



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.02.2020

Delivered on : 22.05.2020

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD).No.1577 of 2019

and

CMP (MD) No.8345 of 2019

M.Yogavalli

:Petitioner/1st Defendant

Vs.

1.Prabakaran

2.Dhanavalli

:Respondents/Plaintiffs

3.M.Balasubramanian

4.Saibaba

5.Shanmugathayammal

6.Leelavathy

7.Mariappa Udayakumar

8.S.Padmavathu

9.Dig vijaya Pandian

10.Chandrika

11.Manjula

12.Parimala

13.Karthikeya Balaji

14.Mariappa Murali

15.Balaji

16.Mariappa Babu

17.Janakipriaya

:Respondents/Defendants

(Respondents 3 to 17 are given up in this Civil Revision
Petition vide Court order, dated 24.01.2020)

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records relating to O.S.No.62 of 2018 on the file of the District Munsif Court, Virudunagar and to Strike off the plaint by allowing the Civil

<https://hcservices.ecourts.gov.in/hcservices/>



For Petitioner : Mr.N.Mohan
For R-1 & R-2 : Mr.R.Sundar Srinivasan
For R-3 to R-17 : Given up

ORDER

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This petition has been filed to strike off the plaint in O.S.No.62 of 2018 on the file of District Munsif Court, Virudunagar.

2.The petitioner herein is the first defendant, the respondents 1 & 2 herein are the plaintiffs and the respondents 3 to 17 herein are the defendants 2 to 18. The relief against the respondents 3 to 17 was given up by the petitioner.

3. The revision petitioner filed a suit in O.S.No.75 of 1991 on the file of the Sub-Court, Srivilliputtur. An ex-parte preliminary decree was passed on 18.09.1991. Subsequently, the case was transferred to the District Munsif, Virudhunagar, re-numbered as O.S.No.223 of 2004. The first respondent filed a petition to set aside the ex-parte decree along with a petition to condone the delay of 5140 days. The delay excuse petition in I.A.No.320 of 2006 was dismissed by the Trial Court. Against which, the defendant/first respondent filed a revision in C.R.P.No.1529 of 2010. The same was dismissed on 25.10.2010. Against that order S.L.P.No.10557 of 2012 was filed by the defendant before the Hon'ble Supreme Court and the same was dismissed by the Hon'ble Supreme Court on 23.03.2012.

4. A Final decree petition in I.A.325 of 2004 in O.S.No.223 of 2004 was filed and a final decree was passed on 27.01.2011. Then E.P.No.31 of 2011 was filed to execute the final decree.

5. The revision petitioner filed a petition in E.A.No.40 of 2014 to implead the legal heirs of the first defendant in the suit. The 11th defendant filed a petition in E.A.No.1 of 2016 to condone the delay in filing a petition to set aside the ex-parte order. That petition was dismissed by the Execution Court on 25.01.2016. The 11th defendant filed a Civil Revision Petition against the dismissal of E.A.No.1 of 2016 in C.R.P.No.1529 of 2016. That Civil Revision Petition was dismissed by this Court on 13.06.2016. Delivery was ordered and effected and the delivery report was filed on 27.05.2016. Before this Court in Tr.CMP.No.145 of 2017, the 12th respondent and the 1st respondent filed a compromise memo regarding item No.23 of the E.P. Petition. Compromise was recorded on 23.06.2017.

6.The respondents 1 & 2 herein have filed a suit in O.S.No.62 of 2018 to cancel the preliminary and final decree passed in O.S.No.223 of 2004. The revision petitioner as the first defendant in that suit has preferred this revision petition to strike off the suit.



