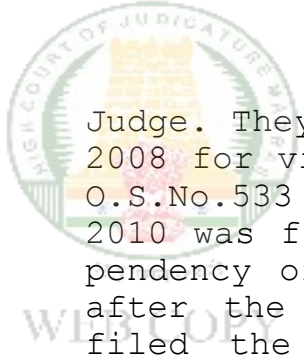
"9. ... 'The petitioner is directed to execute the sale deed in favour of the 35th respondent (now the only private respondent, as accepted by him before this Court). The learned counsel for the petitioner submits that in acceptance of the order of the Commissioner, Land Administration, a few sale deeds have been executed by the petitioner to the parties. Therefore, I direct the petitioner to make a representation along with a copy of this order to the District Collector, Dindigul, within a period



of one month from the date of receipt of a copy of this order to enable the District Collector to arrange for inspection and to resurvey the lands by metes and bounds as directed by the Commissioner for Land Administration, in the impugned order dated 11.12.2007. The District Collector on receipt of the representation from the petitioner and other party shall comply with orders of the Commissioner of Land Administration dated 11.12.2007 and do the needful as directed by the Land Commissioner and as directed above, within a period of three months thereafter.' "

7. The cry of the Revision petitioners is that they originally owned 182 acres of land in A.Vellodu Village. They gave up 128 acres of land which were kept by the cultivating tenants. They had been progressively giving up their claims and the process that started in 1966 was sought to be given a quietus in the year 2010 by way of a compromise. Since Thiru.S.David had put up a house in Survey No.37/1A, the first Revision petitioner Thiru.A.G.Shankar in his advanced age chose to not to continue the battle any further. An offer was made and the same was accepted by Thiru.S.David. Consequently, a direction came to be passed by the High Court in the said Writ petition. The core argument of the Revision petitioners' counsel is that Thiru.Felix John Baskaran does not have any independent right over the property. Both Thiru.S.David and Thiru.Felix John Baskaran are the sons of Sandhiyagu who was the original claimant. Thiru.Felix John Baskaran was nowhere in the picture. It is Thiru.S.David who was actively prosecuting the matter. The matter went up to the High Court. It ended in a compromise and certain directions were passed. It would be a monstrous situation to permit the institution of civil proceedings that would clearly work at cross purposes with the order passed by the High Court. If Thiru.S.David or Thiru.Felix John Baskaran have any grievance, they have to file an application for review of the order dated 22.02.2010 passed by the High Court in W.P.(MD)No.1121 of 2008. Without doing so, filing of successive suits can only be termed as a gross abuse of legal process. The parties cannot be permitted to re-litigate. It is well settled that Order 7 Rule 11 of C.P.C, is not exhaustive. Inherent powers of the Court can always be invoked to non-suit a litigant who is abusing the process of Court. A mere look at the chequered history of the dispute between the parties would indicate that the parties decided to bury the hatchet on 22.02.2010. Therefore, continuance of the impugned suit proceedings would constitute an abuse of process. This Court is also having a supervisory jurisdiction under Article 227 of the Constitution of India.

8. This Court comes to the conclusion that the respondents/plaintiffs herein cannot be permitted to undermine the direction passed by this Court. It is not as if, the respondents did not have any remedy. They ought to have moved the very same



Judge. They ought to have filed an application in W.P.(MD)No.1121 of 2008 for vindication of their claims, if any. This Court notes that O.S.No.533 of 2009 was filed in September 2009 while O.S.No.843 of 2010 was filed on 23.12.2010. The first suit was filed during the pendency of the Writ proceedings, while the second suit was filed after the conclusion of the Writ proceedings. Thiru.S.David who filed the first suit along with his brother Thiru.Felix John Baskaran was very much a party to the Writ proceedings.

9. This Court can safely conclude that Thiru.Felix John Baskaran had full knowledge of the Writ proceedings. Therefore, he could not have independently filed O.S.No.843 of 2010. This Court has to take note of the conduct of the parties. In O.S.No.533 of 2009, the revenue authorities alone were shown as defendants. After they filed a detailed counter, the plaintiffs became aware that they cannot continue the suit. Hence the subsequent suit was instituted by showing Thiru.Felix John Baskaran alone as plaintiff. He was the second plaintiff in the earlier suit. He was the second plaintiff in the earlier suit. The conduct of the plaintiffs is not *bona fide*. They would also undermine the order passed by this Court. Hence, this Court has to necessarily set aside the orders impugned in these Civil Revision petitions.

10. In this view of the matter, the orders impugned in these Civil Revision petitions stand set aside and the plaint in O.S.No.533 of 2009 and O.S.No.843 of 2010 on the file of the District Munsif Court, Dindigul, are struck off from the file.

11. These Civil Revision petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

To
The Principal District Munsif,
Dindigul.

+2cc to Mr.A.HARIHARAN, Advocate, SR.No. 44918,44919
+2cc to Mr.V.R.VENKATESAN, Advocate, SR.No. 44718,44719

C.R.P.(MD).Nos.2644 & 2645 of 2016 and
C.M.P.(MD)Nos.12434 & 12435 of 2016
01.02.2019