



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.11.2019**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

S.A. (MD) No.557 of 2019

and

C.M.P. (MD) No.11138 of 2019

1.Monikantan

2.Ganesh Kumar

3.Chitra

4.Rathika

5.Murugan

6.Rajakumar

7.Ramkumar

8.Remya ... Appellants/Appellants/Respondents/Plaintiffs
vs.

Viswam @ Unni ... Respondent/Respondent/Petitioner/Defendant

Prayer:- Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 15.12.2018 passed in A.S.No.53 of 2018 on the file of the Principal District Judge, Kanyakumari at Nagercoil, confirming the judgment and decree dated 21.03.2012 passed in I.A.No.49 of 2011 in O.S.No.16 of 2007 on the file of the Subordinate Judge, Kuzhithurai.

For Appellants : Ms.J.Anandhavalli
For Respondent : Mr.K.Sreekumaran Nair

JUDGMENT

This second appeal brings to the fore the manner in which a clever and astute litigant abuses the process of Court and law. This litigation exposes how loop holes in law are taken advantage by an intelligent litigant ably assisted by members of the Bar. In the instant case, the appellants and their predecessors in title, namely, their father, have managed to keep the embers of litigation burning from the year 1968 ie., for nearly 5 decades.



2.The genesis for the present appeal is an application filed by the respondent herein for striking off the plaint in O.S.No.16 of 2007 invoking the provisions of Order VII Rule 11, Order VI Rule 16 and Section 151 of the Code of Civil Procedure on the ground that the suit in question is frivolous and vexatious and a clear abuse of the process of Court. In order to appreciate the case on hand, it is necessary to briefly traverse through the history of litigation between the predecessors in title of the appellants and the appellants on one hand and the respondent and his predecessors in title on the other.

3.The property, which is the subject matter of the dispute, is an extent of 40 cents of land together with a building comprised in RS.No.182/1, old S.Nos.2175A and 2170A of Nalloor Village, Vilavancode, Kanyakumari District. The suit property, which is part of larger extent of land, belonged to the Thamarassery Madam. It appears that an extent of 45 cents was the subject matter of O.S.No.640 of 1974 on the file of the District Munsif Court, Kuzhithurai. The said suit was filed by one Arumuga Nadar S/o.Ramalinga Nadar and Ponnachi against the brother of Arumuga Nadar, one Thankaswamy Nadar, who is the father of the appellants 1 to 5 herein and a grandfather of all the other appellants.

4.A preliminary decree was passed in the said suit and no share was allotted to the Thangaswamy Nadar. On 21.08.1978, a final decree was passed in the said suit and the plaintiffs therein namely, Arumuga Nadar and Ponnachi were allotted Plot No.2 measuring an extent of 33.750 cents. The 4th defendant therein one Madhavan Asari was allotted Plot No.3 measuring an extent of 5.652 cents. The said two plots were thereafter sold to one Sathya George. On 30.01.1997, the wife of Sathya George and his children as well as the legal heirs of Arumuga Nadar sold the property measuring an extent of 39.375 to one Sundaram. On purchasing the property, Sundaram had put up a shop building in the suit property. On 19.05.2004, the property in question was sold to the respondent herein by the said Sundaram.

5.The appellants would contend that the property in question belonged to Thangaswamy Nadar, who had purchased an equity redemption in respect of the suit property on 12.10.1960 and the mortgagees right through a release deed dated 25.04.1966. Thangaswamy Nadar had purchased the adjacent land from one Swarnam, who, in turn, had purchased the property from one Kumaravelu Panicker on 12.10.1960. Kumaravelu Panicker had inherited the same from one Kochumony, who got the property from Thamarassery Madam under a sale deed dated 21.07.1093 (M.E) ie., 1918. Therefore, the appellants would contend that right from the year 1966, Thangaswamy Nadar was enjoying the property. They would further contend that the said Thangaswamy Nadar had fallen into bad ways by becoming



appellants 1 to 5 from the area and the inebriated state of Thangasway Nadar, the respondent herein had put up a compound wall and further, the building has been locked and the key retained by the respondent herein, as a result of which, the appellants herein were unable to enter into the premises.

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6.It was on the basis of the above averments that the appellants herein had gone to Court by filing O.S.No.16 of 2007 on the file of the Subordinate Court, Kuzhithurai for a declaration of their title to the suit property and for recovery of possession from the defendant and also for permanent injunction restraining the defendant from altering the physical features of the property.

7.Before discussing the case on hand, it is necessary to briefly chronicle the earlier litigation between the predecessors of the appellants, the respondent and his predecessors in title.

