

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4341 of 2019

G.Gopal Pillai

.. Appellant

vs.

1. The Commissioner of Land Administration
Ezhilagam, Chepauk
Chennai - 600 005.

2. The District Collector
Kancheepuram.

3. The District Revenue Officer
Kancheepuram.

4. A.Noor Mohammed
District Revenue Officer
Kancheepuram.

5. The Tahsildar
Tambaram Taluk.

6. Ranganayagi

7. Narayanan

.. Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent against the order dated 31.10.2019 passed by the learned Single Judge in W.P.No.21812 of 2018.

WP.No.21812/2018 : Writ Petition is filed under Article 226 of the constitution of India, to issue a writ of certiorari to call for the records of 3r respondent herein in Na.Ka.No.22885/2017 No.3, dated 07/08/2018 to quash the same as illegal and pass order.

For Appellant

: Mr.N.Manokaran
for M/s.D.Puspa

For Respondents

: Mr.R.Udayakumar
AGP for respondents 1 to 4

Mr.P.V.Balasubramanian
for Mr.V.Chandraprabu
for respondents 6 and 7

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The writ appeal is by the petitioner whose writ came to be dismissed by the learned Single Judge refusing to interfere with the order dated 7.8.2018 passed by the District Revenue Officer, Kancheepuram, which according to the appellant/petitioner was an order passed without appreciating the fact that the dispute related to the identity of the land that had to be adjudicated only through a civil suit as per the order of the High Court dated 10.03.2015 and then culminating in the judgment of the Civil Court dated 30.06.2016.

2. The appellant/petitioner contends that in the background aforesaid, an order of re-survey of the land by the District Revenue Officer on the representation of the contesting respondent No.7 clearly amounted to an abuse of process that was attempted by respondent No.7 and in which he succeeded to obtain the order impugned in connivance with the District Revenue Officer. The contention is that the learned Single Judge, in spite of having noticed these facts and having noticed the dispute with regard to the identity of the land, refused to interfere with the order of the District Revenue Officer, which clearly amounted to conferring the jurisdiction on the revenue authorities to adjudicate on the identity of the land that had already reached the Civil Court and the suit had been dismissed. The learned Single Judge also overlooked the fact that a writ petition had been filed before this Court being W.P.No.8682 of 2012 and the interim order passed therein came to be vacated on the ground that the order dated 25.1.2006 that had been passed was already a subject matter of a suit in which the plaintiff was late Muralidharan on whose behalf Power of Attorney was being held by respondent No.7, which suit was ultimately dismissed.

3. It is, therefore, submitted that once the predecessor of the contesting respondent had been declined indulgence by this Court under Article 226 of the Constitution of India on the ground that the civil suit is pending, then the same principle should apply when the suit filed by him was ultimately dismissed and therefore, the approach made to the District Revenue Officer by the respondent No.7, who is the power of attorney holder of Muralidharan through a representation was not only an abuse of

process of seeking redressal, but was rather trying to circumvent the finality attached to the proceedings in the background aforesaid. The reopening of the issue before the District Revenue Officer, therefore, ought to have been set aside by the learned Single Judge and having failed to exercise jurisdiction, the prayer is to set aside the impugned judgment as well as the order passed by the District Revenue Officer dated 7.8.2018 to enable the parties to seek their remedy in the appeal filed against the dismissal of the suit which is stated to be still pending.

4. In order to appreciate the aforesaid contention of the learned counsel for the appellant/petitioner, the background in which the dispute arose is that on 02.12.1945, 82 cents of land of Plot Survey No.236 came to be sold by Ramanuja Reddy and A.Krishna Reddy to two persons through separate sale deeds. One sale deed of 41 cents was executed on the purchase of the land by Muniammal, the mother of the appellant/petitioner. The other 41 cents through another separate sale deed executed on the same day was purchased by Ponna Pillai, the brother of Muniammal. Ponna Pillai died as bachelor intestate leaving behind his brother Kulla Pillai, who also died leaving behind his son Munusamy as his sole legal heir. Respondent No.6 Ranganayagi is the widow of late Munusamy. Muralidharan, who pre-deceased his mother respondent No.6, is the son of Munusamy and Ranganayagi and he executed a Power of Attorney in favour of respondent No.7 Narayanan in the year 2014. Pending all these disputes which have been going on after an order was passed on 25.1.2006 by the District Revenue Officer, the revenue records were rectified in favour of the appellant/petitioner by expunging the name of Kulla Pillai whose name, according to the appellant/petitioner, had been erroneously recorded in respect of the land of 41 cents that is being claimed by the appellant/petitioner.

5. From the records, it appears that the dispute arose with regard to the identity of the land in which the Tahsildar issued patta for 41 cents describing it as Plot Survey No.236/1A in favour of the appellant/petitioner and Survey No.236/1B in favour of respondent Nos.6 and 7 claiming through Ponna Pillai and then through Kulla Pillai. The dispute therefore appears to be of the identity of the land which is being developed by respondent No.7 under the Power of Attorney stated to have been executed in his favour by Muralidharan as the heir of Ponna Pillai, Kulla Pillai, Munusamy and Ranganayagi. It is this dispute of identity which had arisen way back in the year 2006 with rectification order passed by the District Revenue Officer on 25.1.2006, long before respondent No.7 had obtained the Power of Attorney from Muralidharan in 2014.

