

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.09.2020	Delivered on 29.09.2020
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD.No. 2410 of 2018

and

C.M.P.No. 14861 of 2018

S.Mohan

... Petitioner

-VS-

P.Naveen Kumar

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 12.12.2017 made in I.A.No. 866 of 2016 in O.S.No.472 of 2016 on the file of the learned Sub-Judge, Avinashi.

For Petitioner : Mr.V.Raghavachari for
Mr.T.Sundaravadanam

For Respondent : Mr.K.S.Karthik Raja

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ORDER

The defendant in O.S.No.472 of 2016 on the file of the Sub-Court,

Avinashi (O.S.No.416 of 2012 on the file of the Sub-Court, Tirupur) has come up with this Civil Revision Petition, challenging the dismissal of his application in I.A.No. 866 of 2016, seeking rejection of the plaint, by the Trial Court.

2. The said suit has been filed by the respondent herein, seeking a declaration that the decree dated 02.07.1983 made in O.S.No. 40 of 1983 on the file of the Sub-court, Tirupur is null and void and not binding on the plaintiff, a declaration that the decree dated 23.01.2002 made in O.S.No. 62 of 1999 on the file of the Sub-Court, Tirupur is null and void and not binding on the plaintiff, directing partition of the suit property into four equal shares and allot one such share to the plaintiff, put him in possession of such share so allotted and for costs.

3. The application for rejection of the plaint was filed mainly on the ground that the suit itself is an abuse of process of court. The history behind the present proceedings is as follows:-

3.1. The suit property originally belonged to one Kondappa Gounder and his son Ponnusamy, who had mortgaged the same on 14.07.1980 in favour of M/s. Shanmuga Vadivu Chit Funds represented by

its Proprietrix Srimathi. Rukmani. Since the mortgagors failed to repay the mortgage money, the mortgagee filed a suit in O.S.No. 937 of 1982 on the file of the District Munsif Court, Tiruppur. The said suit came to be decreed on 02.07.1983. Since Kondappa Gounder, who was the second defendant in the suit died even prior to the suit, he was exonerated. His son, Ponnusamy was already on record as the first defendant.

3.2. After decree, Ponnusamy sold a portion of the property mortgaged to one Sivagami on 15.03.1984. The decree holder filed E.P.No. 107 of 1985 seeking execution of the decree in O.S.No. 937 of 1982. The property was sold in execution on 22.01.1986. The petitioner herein was the successful bidder of the auction that was held on 22.01.1986. Upon confirmation of the sale, the petitioner filed E.A.No. 555 of 1986 for delivery of possession. The Executing Court ordered delivery on 09.02.1987. It is claimed that the purchaser was put in symbolic possession of the property.

3.3. Subsequently, the petitioner herein filed a suit in O.S.No. 62 of 1999 seeking recovery of possession of the suit property against Ponnusamy and Sivagami, the purchaser from Ponnusamy. A prayer for

setting aside the sale deed executed by Ponnusamy in favour of Sivagami was also sought for. The said suit came to be decreed on 23.01.2002. The petitioner herein filed E.P.No. 44 of 2005 seeking delivery of possession. The executing court ordered delivery on 06.01.2006. The said order was challenged before this Court in C.R.P.No. 485 of 2006. The said Civil Revision Petition came to be dismissed by this Court on 18.12.2006. Thereafter, the purchaser from the mortgagor namely, Sivagami and her son, Yoga Prakash filed a suit in O.S.No. 81 of 2007 claiming that the entire proceedings in O.S.No. 40 of 1982 and E.P.No. 107 of 1985 are illegal and null and void and the decree in O.S.No. 40 of 1983 was obtained by fraud since the legal heirs of Kondappa Gounder had no saleable interest in the hypotheca on the date of the auction namely, 22.01.1986.

4. On the above contentions, a decree for partition was sought for by Sivagami and her son, Yoga Prakash. It is seen from the records that the said suit was reportedly settled out of Court and the suit was dismissed on the basis of a memo filed by the plaintiffs in the suit. The defendant namely, the petitioner herein and the original mortgagor had not signed the memo reporting such settlement.