(a) The suit O.S.No.186 of 1968 filed by the Thangaswamy Nadar for redemption of alleged mortgage against the Arumuga Nadar and Ponnachi. The suit was dismissed and against the said judgment and decree, the first appeal filed by Thangaswamy Nadar was also dismissed.

(b) The suit O.S.No.640 of 1964 filed by Arumuga Nadar and Ponnachi for partition against Thangaswamy Nadar and others. The suit was dismissed and no share was given to Thangaswamy Nadar. Against the said judgment and decree, Thangaswamy Nadar filed A.S.No.389 of 1977 and the appeal was also dismissed and thereafter, Arumuga Nadar and Ponnachi had taken delivery of possession through execution proceedings.

(c) The suit O.S.No.589 of 1978 filed by Thangaswamy Nadar for recovery of possession of the suit property against Arumuga Nadar, Ponnachi and Sathya George, who in the interregnum had purchased the property from the said Arumuga Nadar, Ponnachi and Madhavan Asari. The suit was dismissed and challenging the said judgment and decree, Thangaswamy Nadar had filed A.S.No.3 of 1985 on the file of the Sub Court, Kuzhithurai. The appeal was dismissed and challenging the said judgment and decree, Thangaswamy Nadar had filed S.A.No.1003 of 1988 before this Court and the same has also been dismissed.

(d) The suit O.S.No.82 of 1992 was filed by Thangaswamy Nadar against the legal heirs of the Sathya George for injunction restraining them from interfering with Thangaswamy Nadar's possession. The suit was dismissed stating that the said Thangaswamy Nadar was not in possession of the suit property. It is pertinent to mention that the suit for bare injunction filed by the said Thangaswamy Nadar after the dismissal of the earlier suit O.S.No.589 of 1978 for recovery of possession, had been dismissed

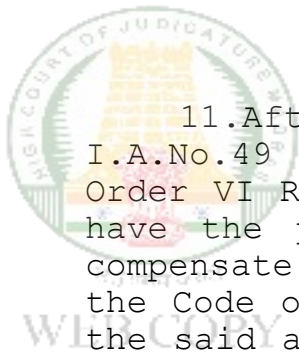


(e) The suit O.S.No.191 of 1997 filed by the said Thangaswamy Nadar against Sundaram @ Vettukathi Sundaram, who had purchased the property from the legal heirs of Sathya George for an injunction. The said Sundaram had invoked the jurisdiction of this Court under Article 227 of the Constitution of India to strike off the plaint in CRP.No.1001 of 1998. This Court by order dated 29.06.1998 was pleased to strike off the plaint. The order of the said revision petition was challenged by Thangaswamy Nadar before the Hon'ble Supreme Court in SLP.No.1678 of 1999 and by order dated 09.08.1999, the Hon'ble Supreme Court was pleased to dismissed the said SLP. Meanwhile, the said Sundaram had filed an application for police protection for constructing the compound wall since Thangaswamy Nadar was obstructing the same. Since the said application was rejected by the Additional Superintendent of Police, Thakkalai on the ground that it was purely a civil dispute, Sundaram moved this Court in Crl.O.P.No.4254 of 1997 seeking directions for police protection from this Court to construct the compound wall. This Court was pleased to allow the said criminal original petition and the construction of the compound wall was also completed.

8.After Thangaswamy Nadar having failed in each and every one of the litigation with reference to the very same property, the plaintiffs herein have filed the present suit for the relief of declaration of title and recovery of possession and also for permanent injunction restraining the respondents herein from altering the physical features of the property.

9.The respondent herein on receipt of the summons in the above application had invoked the superintending jurisdiction of this Court under Article 227 of the Constitution of India to strike off the plaint by filing CRP.No.1041 of 2007. By order dated 27.09.2007, this Court after elaborately considering the series of litigation between the parties held that the present suit was nothing but an abuse of process of law and this Court invoking the jurisdiction of under Article 227 of the Constitution of India was pleased to strike off the plaint.

10.The said order was taken up on appeal to the Hon'ble Supreme Court by the appellants herein in SLP.(C) No.31543 of 2008. The Hon'ble Apex Court by order dated 08.02.2010 was pleased to set aside the order passed in CRP.No.1041 of 2007. While allowing the said appeal, the Hon'ble Apex Court has observed that this Court was not correct in exercising powers under Article 227 of the Constitution of India ignoring the statutory remedy that was available to the respondent under Order VII Rule 11 and Order VI Rule 16 of the Code of Civil Procedure. The appeal was allowed with these observations and the trial Court was directed to proceed in accordance with law.