6. A perusal of the order dated 25.01.2006 indicates that

upon enquiry it was found that there were two sale deeds in existence. The respondent Muralidharan, son of late Munusamy, appeared in the proceeding and in his statement narrated that the land which is claimed by the appellant had been subject matter of a oral sale from his mother Muniammal and that they have been cultivating the land and growing crops over it. It is on this ground that the patta came to be issued in the name of his father and paternal uncle. He further set up a claim that his grandfather Kulla Pillai had executed a Will in 1992 in favour of his father Munusamy and paternal uncle Jagannathan as well as himself in respect of the said land, whereafter they have been paying the property tax continuously. It was also alleged that O.S.No.265 of 2004 had been filed, which was dismissed. In this background, the respondents had contested the matter before the District Revenue Officer, Kancheepuram, practically setting up their title firstly on the basis of the oral sale and then justifying it through the Will of Kulla Pillai and payment of property tax. During enquiry, the paternal uncle of Muralidharan viz., Jagannathan (brother of Munusamy) had also stated the same things.

7. The District Revenue Officer, Kancheepuram, after perusing the Settlement Register and also conducting a site inspection as well as considering the recitals contained in the sale deed, came to the conclusion that this statement of oral purchasing of the said land from Muniammal was unacceptable and the writing of the Will by Kulla Pillai about the land was unsubstantiated as to how the property had been acquired by Kulla Pillai. In the absence of any such recital, the District Revenue Officer opined that the Will appears to have been created for the purpose of acquiring the property. The District Revenue Officer also indicated that there were Velikathan (prosopis juliflora) plants and other plants and that the land was vacant. Concluding, the District Revenue Officer after having examined the encumbrances etc. held that since the respondents could not produce any valid documents claiming right over the land, the legal heirs of Muniammal viz., Gopal Pillai and Lakshmi were directed to be recorded as patta holders. He further observed that if any party has an objection, he can file an appeal before the Special Commissioner within thirty days.

8. This order came to be challenged in a Revision Petition by Muralidharan before the Commissioner of Land Administration, but the same was not entertained on the ground that the jurisdiction had been withdrawn vide a Government Order dated 02.07.2008 and therefore, the party should approach a competent Court of law for any further remedy. This communication dated 7.8.2009 is on record.

9. From a perusal of the judgment and decree of the Civil

Court on 30.06.2016, it appears that O.S.No.61 of 2010 was filed seeking declaration that the order dated 25.01.2006 passed by the District Revenue Officer as well as the consequential actions be declared as null and void and permanent injunction be issued in favour of the plaintiff Muralidharan. Other suits were also filed that were pending being O.S.No.88 of 2006; O.S.No.106 of 2010 and O.S.No.247 of 2008. The details of all the suits are contained in the judgment and decree dated 30.06.2016, but for the present purpose, we have mentioned the relief prayed for in the suit in O.S.No.61 of 2010 against the order dated 25.01.2006.

10. Muralidharan then filed W.P.No.8682 of 2012 before this Court during pendency of the suit itself and an interim order was passed in the said writ petition on 30.01.2015. On coming to know of the same, the appellant Gopal Pillai filed stay vacate application being M.P.No.1 of 2015 and the interim order was vacated on 10.03.2015 by observing as follows:

"Heard Mr.S.Parthasarathy, learned Senior Counsel appearing for the petitioner/fourth respondent and Dr.R.Sampath Kumar, learned counsel appearing for the first respondent/writ petitioner and Mr.S.Gunasekar, learned counsel appearing for Respondents 2 to 5.

2.Learned Senior Counsel appearing for the petitioner/fourth respondent submitted that the suits have been filed by the petitioner and not by the fourth respondent and joint trial was ordered by the trial Court and trial has been completed and the arguments are also over and the judgment has been reserved.

3.It is seen that in one of the suits in O.S.No.61 of 2010, the order impugned in this writ petition is the subject matter or challenge wherein the declaration sought for in the said suit is to declare the order dated 25.01.2006 as null and void. Therefore, obviously, the petitioner cannot maintain writ petition for the same relief.

4.In the light of the above, the interim stay already granted by this Court dated 30.01.2015 in W.P.No.8682 of 2012 stands vacated. M.P.No.1 of 2015 ordered accordingly.

Post the matter after three weeks for filing reply affidavit."

Thus, it is clear that Muralidharan who had executed the Power

of Attorney in favour of respondent No.7 had no order in his favour either in the suits filed by him or by any other authority. The interim order of the High Court was also vacated clearly mentioning that any remedy would now be available in the civil suit.

11. Another development took place in between that when the appellant received patta copy after the order dated 25.01.2006, it was observed that there were certain changes in the Survey Number and the recording of the land in question. The appellant approached the District Revenue Officer, Kancheepuram for rectification and the District Revenue Officer on 18.09.2014 after perusal of the entire documents, ordered issuance of patta to the appellant and Lakshmi, confirming the earlier order dated 25.01.2006 and the consequential action dated 17.02.2006 clarifying that S.No.236/1B shall stand in the name of the appellant and Lakshmi, wife of late Ranganathan.

