

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (NPD). No.3420 of 2013
and M.P. No. 1 of 2013

John Bunyan Carrey

... Petitioner

Vs

1.G.Arch Paul

2.Mark Rajendiran

3.George Daniel

4.Minor Lakshmi

5.Minor Vijaya

6.M.David

... Respondents

(Respondents 4 and 5 were rep. By
their next friend, Guardian maternal
grandmother Seethammal)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike of the plaint in O.S.No.13 of 2010, pending on the file of the Sub Court, Krishnagiri.

For Petitioner : Mr.A.Gouthaman

For Respondents : No appearance

ORDER

The matter is heard through "Video Conferencing".

The present Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.13 of 2010, pending on the file of the Sub Court, Krishnagiri.

2. The learned counsel appearing for the petitioner contended that the learned Judge erred in entertaining the suit without knowing the facts and circumstances of the case. The Trust was created and executed by life time and managing trustees by Registered Trust deed dated 02.05.1993 as Grace Mercy Home. The Trust was formed by the life time trustees with contribution of Rs.1001/- and any properties either movable or immovable acquired by gifts, purchase, settlement, etc., will be for the

purpose of Trust alone. It is false that none of the trustees have any individual or independent vested interest over any of the properties. The object of the Trust and its functioning are validly laid down as per the Trust deed. It is false to state that the properties were purchased by two sale deeds dated 07.10.1996 and 27.11.1996 in the name of plaintiffs' father Trust and five life time trustees were in possession and maintaining the suit properties. The 1st respondent earlier filed O.S.No.308 of 2002 on the file of the District Munsif Court, Krishnagiri for the relief of injunction and mandatory injunction and the said suit was dismissed holding that the first respondent has no right and title over the suit property. The present suit on the very same cause of action is hit by principles of res-judicata. The plaintiff has not filed any appeal against the judgment in O.S.No.308 of 2002 and the said judgment has become final. The suit properties are absolute properties of the petitioner's father and after his death, his legal heirs inherited the same. The defendants 6 and 7 in the earlier suit O.S.No.308 of 2002 are made as plaintiffs 2 and 3 in the present suit only with a view to confuse the issue and contend

that the cause of action and parties to the suit are different. O.S.No.91 of 2008 on the file the Sub Court, Krishnagiri was settled out of Court and entire amount has been paid to them and full satisfaction was also recorded and attachment was also cancelled by the Sub Registrar, Krishnagiri. The right of the respondents 1 to 3/plaintiffs and 6th respondent/4th defendant in the present suit had already been held against them in O.S.No.308 of 2002 and hence, they cannot claim any right in the present suit as cause of action for earlier suit and present suit are one and the same. The respondents 1 to 3 suppressed the material facts and has filed the present vexatious suit. The respondents 1 to 3 have not made any averments in the plaint with regard to earlier suit in O.S.No.308 of 2002. The suit filed by the respondents 1 to 3 is only abuse of process of Court and it is re-litigation of the issue already settled in O.S.No.308 of 2002.

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3. The learned counsel appearing for the petitioner further submitted that the Hon'ble Apex Court and this Court held that re-

litigation or vexatious suit cannot be entertained and it can be struck off at the beginning stage itself and relied on the following judgments:

(i) 2005 (4) LW 206 (The Member Concern Department of Post, Government of India Vs Ms. Annapoorni and others):

“25. All litigations would show that it is a clear case of abuse of process of the Court. The tendency appears to be Seethalakshmi Achi, Wife of Ramasamy Chettiar filing Writ Petitions challenging the Acquisition Proceedings and praying for reconveyance of the properties. The other family members appear to be filing suits after suits claiming Partition. O.S.No.7891 of 2000 has been filed by the Plaintiffs for Partition. On a different sets of facts, the same Plaintiffs have filed O.S.No.724 of 2003 alleging that there was family Partition and that the property was allotted to them. O.S.No.724 of 2003 is nothing but a

relitigation on the same set of facts, giving different colour which amounts to clear abuse of process. Observing that frivolous, vexatious proceedings amount to abuse of process of Court, in the decision reported in K.K.MODI ..VS.. K.N.MODI (A.I.R. 1998 S.C. 1297 = 1998 (3) SCC 573) the Supreme Court has held

"....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 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”.