5. In the interregnum, the petitioner has approached this Court seeking early disposal of E.P.No.44 of 2005 in C.R.P.No. 1077 of 2009. This Court, by an order dated 22.04.2009 directed the Executing Court to complete the proceedings in E.P.No. 44 of 2005 within four months from the date of receipt of a copy of this order therein. It is in this back ground, the suit in O.S.No. 416 of 2012 came to be instituted by the respondent seeking the prayers stated supra. The 3rd defendant in the suit filed written statements supporting the case of the petitioner herein. The 4th defendant, Sivagami also filed a written statement acknowledging the fact that possession has been taken by the 5th defendant / petitioner herein in execution of the decree in O.S.No. 62 of 1999. The 5th defendant filed I.A.No.866 of 2016 seeking rejection of the plaint on the ground that the plaint is an abuse of process of Court. Since Ponnusamy, the father of the plaintiff was a party to all the earlier proceedings and as such, the earlier proceedings would be binding on the present plaintiff.

6. The said application was resisted by the plaintiff contending that the suit properties being ancestral properties and he, having been born

prior to the decree in O.S.No.937 of 1982, ought to have been joined as a party in the said suit. Since he was not made a party to the suit, the decree in O.S.No. 937 of 1982 and the subsequent proceedings will not bind him. It is his further contention that he came to know about the suit itself only recently and as such he is entitled to the reliefs prayed for in the suit.

7. The learned Trial Judge, who heard the application on an erroneous understanding of the observation of this Court in its order in C.R.P.No. 485 of 2006 dismissed the application concluding that the suit has been filed pursuant to the liberty given by this Court. The Trial Court also concluded since the plaintiff / respondent had alleged fraud, the same has to be decided only after evidence is let in on the merits of the claim. On the said conclusions, the learned Trial Judge dismissed the application. Aggrieved, the 5th defendant in the suit has come up with this civil revision petition.

8. I have heard Mr.V.Raghavachari for Mr. T.Sundaravadanam, learned counsel for the petitioner and Mr.K.S.Karthik Raja, learned counsel for the respondent.

9. Mr.V.Raghavachari, learned counsel for the petitioner would

vehemently contend that the very suit is not maintainable at the instance of the respondent in as much as his father Ponnusamy was a party to all the earlier proceedings. He would submit that the respondent cannot claim to have any interest in the property which has been sold in a Court auction in the year 1986 pursuant to a valid decree passed, based on a mortgage executed by the father and grand father of the respondent prior to the birth of the respondent. It is the further contention of Mr.V.Raghavachari that the Trial Court had grievously erred in concluding that this Court has permitted the suit to be filed in C.R.P.No.485 of 2006.

10. Drawing my attention to the order of this Court in C.R.P.No. 485 of 2006, Mr.V.Raghavachari would contend that the claim that this Court refused to go into the question of fraud on the ground that the other legal heirs of Kondappa Gounder were not impleaded. This Court only observed that the parties can file a separate suit, if so advised. Mr.V.Raghavachari would also point out that such an observation by this Court cannot be construed as a licence to the plaintiff to file the present suit that too after six years from the date of disposal of the Civil Revision Petition. He would also point out that the respondent's father was a party to

the said Civil Revision Petition.

11. Mr.V.Raghavachari would also contend that the father of the respondent had actually sold the property to Sivagami, the fourth defendant in the suit even on 15.03.1984 and the respondent has not chosen to question the validity of the said sale in the suit. He would also point out that the petitioner herein has filed a suit against the Sivagami in O.S.No. 62 of 1999 and the said suit has been decreed pursuant to which he has filed an execution petition and has taken possession of the property through Court. He would also invite my attention to various decisions of the Hon'ble Supreme Court and this Court, which conclude that the grounds for rejection of a plaint under Order 7 Rule 11 are not exhaustive and the Courts can always weed out vexatious complaints on other grounds such as abuse of process of Court also.

