

CRP. PD.No.1133 of 2018
and CMP No.5905 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 30.07.2020	Delivered on 17.08.2020
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CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP. PD. No.1133 of 2018
and CMP 5905 of 2018

1. Saraswathy Ammal
 2. T.Raja
 3. Sundari@ Kumari
 4. Vijayalakshmi
- ... Petitioners

Vs.

1. Govindan
 2. Durai Memorial Nursery & Primary School,
Rep. By its Founder Govindan
No.17B, S.N.Chavadi,
Nellikuppam Main Road,
Semmadal Post, Cuddalore 607 001.
- .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decree of the Additional District

Munsif, Cuddalore dated 24.11.2017 passed in I.A.No.447 of 2016 in O.S.No.34 of 2016 dismissing the petition to reject the plaint.

For Petitioners : Ms. A.Arulmozhi

For Respondent : Mr. R.Bharanidharan
for M/s.R.Karthikeyan

ORDER

This matter is taken up for hearing through Video-Conferencing.

The defendants in OS No.34 of 2016, have come up with this Civil Revision Petition. Challenging an order dated 07.06.2016 made in IA No.447 of 2016, in and by which, the Trial Court dismissed the application for striking out the plaint filed under Order 6 Rule 16 of the Code of Civil Procedure.

2. The suit was laid by the respondents/ plaintiffs seeking declaration of title and permanent injunction or in alternative declaring the plaintiffs' easementary right over the suit property and for permanent injunction restraining the defendants from interfering and causing any obstruction to the plaintiffs' peaceful possession and enjoyment of the suit property as pathway in exercise of easementary right over the same.

3. The plaintiffs sued for the above said reliefs contending that the property is a private pathway leading to the second plaintiff School. It is also stated that there were earlier litigations with reference to the suit property in OS No.1421 of 1981, in which the first defendant herein was the plaintiff and the first plaintiff herein, his parents and siblings were defendants 1 to 7. It is claimed that though the suit property was the absolute property of Govindammal, the first plaintiff's mother, since the litigation was not properly prosecuted with the help of necessary documents, the first plaintiff's mother suffered a decree for recovery of possession at the hands of the first defendant. However, no actual delivery was taken pursuant to the decree in OS No.1421 of 1981 and possession remained with the present first plaintiff, who was also a defendant in the earlier suit. It was also stated that the suit property served as a pathway to the School run by the first plaintiff by name of "Durai Memorial Nursery and Primary School".

4. It was further claimed that the suit property was shown as a pathway leading to the School in the correspondence between the first plaintiff and the Authorities, while getting recognition for the School. Claiming that the defendants attempted to obstruct the students from reaching the School, the first plaintiff gave a police complaint on 01.06.2014 and also a petition to the

District Collector on 11.06.2014. It is also claimed that the first defendant had filed a Writ Petition in WP No.21509 of 2014 with all untenable averments. Along with the suit certain documents were produced which go to show that an approval has been granted to the School in the year 2002 and the said approval has been renewed subsequently in the years 2003, 2007, 2010 and 2013. Registration copy of the Will said to have been executed by Govindammal dated 17.06.2005 in favour of the first plaintiff was also filed as a document.

5. Upon receipt of the summons, the defendants filed IA No.447 of 2016 seeking to strike out the plaint under Order 6 Rule 16 of the Code of Civil Procedure. The prayer in the Application reads as follows:

“to strike out the entire pleading in the plaint and consequently dismiss the suit.”

In support of the said application the petitioners would aver that the suit property along with other properties were settled on the first defendant by her husband under a registered Settlement Deed dated 06.10.1969. The father of the respondents/plaintiffs viz., Durai Pillai and his family members laid a false claim to an extent of 1,800 sq. ft. of land in Survey No.2629, which forced her to file a suit in OS No.523 of 1977 for declaration of title and injunction. The said suit was decreed after contest. As against the same, an Appeal was

preferred in AS No.32 of 1980 by the predecessor in interest of the present first plaintiff. The Appeal was also dismissed by the Ist Additional Sub Court, Cuddalore. A Second Appeal in SA No.865 of 1981 was filed before this Court and the same was also dismissed.

6. During the pendency of the Second Appeal a portion of the property measuring about 300 sq. ft. which was the subject matter of OS No.523 of 1977 was encroached upon by the first plaintiff and his family members. Therefore, the suit in OS No.1421 of 1981 was filed for recovery of possession of the said 300 sq. ft. The said suit was hotly contested and it was eventually decreed on 15.07.1992. The said decree was put in execution in EP No.332 of 1992 and the property was delivered to the 1st defendant/1st petitioner on 12.08.1992. It is stated that ever since the said handing over the possession, the petitioners and their family members have been in possession of the suit property.