12. Aggrieved by this, Muralidharan had moved a representation before the Tahsildar, Tambaram, who rejected his claim on 21.10.2014 observing that he can approach the District Revenue Officer by way of an appeal. Thus, this entire contest before the revenue authorities was answered against the respondents that were contested by Muralidharan, who is now represented by respondent No.7, his Power of Attorney holder.

13. Then arrived the judgment in the civil suit on 30.06.2016 that has been dismissed. It is during this interregnum period that a Power of Attorney was executed by Muralidharan in favour of respondent No.7.

14. Respondent No.7 starts a new round of litigation by filing petition before the District Revenue Officer on 22.01.2017 contending that by mistake patta for 41 cents of land in S.No.236/1B has been wrongly issued in the name of the appellant. On this, enquiry notice was issued on 07.12.2017, followed by another notice on 28.12.2017. This was contested by the appellant contending that the District Revenue Officer had no jurisdiction now to entertain any such claim nor any claim could have been entertained in the background of the litigation aforesaid. The District Revenue Officer, Kancheepuram, however, directed production of sale deeds and for re-measurement by the Tahsildar, Tambaram on the premise that another petition which had been filed by respondent No.6 and was pending before the Additional Chief Secretary/Commissioner of Land Administration, Chennai had no connection with this dispute.

15. It is this order which came to be challenged by the appellant before the learned Single Judge contending that after the dismissal of the suit on 30.06.2016, the respondents had

filed an appeal which was pending before the competent Court of civil jurisdiction and therefore, the District Revenue Officer could not have reversed the entire proceedings by reopening the issue again.

16. It may also be pointed out that respondent No.6 Ranganayagi had moved a petition before the Additional Chief Secretary/ Commissioner of Land Administration, Chennai pertaining to S.No.236 to an extent of 41 cents as well, that was again dismissed referring to the judgment of the civil suit and the pendency of the appeal filed against the same. This order dated 13.8.2018 was also on record before the learned Single Judge.

17. The aforesaid facts as narrated in seriatim leave no room for doubt that the reopening of the matter by the impugned order was again conferring the jurisdiction on the revenue authorities themselves for rectifying the grievance that had already been relegated by the High Court to be decided in the civil suit and the civil suit had already been dismissed. The District Revenue Officer, Kancheepuram, therefore, committed a clear overreach which is also evident from the order of the Commissioner of Land Administration dated 13.08.2018 and the narration of the entire history of the case herein above.

18. Respondent No.7, the Power of Attorney holder of Muralidharan therefore clearly attempted to reopen the entire issue that was erroneously attended to by the District Revenue Officer and which amounts to clear abuse of the process of the entire adjudicatory system in the background that the civil suit had already been dismissed and the appeal is pending. The writ petition, therefore, in the above background had to be entertained and the interference by the District Revenue Officer ought to have been set at naught once the matter had reached the High Court and had been remitted to the Civil Court, the judgment whereof as indicated is already intervened. These facts which are on record remain uncontroverted.

19. Learned counsel for the contesting respondent urged that the direction of the learned Single Judge has been complied with by the order dated 20.01.2020. The said order is only a consequence and appears to have been despatched in a hurried manner thereby setting at naught the entire decree of the Civil Court that had culminated in the decision against the respondents. The attempt therefore by the respondents before the revenue authorities was nothing short of abuse of the process of the adjudicatory forums by adopting the litigative perseverance which is impermissible in law.

20. After having dealt with the aforesaid gamut of facts, it is evident that respondent No.7, who is the Power of Attorney holder, and is attempting to develop the land, succeeded in getting the order on a representation on 7.8.2018. This was a clear outcome of the litigative perseverance in order to avoid the outcome of the Civil Court proceedings which has ended in the dismissal of O.S.No.61 of 2010 on 30.6.2016. It is to be noted that the Power of Attorney had been obtained in 2014 and Muralidaran died in 2016, two years after the execution of the Power of Attorney. Respondent No.7 then approached through a representation and obtained an order in 2018 after the dismissal of the civil suit arising out of the very same order dated 25.1.2006.

21. In our opinion, this process adopted by respondent No.7 was nothing else, but virtually gambling at law which should not be permitted, keeping in view the observations made by the Apex Court in the case of Noorduddin v. Dr. K.L.Anand, reported in (1995) 1 SCC 242, where the following observations have been made:

"9. The object of law is to mete out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of the people of the very law and courts. The rules of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and almanac (sic) for the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice."

22. Not only this, the permissiveness of the judicial system should not be stretched to an extent that it defeats public policy, thereby preventing finality attached to the proceedings, the Apex Court in the case of Dr.Buddhi Kota Subbarao v. Mr.K.Parasaran and others, reported in (1996) 5 SC 530 : 1996 (7) Judgment Today 265 had to observe as follows:

"11. The filling of the present application appears to us to be an effort to get 'reopened' the case even after this Court decided criminal appeal

No.275-277 of 1993 on 16.3.1993 and dismissed the review petition also more than three years ago. Finality must attach to some stage of judicial proceedings. The course adopted by the applicant is impermissible and his application is based on misconception of law and facts. No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions.”

23. The question here is could respondent No.7, representing the cause of late Muralidharan or his mother respondent No.6, have approached the District Revenue Officer for fresh survey even though an appeal filed against the dismissal of the suit was pending and is this attempt made by the contesting respondent not an abuse of the adjudicatory process by adopting the method to overreach an adjudication on the identity of the land which was directly an issue in the civil suit itself.