12. Mr.V.Raghavachari would draw my attention to the judgments of the Hon'ble Supreme Court in **T.Arivanandam Vs. T.V.Satyapal** reported in AIR 1977 SC 2421, **Surya Dev Rai Vs. Ram Chander Rai** reported in (2003) 6 SCC 675, and this court in **Ranipet Municipality Vs. M. Shamsheerkhan** reported in 1998 (1) CTC 66 and **Tamilnadu**

**Handloom Weavers Cooperative Society rep.by its Managing Director
Vs. S.R.Ejaz rep. by its power Agent Muralidhar T.Balani reported in
2009 (5) LW 79** in support of his submissions. He would also rely upon the
recent judgment of mine in **Saraswathy Ammal & others Vs. Govindan &
another reported in 2020 (4) LW 254.**

13. Contending contra, Mr.K.S.Karthik Raja, learned counsel for the respondent would submit that since the plaintiff has not been made a party to any of the earlier proceedings, those proceedings are not binding on him and therefore, he is entitled to ignore them and to seek a decree for partition. He would also submit that though he was born in 1983, he was not made a party to the suit and the decree was obtained behind his back. I have considered the submissions of the learned counsel appearing on either side.

14. As regards the power of the Court to reject the plaint or weed out a vexatious suit or proceedings, there is very little doubt that the Courts can throw out a plaint even on grounds which are not enumerated under Order 7 Rule 11 of C.P.C. The grounds enumerated under Order 7 Rule 11 of C.P.C., have been held to be not exhaustive. I have considered all the

decisions relied upon by Mr.V.Raghavachar in the judgment in **Saraswathy Ammal & others Vs. Govindan & another reported in 2020 (4) LW 254**, after considering the decisions relied upon by the learned counsel for the petitioner, I have concluded as follows:-

“ 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 one 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.”

15. In view of the above, I do not think that I need to re-state the position of law as regards the rejection of plaints under Order 7 Rule 11. Coming to the case on hand, the facts narrated above would amply demonstrate that the plaint is nothing but an abuse of process of Court. The original suit on the mortgage was filed even in the year 1982 prior to the birth of the plaintiff. The same was decreed on 02.07.1983. The property was brought to sale and actually sold in Court auction on 22.01.1986. Even prior to the Court auction sale, the father of the respondent, Ponnusamy had sold the property on 15.03.1984 to Sivagami. The Court auction purchaser was forced to take various proceedings not only against the father of the respondent but also against Sivagami, the purchaser subsequent to the decree and eventually, he was able to take possession of the property in E.P.No. 44 of 2005. The plaintiff has been sitting on the fence and watching

the entire proceedings and comes up with the present suit in the year 2012 claiming that he had no knowledge of these proceedings.

16. No doubt, limitation for setting aside a decree would commence from the date of knowledge but in the present case, I do not think that the question of limitation need to be addressed at all. I am convinced that the claim of the plaintiff / respondent herein is a stale claim and even in his absence as a party to the suit, the suit was laid against his father, who was admittedly Karta to the joint family and a decree was passed against him as a Karta of the joint family. The said decree will definitely bind the respondent. He cannot after lapse of almost 29 years file a suit seeking to set aside the decree. On the date of the suit, the petitioner is shown to be aged at 28 years, the alienation of the property by a Karta has to be set aside in the manner known to law and such suit will have to be filed within three years from the date of attaining majority. Therefore, looking at from any angle, the suit is an abuse of process of Court and it deserves to be thrown out at the threshold itself. I therefore, have no hesitation in concluding that the Trial Court was wrong in dismissing the application filed under Order 7 Rule 11 on the ground that this Court had granted liberty

in C.R.P.No. 485 of 2006.

17. In view of the above, this civil revision petition is allowed, application in I.A.No. 866 of 2016 will stand allowed. The plaint in O.S.No. 472 of 2016 on the file of the Sub-Court, Avinashi will stand rejected. No costs.