7. It was further contended that the decree in OS No.1421 of 1981 was challenged before this Court in CMA No.2 of 1993 and the CMA came to be dismissed on 16.02.1999. Even in the order made in CMA, this Court condemned the acts of the respondent/plaintiff and his family members, while dismissing the said CMA. Now the present suit has been filed for the very same property seeking declaration of title and injunction, by alleging that the earlier

proceedings were not properly prosecuted. Therefore, according to the petitioners/defendants, the present suit is an abuse of the process of the Court and all the averments made in the plaint are against the judgments and decrees of the Courts in earlier proceedings viz. in OS No.523 of 1977 and OS No.1421 of 1981.

8. This application was resisted by the defendants contending that all these issues will have to be decided only at the time of trial and what has been claimed is a right of easement by the plaintiffs and the same has to be decided only on the basis of the evidence adduced at trial. The correctness of allegations made in the application relating to the previous suits and the result therein was not disputed.

9. The learned Trial Judge concluded that the petition should have been filed under Order 7 Rule 11 and not under Order 6 Rule 16 of the Code of Civil Procedure, even though the said provision can be construed to be a wrong provision of law and the application could be treated as one under Order 7 Rule 11 of the Code of Civil Procedure, the issues will have to be decided only after trial. On the said conclusion the learned Additional District Munsif, Cuddalore, dismissed the application. Aggrieved the petitioners viz., the defendants in OS No.34 of 2016 have come up with this Civil Revision Petition.

10. I have heard Ms.A.Arulmozhi, learned counsel appearing for the petitioners and Mr.R.Bharanidharan, learned counsel appearing for the respondents.

11. The facts set out above itself would be enough conclude that the order of the Trial Court cannot be sustained. The plaintiffs had referred to the suit in OS No.1421 of 1981 in the plaint itself and claim that they had suffered decree for recovery of possession because of the suit being not prosecuted properly. The proceedings in OS No.523 of 1977 have been totally suppressed. The fact that the suit in OS No.523 of 1977 ended in a decree for declaration of title and injunction in favour of the first defendant in the present suit is not denied. The said decree has been confirmed up to Second Appeal in this Court. Therefore, the title to the property has been finally decided by this Court in SA No.865 of 1981. Thereafter claiming that there was an encroachment, the first petitioner/first defendant in OS No.34 of 2016 has filed a suit in OS No.1421 of 1981 for recovery of possession and that suit having been decreed, the said decree had been executed and the decree holder was put in possession of the property on 12.08.1992.

12. In the counter filed to the application in IA No.447 of 2016, it is claimed that the said delivery is only a paper delivery and the present

plaintiffs/respondents herein continued to be in possession of the property. A right of easement is also claimed. It is Fundamental Principle of Law that a person who claims title cannot claim easementary right. The claim for an easementary right cannot go along with the claim of ownership, because the fundamental requirement of acquisition of a right of easement is to acknowledge the title of the other man and exercise a right with the knowledge that the property viz., the servient heritage belongs to another person.

13. The learned Trial Judge, of course, concluded that the application should have been filed under Order 7 Rule 11 and thereafter, concluded that the questions raised will have to be decided after full trial. I am unable to subscribe the views of the learned Additional District Munsif. It is clear that the present suit is an abuse of processes of Court. The Hon'ble Supreme Court in ***T.Arivandandam vs. T.V.Satyapal and another***, reported in ***AIR 1977 SC 2421***, had observed as follows:

“The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clever right to sue, he should exercise his power under O.VII R.11, C.P.C. taking care to see that the

ground mentioned therein is fulfilled. And, if clever drafting has created an illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O.X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.”

14. I have referred to the facts as stated in the plaint and the facts admitted. It is very clear that the present suit is a complete abuse of the process of the Court. Unfortunately, the learned District Munsif had not seen the distinction between clever drafting which had created an illusory cause of action and the abuse that is hidden behind such clever drafting.

15. As regards the claim that the delivery that was effected pursuant to the decree in OS No.1421 of 1981 is only a paper delivery and the first plaintiff herein, who was the judgment debtor in that suit continued in possession of the property despite possession having been taken through the Executing Court. I am afraid that the first plaintiff is precluded from taking such a plea. After all an act of the Court effecting delivery is an official act and the presumption

attached to it under section 114 of the Evidence Act would apply.

16. In ***C.Ramasami. v. Kuruva Boyan and others***, reported in **1991 (1) LW 244**, this Court has held that a person who suffered an order for delivery and when the records reflect that delivery has been effected through Court, cannot be heard to contend that it was only a paper delivery, in doing so, this Court had observed as follows:

“2. It is not possible for a court to ignore the evidence afforded by the court officials to the effect that delivery has been effected, on the mere allegation that there was no actual delivery. In order to reject the official records such as the, bailiffs endorsements, there must be a definite and specific plea of fraud. In the absence of a plea of fraud with full particulars as are necessary to support the same, the court shall not direct an enquiry as to whether there is actual delivery. In every case the judgment debtor is interested in stating that there is no physical delivery in order that he may obtain an order of stay in the appellate Court. A bare allegation that the

delivery is a paper delivery and the appellant continues in possession is hardly sufficient to direct an enquiry whether there is physical delivery. The presumption under Section 114 of the Evidence Act that official acts are performed regularly will undoubtedly apply”.