24. The question further is that even after having noticed these facts, was the learned Single Judge justified in allowing the reopening of the issue before the revenue authorities in respect of the same subject matter for which not only the High Court had made an observation but had also culminated in the dismissal of the suit as referred to herein above.

25. As observed herein above, the instant is a case where the order dated 07.08.2018 that was impugned in the writ petition was a clear attempt to reopen the cause in a summary proceeding before the revenue authorities, that had already been put to rest in a civil suit. This is clearly, in our opinion, an abuse of process on the part of the seventh respondent permitting the same party to open the same subject matter of litigation by forum shopping.

26. It is true that every matter already decided in an earlier proceedings may not be an abuse, but issues or facts that had been raised earlier and the party had been relegated to the forum of a Civil Court in view of the observations of the High Court and the Civil Court that had ultimately been decreed against the respondents is a clear circumstance in the present case which amounts to an abuse of process. The sending of the matter to the Civil Court was not shutting off the party seeking the relief, but, rather calling upon the party concerned to approach the appropriate forum, and which is being litigated in an appeal filed against the judgment and decree of the Civil Court as indicated above. There was no occasion therefore for

litigating it again before the revenue authorities.

27. This abuse of process has been very vividly and broadly explained by taking into consideration the issues of public policy, estoppel, res judicata, reopening of the litigative pursuit and also judicial interference in the case of Johnson v. Gore Wood and Company, reported in (2001) 1 All ER 481, where the House of Lords rendered its opinion in no uncertain terms by explaining the entire canvas of the law as to what would be an abuse of process and what are the circumstances which would excuse the abuse. The House of Lords also explained that legitimate claims are not stifled and even otherwise potential litigants may not be allowed to misuse the forums to avoid the correct judicial process. The relevant paragraphs are extracted herein under:

"Abuse of process

The rule of law depends upon the existence and availability of courts and tribunals to which citizens may resort for the determination of differences between them which they cannot otherwise resolve. Litigants are not without scrupulous examination of all the circumstances to be denied the right to bring a genuine subject of litigation before the court: Yat Tung Investment Co Ltd v Dao Heng Bank Ltd [1975] AC 581, 590 per Lord Kilbrandon, giving the advice of the Judicial Committee; Brisbane City Council v Attorney General for Queensland [1979] AC 411 at 425, per Lord Wilberforce, giving the advice of the Judicial Committee). This does not however mean that the court must hear in full and rule on the merits of any claim or defence which a party to litigation may choose to put forward. For there is, as Lord Diplock said at the outset of his speech in Hunter v Chief Constable of the West Midlands Police [1982] AC 529, 536, an

"inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied; those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this House were to use this occasion to say anything that might be

taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power."

One manifestation of this power was to be found in RSC Ord 18, r 19 which empowered the court, at any stage of the proceedings, to strike out any pleading which disclosed no reasonable cause of action or defence, or which was scandalous, frivolous or vexatious, or which was otherwise an abuse of the process of the court. A similar power is now to be found in CPR r 3.4 of Part 3 of the Civil Procedure Rules.

GW contends that Mr Johnson has abused the process of the court by bringing an action against it in his own name and for his own benefit when such an action could and should have been brought, if at all, as part of or at the same time as the action brought against the firm by WWH. The allegations of negligence and breach of duty made against the firm by WWH in that action were, it is argued, essentially those upon which Mr Johnson now relies. The oral and documentary evidence relating to each action is substantially the same. To litigate these matters in separate actions on different occasions is, GW contends, to duplicate the cost and use of court time involved, to prolong the time before the matter is finally resolved, to subject GW to avoidable harassment and to mount a collateral attack on the outcome of the earlier action, settled by GW on the basis that liability was not admitted.

This form of abuse of process has in recent years been taken to be that described by Sir James Wigram V-C in *Henderson v Henderson* (1843) 3 Hare 100 at 114 where he said:

"In trying this question, I believe I state the rule of the court correctly, when I say, that where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought

forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time."

Thus the abuse in question need not involve the reopening of a matter already decided in proceedings between the same parties, as where a party is estopped in law from seeking to relitigate a cause of action or an issue already decided in earlier proceedings, but, as Somervell LJ put it in *Greenhalgh v Mallard* [1947] 2 All ER 255, 257, may cover

"issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."

A series of cases, mostly in recent years, has explored this form of abuse. Reference need not be made to all of them. In the *Yat Tung* case abuse was found where a claimant who had unsuccessfully sued a bank on one ground brought a further action against the same bank and another party on a different ground shortly thereafter. Giving the advice of the Judicial Committee of the Privy Council, Lord Kilbrandon said, at pp 589-590:

"The second question depends on the application of a doctrine of estoppel, namely res judicata. Their Lordships agree with the view expressed by McMullin J that the true doctrine in its narrower sense cannot be discerned in the present series of actions, since there has not been, in the decision in no 969, any formal repudiation of the pleas raised by the appellant in no 534. Nor was Choi Kee, a party to no 534, a party to no 969. But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and

therefore should have been litigated in earlier proceedings."

In *Brisbane City Council v Attorney General for Queensland* [1979] AC 411 the Privy Council expressly endorsed Somervell LJ's reference to abuse of process and observed, at p 425:

"This is the true basis of the doctrine and it ought only to be applied when the facts are such as to amount to an abuse: otherwise there is a danger of a party being shut out from bringing forward a genuine subject of litigation."

