



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P.(PD) (MD) No.1244 of 2014
and
M.P (MD) No.1 of 2014

1.J. Santhakumari
2.Vani Sri

... Petitioners/Defendants 1 & 2

vs.

1. Ram Mohan
2. M.J. Preetham
3. J. Prasanth
4. M.N. Jayaprakash
5. The Sub Registrar
Sub Registrar Office,
Kodaikanal.

... 1st Respondent/Plaintiff

... Respondents 2 to 6/Defendants 3 to 6

PRAYER: Petition filed under Article 227 of the Constitution of India, to call for the records in connection with O.S.No.66 of 2014 on the file of District Munsif Court, Kodaikanal and to strike off the same.

For Petitioners : Mr.V.George Raja for M/S.Ajmal Associates
For R1 : Ms.D.Geetha

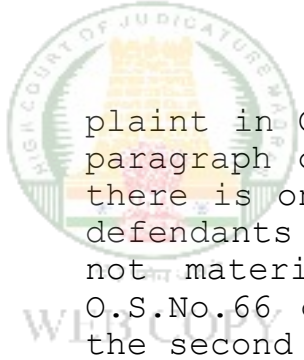
ORDER

This Civil Revision Petition has been filed by the first and second defendants in O.S.No.66 of 2014.

2.In brief, the case of the revision petitioner is that the respondents herein filed an earlier suit namely O.S.No.166 of 2009, on the same cause of action and that , therefore, the second suit namely O.S.No.66 of 2014 is an abuse of process and amounts to re-litigation. Therefore, the said first and second defendants have filed this Civil Revision Petition under Article 226 of the Constitution of India.

3.I heard the learned counsel for the revision petitioners and the learned counsel for the first respondent.

4.The learned counsel for the revision petitioners referred to the plaint in the earlier suit in O.S.No.166 of 2009 and, particularly, to the cause of action paragraph in the plaint and contended that the causes of action for O.S.No.166 of 2009 and O.S.No.66 of 2014 are identical. He, thereafter, referred to the



plaint in O.S.No.66 of 2014 and, in particular, the cause of action paragraph of the said plaint. He further submitted that although there is only one defendant in O.S.No.166 of 2009 and there are six defendants in O.S.No.66 of 2014, the said difference in parties is not material because the other defendants, namely, 3 to 5 in O.S.No.66 of 2014 are the persons who purchased the property from the second defendant.

5. He further submitted that a Civil Revision Petition under Article 227 of the Constitution of India is maintainable, whenever there is an abuse of process of law. In order to substantiate this submission, he relied upon the judgment of this Court in ***Southern and Rajamani Transport Private Limited Vs. R.Srinivasan and others [2010 (4) CTC 690]***. In specific, he relied upon Paragraphs 28 and 29 of the said judgment, wherein, this Court held that the petition under Article 227 of the Constitution of India is maintainable when there is abuse of process of law, to prevent miscarriage of justice, to prevent grave injustice and to establish both administrative as well as judicial power of the High Court.

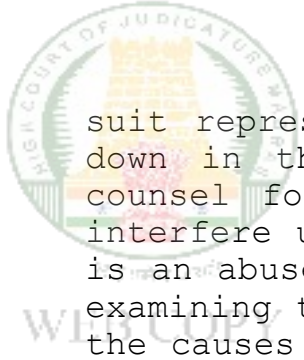
6. He also referred to and relied upon the judgment of the Hon'ble Supreme Court in ***K.K.Modi Vs. K.N.Modi [1998 (3) SCC 573]***. In particular, he relied upon paragraph 44 of the said judgment, wherein, the Court held that re-litigation is an example of abuse of process of the Court and re-litigation may or may not amount to *res judicata*, but if the same issue is sought to be re-agitated, it amounts to an abuse of process of the Court.

7.The learned counsel for the revision petitioner also submitted that any property transactions when the first suit, namely, O.S.No.166 of 2009 is pending would be covered by the doctrine of *lis pendens*. In other words, the sale of the property, which is the subject matter of the said suit, would be subject to the outcome of the suit. Therefore, he submitted that the second suit is totally unnecessary and all these issues can be decided in the first suit and, in fact, the first suit was disposed of by judgment dated 31.07.2015.

8.On the contrary, the learned counsel for the first respondent submitted that the causes of action for the two suits are different as would be evident by examining the cause of action paragraph of the plaints. It was further submitted that the relief requested in the second suit is for a declaration that the sale deed in favour of the defendants was fabricated and consequently to declare that the same is not valid, whereas the first suit is for a permanent injunction not to disturb possession.

9.The pleadings and oral submissions were carefully considered.

10. On examining the plaints in the two suits in question, it is not possible in this proceeding to arrive at the conclusion that the causes of action for the two suits are identical or that the second



suit represents an abuse of process of law. The principles laid down in the two judgments were that relied upon by the learned counsel for the revision petitioners, namely, that the Court can interfere under Article 227 of the Constitution of India when there is an abuse of process is well settled. However, in this case, on examining the plaints in the two suits, it is not self-evident that the causes of action are identical or that the matters in issue are directly and substantially the same. As narrated earlier, the first suit is for a permanent injunction to restrain the defendant therein from interfering with the plaintiff's possession of the suit schedule property whereas the second suit is for a declaration that the documents that were fabricated in 2012 are null and void and to restrain the defendants therein from further alienating or encumbering the suit schedule properties. Therefore, this is not an appropriate case for the exercise of discretionary supervisory jurisdiction under Article 227 of the Constitution. Instead, these matters would have to be considered by the trial Court, while hearing the latter suit, O.S.No.66 of 2014, without being influenced, in any manner, by the observations made in this order.

11. Accordingly, this Civil Revision Petition is liable to be and is hereby dismissed. However, the revision petitioners are at liberty to raise the defences raised herein on any other defences by filing appropriate interim applications or by requesting that issues be framed in this regard. In the result, this Civil Revision Petition is dismissed subject to the observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Munsif Court, Kodaikanal.
2. The Sub Registrar, Sub Registrar Office, Kodaikanal.
3. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1 CC to M/s. AJMAL ASSOCIATES, Advocate (SR-77778[F] dated 26/07/2019)
+1 CC to M/s. D. GEETHA, Advocate (SR-77998[F] dated 26/07/2019)

Order made in
C.R.P. (PD) (MD) No. 1244 of 2014 and
M.P (MD) No. 1 of 2014
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