In view of the aforesaid categorical pronouncement of this Court, the first respondent, who was a party to the earlier litigation and had suffered an order for delivery cannot be heard to contend that he continues to be in possession of the property despite delivery having been effected through the process of Court of Competent jurisdiction.

17. Coming to the reasoning of the learned Trial Judge that an application under Order 6 Rule 16 is not maintainable, I am of the considered opinion, that the Courts should not be bogged down by such technical consideration in matters of this nature where a litigant is trying to engage in wasteful successive litigations in order to protect its nonexistent right.

18. Rule 16 of Order 6 of the Code of Civil Procedure, empowers the Court to strike out pleadings which are unnecessary scandalous, frivolous or vexatious or which amount to an abuse of the process of the Court. A reading

of the plaint in the case on hand would show that the entire plaint would come within the scope of the words “abuse of the process of the Court”, if those pleadings are struck out the plaint cannot stand. Hence the plaint will have to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. Even otherwise, this Court sitting under Article 227 of the Constitution of India, has the power to strike out the plaint if it finds that it is an abuse of the process of the Court.

19. In *Surya Dev Rai v. Ram Chander Rai and others*, reported in (2003) 6 SCC 675, the Hon’ble Supreme Court has held that the power of Superintendence conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. While doing so, the Hon’ble Supreme Court has observed as follows:

“22. It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of

superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.”

20. In ***Ranipet Municipality rep. by its Commissioner and Special Officer, Ranipet vs. M.Shamsheerkhan***, reported in 1998 (1) CTC 66, this Court had held that in order to prevent miscarriage of justice, the Court can invoke jurisdiction under Article 227 of the Constitution of India and strike out the plaint. While doing so, this Court had observed as follows:

“9. It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the

Court, in any of the following cases:-

- (1) Gaining an unfair advantage by the use of a rule of procedure.*
- (2) Contempt of the authority of the Court by a party or stranger.*
- (3) Fraud or collusion in Court proceedings as between parties.*
- (4) Retention of a benefit wrongly received.*
- (5) Resorting to and encouraging multiplicity of proceedings.*
- (6) Circumventing of the law by indirect means.*
- (7) Presence of witness during examination of previous witness.*
- (8) Institution vexatious, obstructive or dilatory actions.*
- (9) Introduction of Scandalous or objectionable matter in proceedings.*
- (10) Executing a decree manifestly at variance with its purpose and intent.*
- (11) Institution of a suit by a puppet plaintiff.*

(12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc.

(See The Code of Civil Procedure - A.I.R. Commentary to Section 151, C.P.C.) The above are only some of the instances, where a party may be said to be guilty of committing abuse of the process of Court.”

21. This Court went on to conclude that despite that being an appellate remedy available against an order granting injunction under Rule 1 and 2 of Order 39 of the Code of Civil Procedure, this Court can exercise its power under Article 227 of the Constitution of India, in cases where there is a gross miscarriage of justice. In fact the plaint in a suit itself was struck off by this Court.

22. Reference could also be made to another judgment of this Court in ***Annapoorni vs. Janaki***, reported in **1995 (1) LW 141**, wherein, Hon’ble Justice M.Srinivasan, as he then was, observed as follows:

“73When this Court finds that a decree suffers from an error of law apparent on the face of the record, owing to non- application of mind of the Court, to the

relevant principles of law, this Court cannot keep silent and allow the decree to be in force, particularly, when it causes grave injustice. There can be no doubt whatever that under the Hindu Succession Act, certain persons are designated as Class I heirs and all of them are entitled to succeed to the estate of a deceased Hindu. There is no earthly reason for depriving the mother of the deceased, of her legitimate share in the estate which in this case happens to be a moiety.

This is a typical case of miscarriage of justice which should be rectified the moment it comes to the notice of this Court. It is only for that reason. I am exercising my powers under Section 115 of the Code of Civil Procedure and Article 227 of the Constitution of India.” (Emphasis Supplied)

23. In **Tamil Nadu Handloom Weavers Cooperative Society rep. By its Managing Director v. S.R.Ejaz, rep. by his Power Agent Muralidhar T.Balani**, reported in 2009 (5) LW 79, this Court had held that where the suit

itself is an abuse of the process of the Court, the same can be struck off exercising the supervisory jurisdiction of this Court. While doing so, this Court had observed as follows:

56. “.... When the subsequent suit is bound to be dismissed on the ground of both *res judicata* as well as *constructive res judicata*, there is no question of allowing the suit to continue, wasting the time of the trial Court. Similarly, when the subsequent suit was found to be a vexatious suit initiated to circumvent the binding decree passed earlier as well as to defeat the directions issued by the Supreme Court, there is no point in directing the petitioner to approach the trial Court with an application to reject the plaint.

