

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.04.2021

PRONOUNCED ON: 03.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (NPD) No. 134 of 2021

And

C.M.P.No. 1280 of 2021

G.Parthiban

... 3rd Respondent/3rd Petitioner/3rd Party/Petitioner

-Vs-

1. Lourdhumarianathan

... Petitioner / Obstructor /Third Party/1st

Respondent

2. Komalambal

3. Kannan

4. Anamalai Gramani

5. D.Gnanaraj

6. D.Pushparaj

... Respondents 4 to 8/Respondents 2 to
4/Respondents/Respondents 2 to 6

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of the India, seeking strike of E.A.No. 90 of 2020 in R.C.E.P.No. 8 of 2002 in H.R.C.O.P.No. 37 of 2001 on the file of the Principal District Munsif's Court, Puducherry.

For Petitioner : Mrs. Hema Sampath
Senior Counsel

For 1st Respondent : Ms. V.Kamala Kumar

For RR 2 to 6 : Given up

ORDER

This Civil Revision Petition has been filed taking advantage of Article 227 of the Constitution of India, to strike off E.A. No.90 of 2020 filed in R.C.E.P. No. 8 of 2002 in H.R.C.O.P. No. 37 of 2001, now pending on the file of the Principal District Munsif, Puducherry.

An examination of the background facts would be instructive:-

2. O.S. No. 803 of 1982 was filed in the II Additional District Munsif Court by St. Xavier Industries, represented by its partners, D.

Gnanaraj and D. Pushparaj against Kamalambal, Kannan and Annamalai Gramani, seeking declaration of title to the suit schedule property and for recovery of rent and for costs.

3. The property had been described as “*Vacant land measuring North-South 21 feet, East-West 36 feet, in Patta No. 1396, R.S. No. 131/2, in Mahatma Gandhi Road, Rangavilas Thottam, Shevarayapet, Pondicherry, on the West of Gandhi Road, on the East of the Pond in Rangavilas Thottam, on the South of Saint Xavier Industries Aluminium Factory and on the North of Murugesn Plot.*”

4. The plaintiff claimed that they were originally paying rent to one Narayasamy Naidu, and on his death, to his son, Samudrarajalu Naidu, who later conveyed the property by registered sale deed dated 18.05.1981 to the plaintiff for valid consideration. They then issued a notice to the defendants, calling upon them to attorn the tenancy in favour of the plaintiff and to pay future rents to the plaintiff. It had been claimed that the property had been leased out to the defendants on 01.05.1969. The defendants had put up a wall on the East and Western Side and on the Southern side of the

property. It had been stated that a separate petition had been filed seeking eviction under the Pondicherry Buildings (Lease and Rent Control) Act. The suit had been however filed for declaration of title and for recovery of rent.

5. The defendants filed a written statement denying title of the plaintiff and also the relationship of lessor-lessee between the parties. They claimed that they had put up construction by their own. They, therefore claimed that they are the owners of the property and that their possession cannot be questioned. They also stated that the plaintiff had already filed H.R.C.O.P. No. 189 of 1992 against the defendants seeking eviction. They stated that the plaintiff will have to chose one forum for their remedy and claimed that the suit had been filed during the pendency of H.R.C.O.P. No. 189 of 1992. They stated that the suit should be dismissed.

6. The parties went to trial on the following issues :

“1. Whether this Court has no jurisdiction to entertain the suit ?

2. *Whether the plaintiffs are entitled for a declaration of title to the suit property ?*

3. *Whether the defendants are tenants under the plaintiffs and are liable to pay rent and arrears of rent as claimed ? and*

4. *The what reliefs the plaintiffs entitled ?”*

7. During trial, the plaintiff examined one witness and marked Ex. A.1 to Ex. A.24. The defendants examined one witness but did not mark any documents. An Advocate Commissioner who had been appointed had also been examined and Ex. X.1 and Ex. X.2 were marked as Court Exhibits.

8. By Judgment dated 31.08.1984, the learned Additional District Munsif decreed the suit with costs.

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9. With respect to Issue No. 1, the learned Additional District Munsif observed the argument put forth on behalf of the defendants that the plaintiff had already instituted rent control proceedings for eviction but had

chosen to withdraw the same, and having chosen a particular forum, the plaintiff cannot file a suit, but will have to proceed with the rent control proceedings. She also observed the counter arguments put forth on behalf of the plaintiff that the suit had been filed for declaration of title and therefore the civil court will have jurisdiction. She held the issue in favour of the plaintiff and held that the court has jurisdiction to try the issues raised.