In *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529, in which *Henderson v Henderson* was not cited, the plaintiff sought to challenge in civil proceedings a decision in a criminal case against which he had not appealed on the ground which he sought to raise in the civil proceedings. The proceedings were struck out.

In *Vervaeke (formerly Messina) v Smith* [1983] 1 AC 145 the appellant, who had failed in English proceedings to annul her marriage, had succeeded in doing so in Belgium on different grounds and sought recognition in England of the Belgian decree. Lord Hailsham of St Marylebone LC, at p 157, described the rule in *Henderson v Henderson* as "both a rule of public policy and an application of the law of *res judicata*" and said of it:

" whatever the limits of *Henderson v Henderson* 3 Hare 100 (which I regard as a sound rule in ordinary civil litigation) may ultimately turn out to be, I believe that it must apply to a case like the present, where the petitioner in the first proceedings not merely does not rely on the grounds then already in theory available to her, but deliberately conceals the real facts (on which she now relies) from the court in order to put forward a bogus case which is radically inconsistent with them."

Ashmore v British Coal Corpn [1990] 2 QB 338 involved an attempt to reopen issues which had been decided adversely to the appellant's contentions in rulings which, although not formally binding on her, had been given in sample cases selected from a group of claims of which hers had been one. The

Court of Appeal held that it was not in the interests of justice to allow her to pursue her claim. Reliance was placed on Bragg v Oceanus Mutual Underwriting Association (Bermuda) Ltd [1982] 2 Lloyd's Rep 132 in which Kerr LJ said, at p 137:

"To take the authorities first, it is clear that an attempt to relitigate in another action issues which have been fully investigated and decided in a former action may constitute an abuse of process, quite apart from any question of res judicata or issue estoppel on the ground that the parties or their privies are the same. It would be wrong to attempt to categorise the situations in which such a conclusion would be appropriate."

In House of Spring Gardens Ltd v Waite [1991] 1 QB 241 the plaintiffs sued three defendants in England to enforce a judgment which they had obtained against those defendants in Ireland. The defendants pleaded in defence that the Irish judgment had been obtained by fraud. That was a contention which two of the defendants, but not the third (a Mr McLeod), had raised in Irish proceedings to set aside the judgment, but the allegation had been dismissed by Egan J. Summary judgment was given against the three defendants in England but Mr McLeod appealed against that judgment. The Court of Appeal held that Mr McLeod, like the other defendants, was estopped from mounting what was in effect a collateral challenge to the decision of Egan J. It also held that Mr McLeod's defence was an abuse of process. Stuart-Smith LJ said, at p 255:

"The question is whether it would be in the interests of justice and public policy to allow the issue of fraud to be litigated again in this court, it having been tried and determined by Egan J in Ireland. In my judgment it would not; indeed, I think it would be a travesty of justice. Not only would the plaintiffs be required to relitigate matters which have twice been extensively investigated and decided in their favour in the natural forum, but it would run the risk of inconsistent verdicts being reached, not only as between the English and Irish courts, but as between the defendants themselves. The Waites have not appealed Sir

Peter Pain's judgment, and they were quite right not to do so. The plaintiffs will no doubt proceed to execute their judgment against them. What could be a greater source of injustice, if in years to come, when the issue is finally decided, a different decision is in Mr McLeod's case reached? Public policy requires that there should be an end of litigation and that a litigant should not be vexed more than once in the same cause."

Arnold v National Westminster Bank plc [1991] 2 AC 93 was a case of issue estoppel. Tenants invited the court to construe the terms of a rent review provision in the sub-underlease under which they held premises. The provision had been construed in a sense adverse to them in earlier proceedings before Walton J, but they had been unable to challenge his decision on appeal. Later cases threw doubt on his construction. The question was whether the rules governing issue estoppel were subject to exceptions which would permit the matter to be reopened. The House held that they were. Lord Keith of Kinkel said, at p 109:

"In my opinion your Lordships should affirm it to be the law that there may an exception to issue estoppel in the special circumstance that there has become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material which could not by reasonable diligence have been adduced in those proceedings. One of the purposes of estoppel being to work justice between the parties, it is open to courts to recognise that in special circumstances inflexible application of it may have the opposite result, as was observed by Lord Upjohn in the passage which I have quoted above from his speech in Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2) [1967]1 AC 853, 947."

In the passage referred to Lord Upjohn had said:

"All estoppels are not odious but must be applied so as to work justice and not injustice and I think the principle of issue estoppel must be applied to the circumstances of the subsequent case with this overriding consideration in mind."