57. The present suit is clearly vexatious and the attempt is nothing but re-litigation. The respondent has scant respect towards the Court and the rule of law. His attempt is to continue in possession at any cost. The learned Trial Judge should have rejected the plaint at the earliest opportunity and at least after filing counter by

*the revision petitioner, opposing the plea raised in the
suit as well as in the interlocutory application.”*

24. From the above observations, it is clear that even without an application under Order 7 Rule 11 of the Code of Civil Procedure or under Order 6 Rule 16, the Court is empowered to strike out the pleadings or even throw out the plaint, if it is found that the plaint is an abuse of the process of the Court or is a re-litigation. The facts stated above are sufficient to demonstrate that the present suit is a clear abuse of the process of the Court and amounts to a challenge to the title of the defendant which has been accepted by this Court in Second Appeal earlier and a decree for possession had been granted in favour of the defendant and the said decree having been executed through Court and possession having been handed over to the defendant. I am convinced that this suit cannot stay on file even a moment longer as it would demean the very majesty of the justice delivery system.

25. I therefore have no hesitation in allowing the Civil Revision Petition. The interlocutory application though filed under Order 6 Rule 16 is treated as under Order 7 Rule 11 of the Code of Civil Procedure and the same will stand allowed and the plaint will stand rejected as it is an abuse of the process of the Court. This Civil Revision Petition is therefore **allowed** and the plaint in the

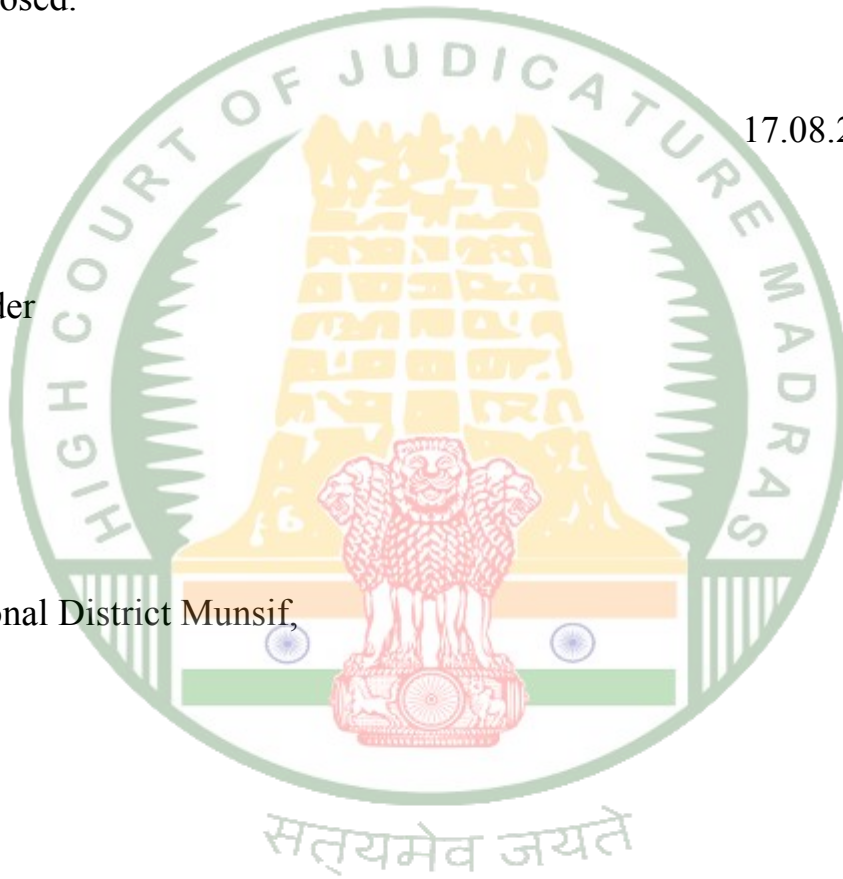
suit in OS No.34 of 2016 will stand rejected. Considering the nature of the case and the fact that the petitioners have been dragged to this Court, I impose a cost of Rs.10,000/- on the respondents. Consequently, the connected miscellaneous petition is closed.

17.08.2020

jv
Index: Yes
Internet: Yes
speaking order

To

The Additional District Munsif,
Cuddalore



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R.SUBRAMANIAN

jv



Pre Delivery Order

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