10. With respect to Issue No. 2, the learned Additional District Munsif held that Ex.A.1 and Ex. A.2 proved the title of the plaintiff. Further, the title of the plaintiff had been upheld in Ex. A.3, a judgment passed by the I Additional District Court. She also observed that by Ex. A.10, the title of the vendor of the plaintiff had been traced and that, by Ex. A.11, a judgment in O.S. No. 897 of 1978, dated 14.06.1980, by the Principal District Munsif, the suit filed by the defendants claiming title had been dismissed. She also observed that the defendants had not let in any evidence to disprove the plaintiff's title to the suit property. She finally held Issue No. 2 in favour of the plaintiff.

11. With respect to Issue No. 3, the learned Additional District Munsif observed that under Ex. X.1 and Ex. X.2, the defendants had admitted to be tenants, and further D.W.1 had also admitted execution of Ex. A.8, lease deed in favour of the plaintiff with respect to the suit property. It was observed that the defendants had admitted themselves to be tenants and since they had not paid rents for the premises, they are liable to pay past rents also. Issue No. 3 was also held in favour of the plaintiff.

12. With respect to Issue No. 4, the learned Additional District Munsif considered the arguments put forth on behalf of the defendants that the suit is liable to be dismissed under Section 34 of the Specific Relief Act, since the plaintiff had not sought delivery of possession, but had filed the suit only for declaration of title, but observed that the suit had also been filed for recovery of rent. The learned Additional District Munsif also observed the argument of the counsel for the plaintiff that after title is declared, then the plaintiff will have to initiate rent control proceedings for evicting the defendants since the defendants come under the purview of the Pondicherry Buildings (Lease and Rent Control) Act. It was held that a suit for mere declaration of title will lie, and that the plaintiff was entitled for

declaration of title to the suit property and for recovery of rent. Finally the suit was decreed with costs.

13. The defendants then filed A.S. No. 72 of 1986 and the learned II Additional District Judge, Pondicherry, by Judgment dated 31.08.1984, reversed the Judgment of the Trial Court in O.S. No. 803 of 1982 and dismissed the suit.

14. The plaintiff then filed S.A. No. 1710 of 1989 before this Court, and by Judgment dated 17.07.2000, the Second Appeal was allowed, and the Judgment and Decree in O.S. No. 803 of 1982 was restored.

15. During the pendency of the litigation at various forums, Vanaja, the mother of the revision petitioner herein, purchased the property from the plaintiff in O.S. No. 803 of 1982 , Saint Xavier Industries, represented by its partners, D. Gnanaraj and D. Pushparaj, by a registered sale deed dated 05.10.1989.

16. By restoration of the Judgment and Decree in O.S. No. 802 of 1982, in view of the Judgment of this Court in S.A. No.1710 of 1989 dated 17.07.2020, the title of Saint Xavier Industries to the suit property was declared and by implication, the title of the purchaser, Vanaja, to the suit property was also recognized.

17. Thereafter Vanaja filed H.R.C.O.P. No. 37 of 2021 seeking eviction on the grounds of denial of title, willful default in the payment of rent and change of user. This petition was filed against Komalambal, Kannan and Annamalai Gramani, the three defendants in O.S. No. 803 of 1982, and also against D. Gnanaraj and D. Pushparaj, the Partners of Saint Xavier Industries, the plaintiff in the said suit.

18. A decree was passed on 05.12.2001.

19. R.C.E.P. No. 8 of 2002 was filed seeking execution by delivery of vacant possession of the schedule mentioned property.

20. The schedule mentioned property was described as “**Brick built house**, initially without door number and subsequently with door No.166, and at present with old door No. 166 and new door No.378, situated at Mahatma Gandhi Road, at Shevarayapet, Rangavilas Thotam, Pondicherry, with an extent of 450 sq.ft., in R.S. No. 131/2 on the West of Gandhi Road, on the East of the Pond (presently dry), on the South of M/s. Saint Xavier Industries building and on the North of house of Murugesn and Pachaiappan.”

21. Two decades on, the Execution Petition is still pending.

22. In the meanwhile, Vanja and her husband who had been impleaded had both died. On her behalf, her son, G. Parthiban, who had been consequently impleaded was prosecuting the matter.

23. It is not on me to conduct a post mortem on the reasons for the pendency, but, I would draw from the narration made by a learned single Judge of this Court, (R.M.T. Teekaraman J) in the order dated 19.06.2020 in C.R.P. (NPD) No.4531 of 2010, which foray was one of many meanderings

of the Execution Petition. The said Revision Petition had been filed by G. Parthiban, in his capacity as decree holder questioning the dismissal by order dated 02.11.2010 of E.A. No. 98 of 2002 filed by him under Order XXI Rules 35(3) and 97 read with sections 47 and 151 of CPC to remove the obstruction caused by the 4th respondent, Lourdhumarianathan in the R.C.E.P. No. 8 of 2002.