Talbot v Berkshire County Council [1994] QB 290 arose out of a motor accident in which both the driver and his passenger were severely injured. The passenger sued the driver. The driver's insurers, without notice to the driver, made a third party claim against the Berkshire County Council, claiming contribution as between joint tortfeasors but including no claim for the driver's own injuries. Not until after the expiry of the limitation period for bringing a personal claim did the driver learn of the third party claim against the county council. At trial, the passenger succeeded in full, damages being apportioned between the driver and the county council. The driver then sued the county council to recover damages for his own injuries. On the trial of preliminary issues, the judge held that the driver was prima facie estopped from bringing the action but that there were special circumstances which enabled the court to permit the action to be pursued. The county council successfully challenged that conclusion on appeal. Stuart-Smith LJ said, at p 298:

"There can be no doubt that the [driver's] personal injury claim could have been brought at the time of [the passenger's] action. It could have been included in the original third party notice issued against the council (RSC Ord 16, r 1(b)(c)); it could have been started by a separate writ and consolidated with or ordered to be tried with [the passenger's] action: Ord 4, r 9. The third party proceedings could have been amended at any time before trial and perhaps even during the trial to include such a claim, notwithstanding that it was statute-barred, since it arose out of the same or substantially the same facts as the cause of action in respect of which relief was already claimed, namely, contribution or indemnity in respect of [the passenger's] claim: Ord 20, r 5. In my opinion, if it was to be pursued, it should have been so brought."

Stuart-Smith LJ considered that the insurers' solicitors appeared to have been negligent but that the claim against the county council should be struck out unless there were special circumstances, and concluded that there were not. With his conclusions Mann and Nourse LJJs agreed. Since the driver's claim against the county council was held

by the judge to be statute-barred, a claim against the solicitors may have offered the driver his only hope of recovery.

The plaintiff in *C (A Minor) v Hackney London Borough Council* [1996] 1 WLR 789 lived in the house of which her mother was tenant. She suffered from Down's syndrome and claimed in this action to have suffered personal injury caused by the negligence and breach of statutory duty of the borough council as housing authority. Her mother had previously made a similar claim which had been the subject of a consent order in the county court. The borough council applied to set aside a judgment entered in the plaintiff's favour in default of defence and to strike out the claim on the ground that the plaintiff's action was an abuse of the process of the court. Reliance was placed in particular on *Yat Tung Investment Co Ltd v Dao Heng Bank Ltd* [1975] AC 581 and *Talbot v Berkshire County Council* [1994] QB 290. This argument was accepted by the judge, who held that the plaintiff's action should have been advanced at the same time as her mother's, the more so as the plaintiff was dependent on her mother. The plaintiff's appeal against this decision succeeded. Simon Brown LJ said, at pp 794-795:

"I therefore reject entirely the submission that *Yat Tung Investment Co Ltd v Dao Heng Bank Ltd* justifies extending the *Talbot v Berkshire County Council* principle—that an unlitigated monetary claim is barred if it could have been advanced and established in earlier proceedings (itself to my mind an extended application of the *res judicata* doctrine)—to those not themselves party to the earlier proceedings.

"It follows from all this that in my judgment the doctrine of *res judicata* even in its widest sense has simply no application to the circumstances of the present case and that the judge erred in ruling to the contrary. One does not, therefore, reach the point of asking here whether special circumstances exist to exclude it; C's erstwhile solicitors' suggested negligence is, frankly, an irrelevance. Nor, in my judgment, does this case come within measurable distance of any other form of abuse of process based on public policy considerations analogous to those underlying

the res judicata doctrine: see, for instance, the Court of Appeal's decision in *Ashmore v British Coal Corp* [1990] 2 QB 338.

"All that said, this judgment should not be taken as any encouragement to lawyers or their clients to follow the course in fact adopted here. As the judge rightly recognised, in circumstances such as these, it is plainly in the public interest to have a single action in which the claims of all the affected members of the household are included rather than a multiplicity of actions ..."

Barrow v Bankside Agency Ltd [1996] 1 WLR 257 was one of the flood of cases which arose out of losses in the Lloyd's insurance market. Mr Barrow was a member of an action group which had successfully sued a number of members' agents for negligent underwriting. Having substantially succeeded, but recovered only a proportion of the damages he had claimed, Mr Barrow issued fresh proceedings against his members' agent on a different ground. It was clear that this claim, even if made earlier, would not have been tried at the same time as the earlier action, since the scheduling of cases was the subject of detailed management by the Commercial Court. The members' agent contended that to bring this further claim, not raised at the time of the earlier proceedings, was an abuse. In the Court of Appeal it was said, at p 260:

"The rule in *Henderson v Henderson* (1843) 3 Hare 100 is very well known. It requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided (subject, of course, to any appeal) once and for all. In the absence of special circumstances, the parties cannot return to the court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise. The rule is not based on the doctrine of res judicata in a narrow sense, nor even on any strict doctrine of issue or cause of action estoppel. It is a rule of public policy based on the desirability, in the general interest as well

as that of the parties themselves, that litigation should not drag on for ever and that a defendant should not be oppressed by successive suits when one would do. That is the abuse at which the rule is directed."

The rule was described, at p 263, as a salutary one, and the court suggested that its application should not be circumscribed by unnecessarily restrictive rules. On the facts it was held that the procedure adopted by Mr Barrow was not an abuse. The court also held that if, contrary to its opinion, the case did fall within the mischief at which *Henderson v Henderson* was directed, there were special circumstances which justified non-application of the rule.