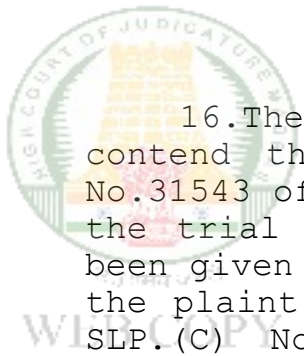
11.After the above orders, the respondent herein filed I.A.No.49 of 2011 invoking the provisions of Order VII Rule 11, Order VI Rule 16 and Section 151 of the Code of Civil Procedure to have the plaint struck off and to direct the respondent to pay compensate cost as contemplated under Sections 35 (A) and 35 (B) of the Code of Civil Procedure. In the affidavit filed in support of the said application, the series of litigation that has been taken place between the parties has been detailed.

12.The appellants herein had filed a counter *inter alia* contending that the application was not maintainable and was an abuse of process of Court in law. They would contend that all the transactions had been affected only taking advantage of the age of Thangaswamy Nadar and his addiction of consuming Alcohol and also the fact that he was suffering from Amnesia. The appellants herein would categorically state that the earlier proceedings have no relevance for the disposal of the petition in question. They would further contend that in SLP (C) No.31543 of 2008, the Hon'ble Supreme Court had directed the parties to proceed with the trial. It is the categoric case that the suit O.S.No.16 of 2007 was not re-litigation. After hearing the parties and perusing the entire records, the learned Subordinate Judge, Kuzhithurai, was pleased to allow I.A.No.49 of 2011 and consequently, the suit O.S.No.16 of 2007 was struck off the file.

13.Instead of filing a first appeal under Section 96 of the Code of Civil Procedure, the appellants herein have filed Civil Miscellaneous Appeal with a delay of 134 days. The said delay was condoned and challenging the said order, the appellants herein had filed CRP.No.381 of 2018 and ultimately, on consent of the appellants herein, the revision was disposed of by order dated 21.02.2018 by converting the Civil Miscellaneous Appeal into an Appeal Suit.

14.By a judgment and decree dated 15.12.2018, the learned Principal District Judge, Kanyakumari at Nagercoil was pleased to dismiss the appeal and confirmed the the order passed in I.A.No.49 of 2011 in O.S.No.16 of 2007 by the Subordinate Judge, Kuzhithurai. Challenging the said judgment and decree, the appellants have filed the above second appeal.

15.From the records in this second appeal, it appears that the respondent has entered appearance even before the second appeal has been admitted and notice was ordered to him. Therefore, this Court is not taking into consideration the arguments that have been advanced on the side of the respondent as the matter is posted for admission and is passing the judgment on the basis of the materials available on record and arguments of the learned counsel appearing for the appellants.



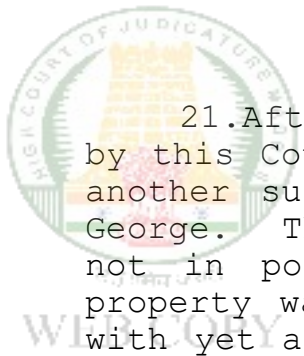
16.The learned counsel appearing for the appellants would contend that the Hon'ble Supreme Court has allowed the SLP.(C) No.31543 of 2008 filed by the plaintiffs with a clear direction that the trial Court should proceed with the suit and liberty has not been given to the defendant to file any application for striking off the plaint. She drew the attention of this Court to the order in SLP.(C) No.31543 of 2008 particularly penultimate and ultimate paragraphs in the said order.

17.The learned counsel would further contend that with reference to the petition under Order VII Rule 11 of the Code of Civil Procedure, the Court should only consider the averments in the plaint and cannot move away from the plaint. She would further argue that there is no finding in the order of the Courts below that the subject matter of the suit O.S.No.16 of 2007 is the very same subject matter of the earlier proceedings. The question of establishing their title and that of their predecessors in title was not required in a proceeding under Order VII Rule 11 of the Code of Civil Procedure. That apart, the present suit is not barred by *res judicata*. She would also take this Court through cross-examination of the respondent/defendant, wherein, he has stated that he had no knowledge that his counsel before the Hon'ble Supreme Court had later filed a petition seeking a direction permitting the defendant to file an application under Order VII Rule 11, Order VI Rule 16 of the Code of Civil Procedure. She would therefore contend that in the light of the admission made by the respondent as P.W1, the statement made in the affidavit at paragraph No.13 was a falsehood and therefore, the application deserves to be dismissed.