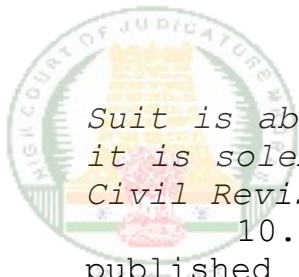
7. On the side of the petitioner, it is stated that the petitioner is the plaintiff in O.S.No.75 of 2011 on the file of the Sub Court, Sriviliputtur, which was transferred and renumbered as O.S.No.223 of 2004 on the file of the District Munsif, Virudhunagar and a decree was obtained in favour of the revision petitioner. The 1st defendant in that suit has approached the Hon'ble Supreme Court by way of a Special Leave Petition and he failed. Already, a compromise was recorded with regard to one of the suit properties. Delivery was recorded. If the petitioner file a petition to reject the plaint under Order 7 Rule 11 of CPC an order passed in that petition will be an appealable order and again the petitioner will be drag on to Court. The petitioner is fighting for her rights from the year 1991 onwards.

8. On the side of the revision petitioner, it is stated that the same issue was already raised by the respondent's father in the suit in O.S.No.223 of 2004 itself. Even the Special Leave Petition filed by the father of the first respondent was dismissed by the Hon'ble Supreme Court, the respondent filed a petition in E.A.No.1 of 2016 and that was dismissed on 25.01.2016. After 3 years, the respondents filed a suit on the same grounds to declare the decree as null and void. Since delivery was already taken, the suit filed by the respondents 1 and 2 is not maintainable and the High Court can strike off the suit. A judgment of this Court published in **2011 (2) MWN (Civil) 363** is cited wherein it was decided as follows:-

"Impleading Application was dismissed and same was confirmed by after dismissal of her Impleading Application by above Courts is maintainable or no - Suit filed by Respondent is nothing but abuse of process of Court - Frivolous an vexatious proceedings also amount to process of Court - High Court can strike off Suit which is frivolous and vexatious in order to prevent abuse process of Court - Civil Revision Petition allowed."

9. On the side of the revision petitioner, it is stated that there is no subsisting cause of action and that the suit is an abuse of process of law and it should be strike off. A judgment of this Court published in **2017 (2) MWN (Civil) 665** is cited wherein it was decided as follows:-

" Having lost in two Suits with respect to same property, First Respondent has come up with present Suit on same cause of action seeking same relief - Present Suit is vexatious and Petitioner is unnecessarily dragged to Court from 1983 - To exercise superintending power and to strike off Plaint, Court should come to conclusion that Suit is an abuse of process of law based on Plaint averments and admission made by Plaintiff - When there is no subsisting cause of action for seeking relief sought for in Plaint,



Suit is abuse of process - Present Suit being vexatious litigation, it is solemn duty of Court to strike off Plaintiff - Suit struck off - Civil Revision Petition allowed."

10. On the side of the petitioner, a similar judgment published in **2017 (2) MWN (Civil) 149** is cited wherein it was decided as follows:-

" Power of High Court - A Plaintiff can be rejected for abuse of process of law and suppression of material facts to curtail vexatious litigation by striking off Plaintiff."

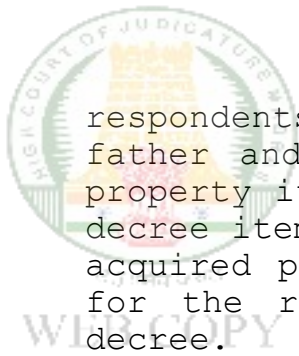
11. A similar judgment of this Court published in **2018 (4) CTC 483** is cited wherein it was decided as follows:-

"Respondent filed 2 more similar Petitions for Divorce prior to present Petition which were dismissed - Respondent subsequently filed Petition for Divorce in lower Court in 2006 on same allegations and grounds of cruelty and desertion as alleged in earlier petition - Conduct of Respondent amounted to abuse of process of Court - Court cannot overlook such abuse of process by Respondent - Revision Petition allowed."

12. On the side of the revision petitioner, it is stated that re-agitating and re-litigating issues, which were already decided, is frivolous, vexatious and amounts to abuse of process of law. A judgment of this Court published in **2019 (2) CTC 257** is cited wherein it was decided as follows:-

" Held, conduct of Petitioners re-agitating and re-litigating issues, which have already been finally decided, is frivolous, vexatious and amounts to abuse of process of Court - Issue of non-compliance of conditions imposed under Will could have been raised in earlier Suits - Elements of abuse of process are: (i) existence of ulterior purpose/motive underlying use of process; (ii) some act in use of legal process not proper in regular prosecution of proceedings - Suit filed with ulterior motive of denying fruits of Decree passed in favour of Respondent - Fresh Suit for same dispute, which has already been adjudicated and reached finality in earlier Suits is barred by res-judicata - High Court under Article 227 of Constitution empowered to strike off frivolous and vexatious Suits - Respondent to be adequately compensated for harassment through frivolous and vexatious Suit."