(Emphasis supplied)

26. 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 res judicata. 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, as a spurious claim being made in litigation may also in a given set of facts amount to an abuse of 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 proceedings summarily and prevent the time of 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 would be sparingly exercised, and exercised only in special cases. The Court should also be satisfied that there is no chance of the Suit succeeding.

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28. In *McLLKENNY ..VS.. CHIEF CONSTABLE OF WEST MIDLANDS POLICE FORCE* (1980) 2 ALL E.R. 227, 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.

.....

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. In the circumstances of the case, it is just and necessary to direct the respondents to pay a cost of Rs.20,000/- (Rupees Twenty Thousand Only) – (Rs.10,000/- payable to the Revision Petitioner/Postal Department and Rs.10,000/- payable to the Tamil Nadu State Legal Services Authority, Chennai).”

(ii) 2013 (1) CTC 180 (N. Babu Vs. S. Shanmugam and Others):

“7. In the judgment reported in 2003 (3) MLJ 566, this Court following the judgment reported in K.K.Modi Vs. K.N.Modi, AIR 1998 SC 1297: 1998 (3) SCC 573, has held that the Court has got power to stop vexatious proceedings and when there is a clear abuse of process of Court, the Court has to view such conduct seriously and the same has to be deleted to save the precious time of the public and the Court being wasted.

8. In the judgment reported in Tamil Nadu Handloom Weavers' Cooperative Society V. S.R.Ejaz, 2009 (5) CTC 710, following law laid down in Palanisami Gounder V. Sankara Ramanathan & 4 others, 1999 (3) LW 897, the learned Judge held that subsequent Suit filed at the instance of the judgment-debtor in an earlier suit, which was confirmed by the High Court has to be set aside by invoking the jurisdiction of the Court under Article 227 of the Constitution of India. Further, the learned Judge observed as follows in the above judgment which is

relevant for this case:

“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...

59.It is the solemn duty of this Court to see that nothing would come in the way of frustrating the recipient of justice from executing the decree. Similarly, the Court is expected to filter out and throw all unwanted and vexatious litigations which would be an obstruction to the decree jolders in their journey to get justice.

Conclusion:

60.The issue involved in this Revision is a classic example as to how a vexatious litigant would be able to delay the legal process and cause threat to the very Justice Delivery System by way of unwanted re-litigation. The respondent was attempting to make mockery of the very judicial system. In case litigants like the respondent is permitted to achieve

their objective in delaying the execution of a decree passed by the Court, which was attained finality, the common man will lose faith in Courts as well as in the Justice Delivery System.”

.....

10. Therefore, from the law laid down by the Hon'ble Supreme Court and this High Court, it is very clear that in the case of re-litigation, the Court should strike off the plaint at the earliest instance and the filing of subsequent Suit is a clear abuse of process of Court and that should not be encouraged.

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25. Further, though an alternative remedy is available to the Revision Petitioner, for striking off the suit under Order 21, Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of Court and when the facts are not controverted and admitted by the Plaintiff/First Respondent, the Court can exercise the extraordinary jurisdiction of the Court under Article 227 of the Constitution of India and strike off the plaint and as a matter of fact, this Court and Hon'ble Supreme Court held that the right conferred under Article 227 must be

exercised very sparingly and it is also settled law that when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of Article 227 of the Constitution of India.”

(iii) 2009 (2) CTC 57 (Dindigul Pettai Sathangudi Shatriya Nadar Urayinmurai vs. Selvaraj Sundar and Others):

“11. As per the above said dicta, if a party has initiated a vexatious or frivolous litigations in order to harass the other party, the Court can nip the attempt in the bud itself, irrespective of the stage of such proceedings.