18.The learned counsel would further argue that Thangaswamy Nadar has been in possession of the property right from the year 1966 and that possession of the property had gone to the defendant only by virtue of the order made in CrI.O.P.No.4254 of 1997.

19.Heard the learned counsel and perused the papers.

20.As already observed, the suit is nothing but an abuse of process of Court in law and an attempt to scuttle the legal process. The predecessor in title of the appellants, who is none other than the father of the appellants and under whom they claim title has filed the suit O.S.No.589 of 1978 for recovery of possession of the very same property which is the subject matter of the present suit against the Arumuga Nadar, Ponnachi and Sathya George. The suit was dismissed and the judgment and decree of the trial court has been upheld right up to this Court in S.A.No.1003 of 1988 and the delivery of possession of the suit property had been taken by virtue of earlier proceedings in O.S.No.640 of 1974. Recognizing and accepting the fact that he was not in possession, Thangaswamy Nadar had moved the suit O.S.No.589 of 1978 for recovery of possession.



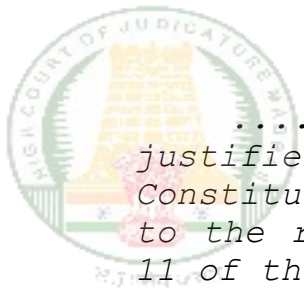
21. After the dismissal of the suit O.S.No.589 of 1978 confirmed by this Court as well, Thangaswamy Nadar had proceeded to file yet another suit O.S.No.82 of 1992 against the legal heirs of Sathya George. The suit was dismissed holding that Thangaswamy Nadar was not in possession of the suit property. Thereafter, when the property was sold to the said Sundaram, Thangaswamy Nadar came up with yet another suit O.S.No.191 of 1997 once again for injunction restraining the said Sundaram from interfering with his possession. The said Sundaram had invoked the superintending jurisdiction of this Court in CRP.No.1001 of 1998 and by order dated 29.06.1998, this Court was pleased to strike off the plaint. This order has been reported in **1998 3 MLJ 3**. The learned Judge in the said order has observed as follows:

14. In this connection, it may also be noted that Order 7 Rule 16 of the Code of Civil Procedure was amended under the Act 104 of 1976 where the power is given to Court at any stage of the suit to strike off the plaint, "which is otherwise an abuse of process of law". Apart from the same, under inherent powers, under Section 151 of the Code of Civil Procedure, the Court is given the power to strike off the plaint if it comes to the conclusion that there is an abuse of process of law.

22. Ultimately, the learned Judge has struck off the plaint with the following observations.

25. On a reading of the plaint, I feel that the respondent has come to this Court only to re-agitate the manner in which has already been concluded and which is admitted in the plaint. I find that this is a fit case wherein the powers under Section 151, Order 6, Rule 16; Order 7 Rule 11 of the Code of Civil Procedure read with Article 227 of the Constitution of India will have to be invoked. Since the respondent has abused the process of Court, the plaint in O.S.no.191 of 1997 is to be struck off the file and consequently, all the interim applications filed by him in the case is also to be rejected, and I direct the lower Court to do so;

23. After their predecessor in title had lost all the proceedings initiated by him, the appellants herein have had the temerity to once again initiate the suit for the very same relief that has been denied by all the Courts starting from the trial Court to the Hon'ble Apex Court in the earlier suits initiated by their father. The argument of the learned counsel appearing on behalf of the appellants that by order dated 08.02.2010 in SLP.(C) No.31543 of 2008, the Hon'ble Supreme Court has only directed the parties to conduct the trial in the suit is to say the least absurd. While allowing the appeal filed by the appellants herein, the Hon'ble Supreme Court has observed as follows:



.....In our view, the High Court was not at all justified in exercising power under Article 227 of the Constitution ignoring that statutory remedies were available to the respondent under Order VI, Rule 16 or Order VII, Rule 11 of the Code of Civil Procedure.

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24.Ultimately, while allowing the appeal, the Hon'ble Supreme Court has stated as follows:

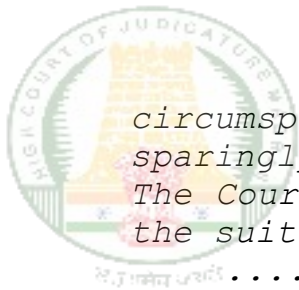
With the above observations, the appeal is allowed and the impugned order is set aside.