“6. It is seen from the records that the petitioner's wife Vanaja Ganesan obtained a Decree for evicting the respondents 1 to 3. She filed E.P.No.8 of 2002 before the Rent Controller, Pondicherry for taking possession. The fourth respondent herein obstructed execution and she filed E.A.No.98 of 2002 for removal of obstruction. On her death pending the said application, the petitioner/her husband was permitted to continue execution. Evidence was taken and Execution Application was posted for orders on 27.08.2003. At that stage, the fourth respondent filed E.A.No.144 of 2003 for re-opening the case. It was ordered and again the case was posted for orders on 11.09.2003. To protract the proceedings, the fourth respondent filed the said application to reopen the

matter and it was allowed. The petitioner filed C.R.P.No.443 of 2003 against the said order of re-opening and the said CRP dismissed on 21.11.2006. It took the executing Court more than one year to commence enquiry after this order. After giving several opportunities, the fourth respondent's side evidence was closed. On 12.11.2009 again the fourth respondent was absent. The Court ordered removal of obstruction and batta was paid as directed. Again when the Amin attempted to execute, the fourth respondent obstructed him and the Amin returned the warrant requiring police aid. The fourth respondent filed E.A.No.90 of 2009 to set aside the order dated 12.11.2009 for removal of obstruction. On 12.04.2010, the Court below allowed the petition directing the fourth respondent to pay cost of Rs.500/-, which the petitioner refused to receive and E.A.No.98 of 2002 filed by the petitioner for removal of obstruction was dismissed."

24. The fourth respondent mentioned in the extract above is

Lourdhumarianathan, who was also described as *Obstructor/3rd party*.

25. The learned Judge of this Court examined the documents produced by said Lourdhumarianathan/obstructor/3rd party to the decree and to the execution petition and the documents filed by him as Ex. R.1 to Ex. R.6 and observed as follows :

“14. Perused Ex.R1-certificate issued by the Pondicherry Municipality in respect of D.No.178, M.G.Road, Muthialpet, Pondicherry. Admittedly, it is not the petition property. Ex.R3 is the letter given by the Town and Country Planning Department issued for the site clearance in respect of R.S.No.131/2, Mahatma Gandhi Road, Muthialpet, Pondicherry. It is only a no objection for the proposed set up of the industry. In other words, it only indicates that there is a proposal and it does not indicate that the fourth respondent is in possession of the said property.

15. Furthermore on perusal of Ex.R4, dated 17.01.1991, issued by the Inspector of Factories, it is seen that the said property is with regard to the D.No.84, M.G.Road, Muthialpet,

Pondicherry. Admittedly, it is not the petition property whereas Ex.R5 issued by the Government of Puducherry Industrial Centre in respect of the proposed site for pollution control in respect of D.No.84, M.G.Road, Muthialpet. This is also not the petition property. Ex.R6 is the no objection certificate issued by the Pondicherry Planning Authority for the proposed set up at D.No.131/2. It is only a clearance of the proposal.”

26. The learned Judge further observed as below :

“18. As stated supra, only in the cross-examination, it is elicited from RW.1 that he was get into possession through one Mr.Sambasivam. Neither any document of title of the said Sambasivam nor any title of the fourth respondent has been filed before the Execution Court. In the absence of any document either in connection with the title or in connection with the possession as that of the said Sambasivam or as that of the fourth respondent herein, it appears that the learned Rent Controller has rendered a

finding that the fourth respondent is in possession which glaring error on the face of the record.

19. After going through the documents filed before the Execution Court and also the evidence of RW.1 and taking note of the admission elicited in the cross-examination of RW.1, this Court is of the considered view that except the name Board placed upon the petition mentioned property, the fourth respondent is causing hindrance without any legal basis in respect of the execution of the Civil Decree, namely, decree granted in HRCOP.37 of 2001. Earlier this Court found that the Rent Controller not even looked into the documents in Exs.R1 to R4 in proper perspective and appears to be an extrapolated the contents of the document and gave an erroneous finding as if the fourth respondent is in possession and hence the same is liable to be vacated and accordingly the same stands vacated and the claim of the revision petitioner stands proved and the fourth respondent is no way in possession of the property and his possession is not proved in the

manner known to law and he has successfully prevented the execution of the decree granted in the year 2001.”

27. C.R.P. (NPD) No. 4531 of 2010 was allowed with costs of Rs.5,000/- payable by Lourdhumarianathan/4th respondent/obstructor/3rd party to the credit of H.R.C.O.P. No. 37 of 2001 before the Court below.