.....
13. *As per the opinion expressed by this Court, if the court is of the view that a particular litigation is a totally unnecessary one, which was initiated with a view to harass the other side, the Court can discern the circumstances, decide and to hold that it is an abuse of process of court.*

.....
20. *In considered opinion of this Court,*

whenever this Court finds any abuse of process of Courts and if the proceedings initiated are possessing the elements of frivolousness and vexatiousness, this Court can very well pass appropriate orders, invoking Article 227 by exercising supervisory jurisdiction.”

(iv) 2017 3 LW 443 (P. Srikanth vs. R. Venkatesan and others):

“25. Considering all the materials on record and judgments relied on by the learned Senior Counsel for the petitioner, I hold that the suit filed by the first respondent is a clear abuse of process of court and it is nothing but re-litigation of the very same issue of title to the suit property. The judgment relied on by the learned Senior Counsel for the petitioner with regard to re-litigation are squarely applicable to the facts of the present case. The relief sought for in the suit in O.S. No. 11 of 2014 and the present suit is entirely different and cause of action for both the suits are also different. Further the learned counsel for the first respondent has stated that the suit in O.S. No. 111 of 2014 has become infructuous in view of the fact that

the sale deed has been released to the petitioner. In view of the same, the suit is not hit by provisions of Order II Rule 2 CPC.

.....

27. The above judgments are squarely applicable to the facts of the present case and this Court has power not only under Section 115 of CPC and has power under Article 227 of the Constitution of India to reject the plaint but also has power to strike off the plaint, when it is brought to the notice of the court that the suit is abuse of process of court. The Hon'ble Apex Court held that it is the duty of the courts to prevent the said abuse of process of court becoming perpetual by interfering with the proceedings. The abuse of process of court is instituting vexatious, obstructive or dilatory action in court of law is one instance; where a party should be held to be guilty of an abuse of the multiplicity of proceedings for enhancing one's own wealth is yet another instance where a party could be said to have committed an abuse of the process of the court."

**(v) Order dated 16.02.2017 made in C.R.P.(MD).No.563 of 2015
(PD) (R. Arun Vs. D. Manivannan and others):**

“12. The power conferred on the Courts under Article 227 of the Constitution of India is an extraordinary power. As per the said power, the Court has supervisory control over Subordinate Courts. The Court has power to stop the proceedings and strike out the plaint, if the said proceeding is abuse of process of Court; the plaint does not reveal cause of action; the Court has exceeded its jurisdiction or failed to exercise its jurisdiction or from the averments in the plaint, it is seen that there is no possibility of plaintiff succeeding in the suit or the suit is abuse of process of Court. Article 227 of the Constitution of India can be invoked also to prevent miscarriage of justice and grave injustice and the relief sought for is contrary to justice and public policy. The Court can exercise this power even if the party has not exhausted the alternative remedy. The vexatious, obstructive or dilatory action can be struck off at the threshold itself.

13.It is pertinent to note that the Court must

exercise this power sparingly and only in extraordinary cases. The plaint can be struck off only when the Court is satisfied that it is a fit case to exercise the power under Article 227 of the Constitution of India. This power is discretionary power and the Court must exercise the power judicially. The Court can consider only the averments in the plaint to decide whether the plaint is liable to be struck off or not. The written statement or any document relied on by the defendant cannot be considered."