25.Therefore, it is a crystal clear that the appeal has been allowed with the observations that the defendant has the statutory remedy in the form of applications under Order VI Rule 16, Order VII Rule 11 of the Code of Civil Procedure and when such a remedy was available, this Court should not exercise its jurisdiction under Article 227 of the Constitution of India. Therefore, filing of I.A.No.49 of 2011 in O.S.No.16 of 2007 which is the subject matter of the present second appeal is undoubtedly maintainable.

26.The appellants and their predecessors in title have been making a mockery of the judicial process and their actions are nothing but a clear case of process of Court and law. The sequence of the earlier litigations would clearly indicate that each time a litigation attained finality, the next litigation is commenced and this process has travelled for over 5 decades. The appellants have been re-litigating time and again.

27.The Hon'ble Supreme Court in the case of **K.K.Modi Vs. K.N.Modi and others** reported in **(1998) 3 SCC 573**, had observed as follows:

44.One of the examples cited as an abuse of the process of the Court is relitigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as resjudicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the 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 the Court especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceeding summarily and prevent the time of the public and the Court from being wasted. Undoubtedly, it is a matter of the Court's 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 change of the suit succeeding.

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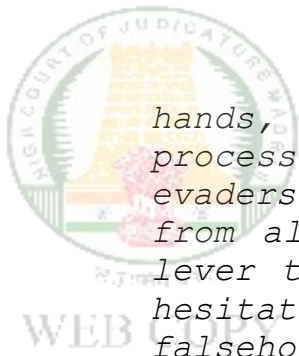
46. In *McIlkenny V. Chief Constable of West Midlands Police Force*, the Court of appeal in England struck out the pleading on the ground that the action was an abuse of the process of the Court since it raised an issue identical to that which had been finally determined at the plaintiff's earlier criminal trial. The Court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the Court because it is an abuse for a party to relitigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of *res judicata* or the requirement of issue estoppel.

28. In the case of ***Seeni Alias Sundarammal Vs. Ramasamy Poosari and 2 others*** reported in **(2000) III CTC 74**, this Court has sounded a word of 'caution' stating that it is the duty of the Court to prevent improper use of its machinery. The learned Judge has observed as follows in paragraph No7 of the said judgment:

7. Process of Court must be used bona fide and properly and must not be misused or abused. It is the duty of the Court prevent improper use of its machinery. The Court has to see that it is not used as a means of oppression and the process of litigation is free from vexatiousness. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process would depend upon the relevant circumstances. But, it has be judged from the angel of interest of justice and public policy.

29. The judgment cited supra reported in **(1998) 3 SCC 573** has been followed by this Court in the case of ***The Member concern Department of Post, Government of India, Ministry of Communication represented by its Chief Postmaster General Vs. Ms. Annapoorni and another*** reported in **2005-4-L.W.206**. The learned Judge has stated that the plaint can be struck off at any stage of the litigation and has also relied on the judgment in the case of ***S.P. Chengalvaraya Naidu Vs. Jagannath*** reported in **AIR 1994 SC 53=1994 (1) SCC 21=1994-1-L.W.21**. The relevant paragraph of the said judgment is as follows:

30. "The principle of 'finality of litigation' cannot be pressed into the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean



hands, we are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation...."

30.Ultimately, the learned Judge had proceeded to impose cost on the respondents therein and while ordering cost, has stated as follows:

34.The repeated filing of number of litigations, facts and other circumstances demonstrably shows clear abuse of process of the Court and the plaint in O.S.no.724 of 2003 is to be ordered to be struck off. However, considering the conduct of the respondents in filing number of litigations, it is necessary to infuse the sense of responsibility in the mind of the respondents, by directing to pay cost in wasting the time of the Postal Department by entangling them in number of litigations and also the judicial time.

31.On a conspectus of the above discussion, this Second Appeal is dismissed confirming the judgment and decree of both the Courts below. Taking note of the fact that the appellants have been filing one litigation after the other, this Court is of the view that interest of justice as well as the majesty and sanctity of the judicial process would be upheld by directing the appellants to pay a sum of Rs.50,000/- to the respondent/defendant, within a period of four weeks from the date of receipt of a copy of this order.

32.This Court would also like impress upon the members of the Bar that they are first officers of the Court and it is also in their interest to uphold the dignity and sanctity of the Court. They should use their good offices to dissuade such vexatious litigations from being instituted. Such an effort would help in reducing the docket explosion. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Principal District and Sessions Judge,
Nagercoil.

2.The Subordinate Judge,
Kuzhithurai.

3.The Section Officer, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J. ANANDHAVALLI, Advocate (SR-101287[F] dated
26/11/2019)

+1 CC to MR.K. SREEKUMARAN NAIR, Advocate (SR-101845[F] dated
27/11/2019)

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