In *Manson v Vooght* [1999] BPIR 376, the plaintiff had sued administrative receivers of a company of which he had been managing director and principal shareholder in a 1990 action which culminated in a judgment adverse to him in 1993. There were other proceedings leading to other judgments, also given in 1993, relating to certain of the same issues: proceedings to disqualify the plaintiff as a director, in which findings adverse to him were made; and summonses issued in the liquidation of the company, when the court refused to allow issues which had been decided in the disqualification proceedings to be re-litigated. In 1994 the plaintiff issued a further writ making claims against the administrative receivers and others. His proceedings against the administrative receivers were struck out on the ground that these claims should have been raised, if at all, in the 1990 action. This decision was upheld by the Court of Appeal. Giving the leading judgment May LJ said, at pp 387-388:

"In my view, the use in this context of the phrase 'res judicata' is perhaps unhelpful, and this not only because it is Latin. We are not concerned with cases where a court has decided the matter; but rather cases where the court has not decided the matter, but where in a (usually late) succeeding action someone wants to bring a claim which should have been brought, if at all, in earlier concluded proceedings. If in all the circumstances the bringing of the claim in the succeeding action is an abuse, the court will strike it out

unless there are special circumstances. To find that there are special circumstances may, for practical purposes, be the same thing as deciding that there is no abuse, as Sir Thomas Bingham MR came close to holding on the facts in *Barrow v Bankside Agency Ltd* [1996] 1 WLR 257. The bringing of a claim which could have been brought in earlier proceedings may not be an abuse. It may in particular cases be sensible to advance cases separately. It depends on all the circumstances of each case. Once the court's consideration is directed clearly towards the question of abuse, it will be seen that the passage from Sir James WigramV-C's judgment in *Henderson v Henderson* 3 Hare 100 is a full modern statement of the law so long as it is not picked over semantically as if it were a tax statute.

"The extent of any coincidence of causes of action, facts or even the capacities in which parties are sued, though relevant, will not necessarily determine the outcome."

May LJ continued, at pp 388-389:

"[Counsel for Mr Manson] submits that the kind of abuse of process relied on by the first defendant in this appeal is to be narrowly confined and precisely defined so that legitimate claims are not stifled and so that potential litigants know where they stand. Otherwise they may be driven to include in one proceedings related but distinct claims which might sensibly be left for later consideration. The law should not thus encourage premature litigation which may prove unnecessary. He further submits that delay is the subject of the law of limitation and should not feature additionally as an element of abuse.

"It is of course axiomatic that the court will only strike out a claim as an abuse after most careful consideration. But the court has to balance a plaintiff's right to bring before the court genuine and legitimate claims with a defendant's right to be protected from being harassed by multiple proceedings where one should have sufficed. Abuse of process is a concept which defies precise definition in the abstract. In particular cases, the court has

to decide whether there is abuse sufficiently serious to justify preventing the offending litigant from proceeding. In cases such as the present, the abuse is sufficiently defined in Henderson which itself is encapsulated in the proposition that the litigant could and should have raised the matter in question in earlier concluded proceedings. Special circumstances may negative or excuse what would otherwise be an abuse. But there may in particular cases be elements of abuse additional to the mere fact that the matter could and should have been raised in the earlier proceedings."

May LJ added, at p 389:

"Mr Manson relies on special circumstances to negative or excuse the abuse. He says that the scope of the 1990 action was limited because he had legal expenses insurance for that action which only covered some of his claims and that the insurers were not prepared to support the claims which he now wants to bring. Although this may be an explanation, in my view it does not excuse the abuse nor does it amount to special circumstances. It is commonplace for litigants to have difficulties in affording the cost of litigation. But lack of means cannot stand as an excuse for abuse of process."

Last in this series of cases comes Bradford and Bingley Building Society v Seddon [1999] 1 WLR 1482, a decision later in time than the Court of Appeal's judgment in the present case but given by two of the same Lords Justices. Mr Seddon had made an investment on the advice of an accountant, Mr Hancock, which he had financed by taking a mortgage loan from the Bradford and Bingley Building Society. The investment failed. Mr Seddon claimed damages or an indemnity against Mr Hancock, who admitted liability to indemnify Mr Seddon to the extent of about 75% of Mr Seddon's claim. Judgment was entered in Mr Seddon's favour for this admitted sum and Mr Hancock was given leave to defend as to the balance. Mr Seddon was unable to enforce his judgment as Mr Hancock had no money, and the residual claim was not pursued. The building society then proceeded against Mr Seddon to enforce the debt owed to it under the mortgage loan. Mr Seddon sought to join as third parties Mr Hancock,

in order to pursue the residual claim, and two of his partners, Mr Seddon's contention being that the advice tended to him had been given by the firm to which Mr Hancock and his partners belonged. An application to strike out the third party claim was upheld by the judge and Mr Seddon appealed. In the course of a judgment with which Nourse and Ward LJ agreed, Auld LJ said, at pp 1490-1491:

"In my judgment, it is important to distinguish clearly between res judicata and abuse of process not qualifying as res judicata, a distinction delayed by the blurring of the two in the courts' subsequent application of the above dictum [of Sir James Wigram V-C in Henderson v Henderson 3 Hare 100]. The former, in its cause of action estoppel form, is an absolute bar to relitigation, and in its issue estoppel form also, save in 'special cases' or 'special circumstances': see Thoday v Thoday [1964] P 181, 197-198, per Diplock LJ, and Arnold v National Westminster Bank plc [1991] 2 AC 93. The latter, which may arise where there is no cause of action or issue estoppel, is not subject to the same test, the task of the court being to draw the balance between the competing claims of one party to put his case before the court and of the other not to be unjustly hounded given the earlier history of the matter ...