29.09.2020

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Index: Yes
Internet: Yes
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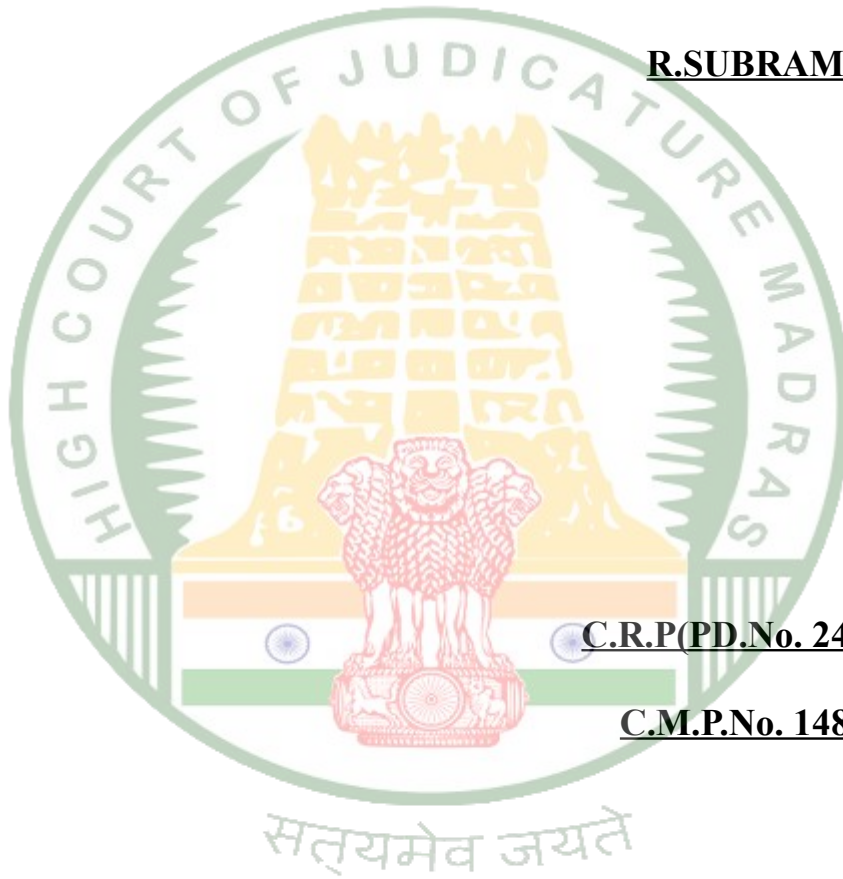
To:-

1. The learned Sub-Judge,
Avinashi.



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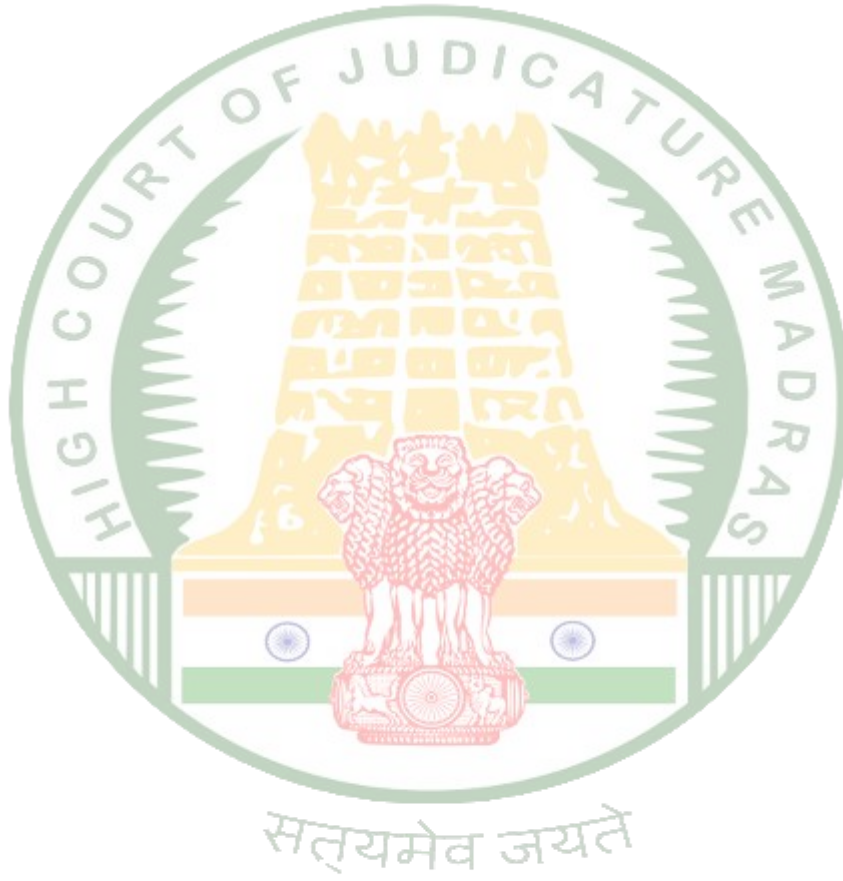
R.SUBRAMANIAN, J.
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C.R.P(PD).No. 2410 of 2018
and
C.M.P.No. 14861 of 2018

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