(vi) 2010 (4) CTC 690 (Southern and Rajamani Transport Private Limited Vs. R. Srinivasan)

"32. Before, parting with this Civil Revision Petition, it has become infeasible to say something about the conduct of the Principal District Court, Pudukottai. The First Respondent/Plaintiff has instituted Original Suit No. 3 of 2010 for the reliefs of Specific Performance and perpetual injunction mainly on the basis of the Sale Agreement dated 20.09.2000 alleged to have been executed by the fourth

Respondent/25th Defendant. Even in the said. Sale Agreement it has been specifically stated that the properties mentioned therein have been allotted to the share of B.V. Rajagopal Naidu who is none other than the father of the fourth Respondent/25th Defendant. In the Sale Agreement dated 20.09.2000 the present Revision Petitioners/Defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 are not at all parties and there is no privity of contract as well as binding nature between the Revision Petitioners/Defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 and First Respondent/Plaintiff. Therefore the Revision Petitioners/Defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 are totally unnecessary parties to Original Suit No. 3 of 2010. But the Principal District Court, Pudukottai has taken the Plaint on file in Original Suit No. 3 of 2010 without knowing the fact that there is no privity of contract between the Revision Petitioners/Defendants 1, 2, 3, 5, 6, 8 to 24 and 26 to 37 and First Respondent/Plaintiff. In fact, the Principal District Court, Pudukottai has adopted a spasmodic as well as desultory conduct in numbering Original Suit No. 3 of 2010. In every

District, Principal District Court is having power of superintendence over its Subordinate Courts and the same should be a prototype in administration of justice. But, here the Principal District Court, Pudukottai has done a flagrant and also a stupendous mistake in numbering Original Suit No. 3 of 2010 against the Revision Petitioners. It is not an exaggeration to say that the Principal District Court, Pudukottai has adopted complete lethargic attitude for the reasons best known to it. The approach made by the Principal District Court, Pudukottai is not only regrettable but also condemnable.”

4. Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. The petitioner has filed the present Civil Revision Petition under Article 227 of the Constitution of India to strike off the plaint in O.S.No.13 of 2010 on the ground that the respondents 1 to 3 are re-litigating the issue already decided in O.S.No.308 of 2002 filed by the 1st respondent on the file of the District Munsif Court, Krishnagiri and the present suit is abuse of process of Court and the learned Judge did not exercise the power properly while entertaining the suit in O.S.No.13 of 2010.

7. The power conferred on the Court under Article 227 of the Constitution of India is an extraordinary discretionary power. As per the said power, this Court has supervisory control over the Subordinate Courts. This power can be exercised to strike out the plaint and stop the proceedings of the suit if defendants substantiate any one of the following grounds:

(a) The suit is abuse of process of Court.

(b) The plaint does not reveal the cause of action.

- (c) The Court has exceeded its jurisdiction or failed to exercise its jurisdiction.
- (d) To prevent miscarriage of justice or injustice.
- (e) From the averments of the plaint, if there is no possibility of succeeding the suit.
- (f) The relief sought for is contrary to justice and public policy.
- (g) If the suit is vexatious, obstructive or dilatory action in Courts of law.

8. The Court has power to strike off the plaint at the threshold itself even if party has not exhausted alternative remedy. The issue of striking out the plaint while exercising extraordinary discretionary power under Article 227 of the Constitution of India is no longer res-integra. The judgments relied on by the learned counsel appearing for the petitioner has enumerated the grounds on which the plaint can be struck off.

9. Based on the above well settled judicial pronouncement, it is to be seen that whether petitioner has made out a case for striking off the plaint in O.S.No.13 of 2010.

10. It is the contention of the learned counsel appearing for the petitioner that earlier suit was filed in O.S.No.308 of 2002 by the 1st respondent against the petitioner, his brothers, sisters and the respondents 2 and 3 and 6th respondents. The said suit after contest was dismissed and the contention of the learned counsel appearing for the 1st respondent was rejected. The 1st respondent did not file any appeal and the judgment dated 25.01.2006 in O.S.No.308 of 2002 has become final. The 1st respondent adding respondents 2 and 3 as plaintiffs who were the defendants 6 and 7 in the suit in O.S.No.308 of 2002, filed the present suit O.S.No.13 of 2010 against the petitioner and respondents 4 to 6, agitating the very same issue raised in the earlier suit.