"Thus, abuse of process may arise where there has been no earlier decision capable of amounting to res judicata (either or both because the parties or the issues are different) for example, where liability between new parties and/or determination of new issues should have been resolved in the earlier proceedings. It may also arise where there is such an inconsistency between the two that it would be unjust to permit the later one to continue."

Auld LJ continued, at pp 1492-1493:

"In my judgment mere 're'-litigation, in circumstances not giving rise to cause of action or issue estoppel, does not necessarily give rise to abuse of process. Equally, the maintenance of a second claim which could have been part of an earlier one, or which

conflicts with an earlier one, should not, per se, be regarded as an abuse of process. Rules of such rigidity would be to deny its very concept and purpose. As Kerr LJ and Sir David Cairns emphasised in *Bragg v Oceanus Mutual Underwriting Association (Bermuda) Ltd* [1982] 2 Lloyd's Rep 132, 137, 138-139 respectively, the courts should not attempt to define or categorise fully what may amount to an abuse of process; see also per Stuart-Smith LJ in *Ashmore v British Coal Corp* [1992] 2 QB 338, 352. Sir Thomas Bingham MR underlined this in *Barrow v Bankside Agency Ltd* [1996] 1 WLR 257, stating, at p 263B, that the doctrine should not be 'circumscribed by unnecessarily restrictive rules' since its purpose was the prevention of abuse and it should not endanger the maintenance of genuine claims; see also per Saville LJ, at p 266D-E.

"Some additional element is required, such as a collateral attack on a previous decision (see eg *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529; Bragg's case [1982] 2 Lloyd's Rep 132, per Kerr LJ and Sir David Cairns, at pp 137 and 139 respectively, and *Ashmore's case* [1990] 2 QB 338), some dishonesty (see e g per Stephenson LJ in Bragg's case, at p 139, and Potter LJ in *Morris v Wentworth-Stanley* [1999] 2 WLR 470, 480 and 481; or successive actions amounting to unjust harassment (see eg *Manson v Vooght* [1999] BPIR 376 ...))."

The Court of Appeal held that Mr Seddon's third party proceedings were not an abuse of process, and the appeal succeeded.

It may very well be, as has been convincingly argued (Watt, "The Danger and Deceit of the Rule in *Henderson v Henderson*: A new approach to successive civil actions arising from the same factual matter" (2000) 19 CLJ 287), that what is now taken to be the rule in *Henderson v Henderson* has diverged from the ruling which Wigram V-C made, which was addressed to res judicata. But *Henderson v Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation

and that a party should not be twice vexed in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before. As one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not. Thus while I would accept that lack of funds would not ordinarily excuse a failure to raise in earlier proceedings an issue which could and should have been raised then, I would not regard it as necessarily irrelevant, particularly if it appears that the lack of funds has been caused by the party against whom it is sought to claim. While the result may often be the same, it is in my view preferable to ask whether in all the circumstances a party's conduct is an abuse than to ask whether the conduct is an abuse and then, if it is, to ask whether the abuse is excused or justified by special circumstances. Properly applied, and whatever the legitimacy of its

descent, the rule has in my view a valuable part to play in protecting the interests of justice."

28. On the above principles, the conduct of respondent No.7 by obtaining orders and the indulgence granted by the Officer vide order dated 07.08.2018 are a compounded abuse of process resulting in clear harassment to the appellant in spite of the fact that a judicial decree from an appropriate forum dated 30.6.2016 had already intervened and the appeal against whereof is still pending consideration. The Officer while passing the order dated 7.8.2018 could not afford to overlook this aspect to put the respondent No.7 to an advantage. This is inexcusable in law. The representation of the respondent No.7 before the Officer that triggered this exercise is an inexcusable conduct of abuse of process.

29. The learned Single Judge, therefore, could not have added impetus by allowing the judicial survey to be re-conducted bereft of what had happened earlier. In our opinion the learned Single Judge ought to have exercised judicious discretion and should have quashed the proceedings in the wake of the facts of the present case. Consequently, for all the reasons aforesaid the impugned judgment of the learned Single Judge dated 31.01.2019 is set aside. The order dated 07.08.2018 is also quashed. Since the order dated 08.01.2020 passed by the Tahsildar, Tambaram is an outcome of the order dated 07.08.2018 which has been quashed, the same is also set aside and the revenue records as were existing prior to 07.08.2018 shall be restored.

30. We were further impelled to observe that heavy costs of Rs.1,00,000/- should be imposed on respondent No.7 for generating a litigative pursuit, but we find that the same was an outcome of the incorrect order passed on 07.08.2018 which was affirmed by the learned Single Judge and therefore, we impose costs of Rs.5,000/- (Rupees Five Thousand) on respondent No.7 to be paid to the appellant to compensate the harassment.

The appeal is allowed with the said observation. Consequently, C.M.P.No. 27967 of 2019 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr

To:

1. The Commissioner of Land Administration
Ezhilagam, Chepauk
Chennai - 600 005.
2. The District Collector
Kancheepuram.
3. The District Revenue Officer
Kancheepuram.
4. The Tahsildar
Tambaram Taluk.

+2cc to Mr.D.Pushpa, Advocate, S.R.No. 18001
+1cc to the Government Pleader, S.R.No. 18212

W.A.No.4341 of 2019

AD (CO)
GN(24/09/2020)



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