13. On the side of the respondent, it is stated that the



respondents were impleaded as the legal heirs of the petitioner's father and not in their individual capacity. In the earlier suit property item Nos.189 and 14 were wrongly added and in the earlier decree item Nos.15 and 16 were wrongly added. Item No.18 is the self acquired property of the respondents and the only course available for the respondents is to file a separate suit questioning the decree.

14. On the side of the respondent, it is stated that the petitioner has to approach the Trial Court under Order 7 Rule 11 and it is wrong on the part of the petitioner to approach this Court under Article 227 of the Constitution of India.

15. A judgment published in **2000 (IV) CTC 358** is cited wherein it was decided as follows:-

"18..... the High Court should direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single judge need not have entertained the revision petition at all and the party affected by the interim ex-parte order should have been directed to resort to one of the other remedies."

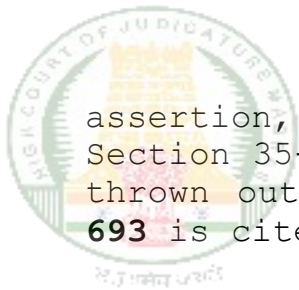
16. On the side of the respondent, it is stated that if a person is aggrieved by the order passed under Order 39 Rules 1 and 2, there is an appeal remedy available. A judgment published in **2005 CTC 365** is cited wherein it was decided as follows:-

"If the petitioner is aggrieved by the order passed under Order 39, Rules 1 and 2, there is an appeal remedy and he can avail, of it. If the petitioner's; case is that the plaint should be rejected, even then, he has his remedy."

17. On the side of the respondent, it is further stated that Article 227 has to be exercised most sparingly only in appropriate cases. The petitioner filed this petition under Article 227 of Constitution of India, to strike off suit on the ground that it was filed as abuse of the process of Court which is not maintainable. A judgment published in **2007 (7) MLJ 13** is cited wherein it was decided as follows:-:-

"Article 227 Power of General Superintendence under - Scope and Extent - Has to be exercised most sparingly only in appropriate cases - Suit for injunction - Petitioner filing petition under article 227 to strike off suit on ground that it was filed in abuse the process of Court - Held, not maintainable."

18. On the side of the respondent, it is further stated that furnishing false statement in a plaint is a matter to be determined at the time of trial. If at all suit is vexatious and based on false



assertion, plaintiff would be liable to pay compensatory costs under Section 35-A of the Code of Civil Procedure and the plaint cannot be thrown out at the threshold. A judgment published in **2005 (5) CTC 693** is cited wherein it was decided as follows:-

"Issues raised cannot be decided at the time of considering Application under Order 7, Rule 11 - Falsity of Plaint is a matter to be determined at time of trial - If at all Suit is vexatious and based on false assertion, plaintiff would be liable to pay compensatory costs under Section 35-A of the Code of Civil Procedure - Plaint cannot be thrown out at threshold."

19. On the side of the respondent, it is stated that when a remedy of appeal is available and that powers under Article 227 of Constitution of India cannot be invoked. A judgment of this Court published in **2010 (3) CTC 604** is cited wherein it was decided as follows:-

"Alternate remedy of Appeal and maintainability of Revision under Article 227 - Powers under Article 227 cannot be invoked when efficacious alternative remedy of Appeal is available"

20. On the side of the respondent a judgment of this Court published in **2019 (3) T.N.C.J. (MAD) (MB)** is cited wherein it was decided as follows:-

"Article 227 - Writ Jurisdiction - invoked to quash the order rejecting the application to reject the plaint - Perusal of pleadings - Application to reject the plaint filed under Order 7, Rule 11 (d) of CPC"

21. On the side of the respondent, it is stated that the availability of a remedy under the CPC will deter the High Court, from exercising its power under the constitution. A judgment of this Court published in **W.W.W.LIVELAW.IN in Civil Appeal No.7764 of 2019** paragraph **13 and 14** is cited wherein it was decided as follows:-

"13..... the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under article 227, even a decree passed in a suit, on the same grounds on this the respondents 1 and 2 invoked the jurisdiction of the High Court....."

14. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under



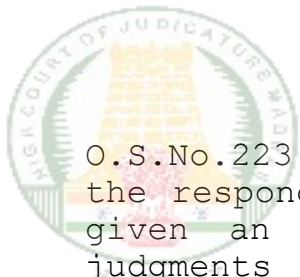
the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the code of Civil Procedure itself."

22. On the side of the revision petitioner, it is stated that the earlier suit attained finality by the order of the Hon'ble Supreme Court and delivery was already effected and prayed the petition to be allowed.

23. On the side of the respondent, it is stated that all the proceedings were based only on an ex-parte decree. The petition to condone the delay in filing a set aside petition was dismissed by the Trial Court and the same was confirmed by the Apex Court and the matter was not decided on merits. The delivery report was not yet confirmed and prayed the petition to be dismissed.

24. A perusal of records reveals that the revision petitioner filed a suit in O.S.No.75 of 1991, which was transferred and re-numbered as O.S.No.223 of 2004 on the file of the learned District Munsif Court, Virudhunagar, and an ex-parte decree was passed in that suit. The father of the respondents 1 & 2, who was the first defendant in the suit, filed a petition to condone the delay in filing a petition to set aside the ex-parte decree in I.A.No.320 of 2006. The delay is 5140 days and the Trial Court dismissed the petition. Against which, the father of the respondents 1 and 2 preferred a revision in CRP.No.1529 of 2010. That Civil Revision Petition was dismissed. Against which, he filed a Special Leave petition before the Hon'ble Supreme Court in SLP.No.10557 of 2012. That petition was also dismissed by the Hon'ble Supreme Court. In between a final decree was passed. E.P was filed in O.S.No.223 of 2004. Subsequently, delivery was effected and delivery report was filed.

25. The respondents 1 and 2, who are the legal heirs of the 1st defendant in O.S.No.223 of 2004 have filed a suit in O.S.No.62 of 2018 before the learned District Munsif Court, Virudhunagar, questioning the decree passed in O.S.No.223 of 2004. The revision petitioner prayed to strike off the suit on the ground that the matter was already decided and the decree was confirmed. It is argued that re-agitating a matter already settled amounts to clear abuse of process of law and the suit has to be strike off. On the side of the respondents 1 and 2, it is stated that only an ex-parte decree was passed and that no opportunity was ever given to the respondents to contest the suit and the petitioner is entitled to question the decree by way of filing a separate suit.



26. Since the decree questioned by the respondent in O.S.No.223 of 2004 is an ex-parte decree, there is no question of the respondents re-agitating the matter as the respondents were not given an opportunity to agitate the earlier case. Hence, the judgments referred by the counsel appearing on behalf of the revision petitioner are not applicable to the facts of the present case. The decree in O.S.No.223 of 2004 is only an ex-parte decree. The efforts taken by the first defendant failed as the inordinate delay in filing the set aside petition was not properly explained by him.

27. The revision petitioner has approached this Court to strike off the suit. Falsity of a plaint is a matter to be decided at the time of trial. If at all a suit is vexatious and based on false assertion, plaintiff would be liable to pay compensatory costs under Section 35-A of the Code of Civil Procedure and a plaint cannot be thrown out at the threshold.

28. In the above circumstances, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dss

Note: With the consent of both side counsels the order is pronounced in the Open Court through Video conference on this 22nd day of May 2020.

To

1.The District Munsif ,
Virudunagar.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2c)

C.R.P. (PD) (MD) .No.1577 of 2019

and

CMP (MD) No.8345 of 2019

22.05.2020

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