11. The petitioner has not filed the copy of the plaint in O.S.No.308 of 2002 filed by the 1st respondent. The failure on the part of the petitioner to file copy of the plaint filed by the 1st respondent in the earlier suit O.S.No.308 of 2002 itself is a ground for dismissing the Civil Revision Petition. But the petitioner has filed the copy of the judgment dated 25.01.2006 made in O.S.No.308 of 2002 in the typed set of papers. In view of the same, I proceed to decide the Civil Revision Petition on merits.

12. From the judgment in O.S.No.308 of 2002, it is seen that the 1st respondent has filed suit for permanent injunction restraining the petitioner and others with administration of the Trust and for mandatory injunction to produce the Trust documents. The issues in the said suit related to the petitioner and others preventing the 1st respondent from entering the office premises, discharging his duties and to elect new managing trustee. The 1st respondent also prayed for injunction restraining the petitioner and others from alienating the properties

belonging to the Trust. The learned Judge considering the averments in the plaint and written statement, framed seven issues. The said issues did not relate to title of the suit properties. No issue was framed to decide who is the owner of the suit properties. In the present suit, the respondents 1 to 3 are claiming relief of declaration of title of the suit properties and other relief. The main relief in the present suit is with regard to title of the suit properties. According to the respondents 1 to 3, the suit properties are properties of Trust purchased by two sale deeds dated 07.10.1996 and 27.11.1996.

13. On the other hand, it is the contention of the petitioner that the suit properties were absolute properties of his father John William Carrey, who has purchased the suit properties. After death of his father, the petitioner and his brother, sisters became absolute owner of the properties and they are in possession and enjoyment of the same. From the rival contention of the petitioner and respondents 1 to 3, it is seen that there is a dispute with regard to ownership of the suit properties and both

the parties claim title by virtue of two sale deeds. Whether the petitioner, his brothers and sisters are owner of the suit properties or properties belong to the Trust can be decided only by appreciating the evidence let in by the parties during trial in the present suit and the same cannot be decided in the present Civil Revision Petition filed under Article 227 of the Constitution of India. Further, the relief sought for in O.S.No.308 of 2002 and the present suit are not one and the same. As already stated, the issue of title was not an issue and no issue with regard to title was framed in the earlier suit in O.S.No.308 of 2002. For the above reason, I hold that the respondents 1 to 3 are not re-litigating the issues already decided in the earlier suit and disputed claim of title cannot be decided in the present petition.

14. The second ground of the learned counsel appearing for the petitioner that suit is abuse of process of Court, is based on the contentions that the respondents 1 to 3 are re-litigating the issue already decided and became final. Once it is held that the respondents 1 to 3 are

not re-litigating the issue, this ground has no legs to stand.

15. The third contention of the learned counsel appearing for the petitioner that the learned Judge ought not to have entertained the suit on file, is without merits. When plaint is presented in a competent Court having jurisdiction, the Court has to verify whether plaint complies with the provisions of C.P.C., and procedures laid down for entertaining the plaint and the Court cannot decide whether the plaintiff is re-litigating the issue already decided or suit is abuse of process of Court. Considering the entire materials on record, the judgment dated 25.01.2006 in O.S.No.308 of 2002, the averments in the present plaint in O.S.No.13 of 2010 and the ratio in the judgment relied on by the learned counsel appearing for the petitioner, it is clear that the petitioner has not made out any case for striking off the plaint in O.S.No.13 of 2010.

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16. The judgments relied on by the learned counsel appearing for

the petitioner do not advance the case of the petitioner. On the other hand, the judgments have laid down the grounds on which the plaint can be struck off by exercising the discretion of the Courts under Article 227 of the Constitution of India. The petitioner has not made out any case substantiating any one of the conditions under which the plaint can be struck off by exercising power under Article 227 of the Constitution of India.

17. The Civil Revision Petition is filed on misconception and misinterpretation of the facts and law. The Civil Revision Petition is devoid of merits and is liable to be dismissed and is hereby dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

28.09.2020

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Index: Yes/No

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V.M.VELUMANI, J.

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To

The Subordinate Judge,
Krishnagiri.



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