After the parties were relegated back to the Execution Court, the said Lourdhumarianathan filed E.A. No. 90 of 2020 under Order XXI Rules 97 and 101 of CPC to hold that the Order dated 05.12.2001 in H.R.C.O.P. No.37 of 2001 as a nullity and non-est.

28. In the affidavit filed in support of the said petition, Lourdhuarianathan after stating the facts from the institution of O.s. No. 803 of 1982 till the judgment of this Court in S.A. No.1710 of 1989, and the further proceedings by filing of H.R.C.O.P. No. 37 of 2001 for eviction on the grounds of denial of title, willful default in the payment of rent and change of user, reproduced the schedule as mentioned in O.S. No. 803 of 1982.

29. He pointed out the property mentioned in the schedule was

vacant site.

30. He claimed that the provisions of Pondicherry Buildings (Lease and Rent Control) Act would not apply to vacant sites.

31. He then pointed out that in schedule in R.C.E.P. 8 of 2002 in H.R.C.O.P. No. 37 of 2001 the property was described as **brick built house**.

32. He claimed that the difference or discrepancy in the schedule of the property as mentioned in O.S. No. 803 of 1982 and H.R.C.O.P. No. 37 of 2001 came to his knowledge only during the proceedings of C.R.P. (NPD) No. 4531 of 2010.

33. He claimed that the decree in the rent control proceedings should be therefore declared as a nullity and as non-est, since declaration of title had been obtained in O.S. No. 803 of 1982 for *vacant site*, but H.R.C.O.P. No. 37 of 2001 and the resultant R.C.E.P. No. 8 of 2002 had been filed with respect to **brick built house**.

34. Questioning the rationale behind such a proposition and further

taking umbrage at the filing of the petition itself, G. Parthiban, who had stepped into the shoes of the decree holder has filed the present Civil Revision Petition under Article 227 of the Constitution of India, primarily against Lourdhumarianathan described as the 1st respondent/obstructor calling upon this Court to strike off E.A. No. 98 of 2020 as an abuse of process of Court.

35. Heard arguments advanced by Mrs. Hema Sampath, learned Senior Counsel for Ms. R. Meenal, learned Counsel on behalf of the revision petitioner and Ms V. Kamala Kumar, learned Counsel for the 1st respondent/obstructor. The other respondents were not represented. It can be safely presumed that they are no longer interested in the proceedings.

36. Mrs. Hema Sampath presented a brief synopsis by way of Dates and Events. Ms. V. Kamala Kumar also presented written arguments and her version of Dates and Events. It must be pointed out that there was no material difference on facts between the two sets of papers presented.

37. Mrs. Hema Sampath, learned Senior Counsel took the Court

through the dates and events and lamented that though a decree for eviction had been passed two decades ago, the decree holder could still not take possession. Learned Senior Counsel pointed out that this Court in C.R.P. (NPD) No. 4531 of 2010 had held against the obstructor, Lourdhumarianathan on all points and stated that filing a petition again, obnoxiously, under Order XXI Rule 97 CPC was totally unwarranted and an abuse of process of Court. Learned Senior Counsel expressed fear that pendency of a petition, which is not maintainable, would further delay the execution process for well nearly another decade. Learned Senior Counsel pointed out that the obstructor was carrying on business in a building and naturally the provisions of the Pondicherry Buildings (Lease and Rent Control) Act would apply and was emphatic in her submission that the decree was perfectly valid and executable.

38. Learned Senior Counsel stated that the revision petitioner has been forced to approach this Court under Article 227 of the Constitution of India, in view of the blatant tactics bordering on abuse of process of Court adopted by the 1st respondent/obstructor to prevent execution of a lawfully obtained decree. Learned Senior Counsel urged that this Court should step

in to ensure that the vexatious petition now filed by the 1st respondent/obstructor is struck off the file and the Rent Controller is permitted to proceed with execution of the decree.

39. In this connection, reference had been made to ***Ranipet Municipality rep. by the Commissioner and Special Officer –vs- M. Shamsheerkhan***, reported in ***(1998) 1 CTC 66***.

40. That was a case where the respondent's grandfather had taken on lease the petitioner's vacant land, a weekly market. The respondent had later put up a shed and other pucca construction at his own cost to facilitate effective functioning of a cattle shandy. The respondent and his ancestors claimed to be in possession for atleast twenty years. The petitioner/Municipality issued a notification to bring the land on auction. A suit was filed and injunction was granted. The notification was withdrawn. The suit was also withdrawn. A further notification was issued and another suit was filed and again injunction was granted and again both the notification and the suit were withdrawn. A third notification was again proposed, and another suit was filed, and again injunction was granted and

again both the notification and the suit were withdrawn. A Writ Petition was also filed for the same relief by the respondent and that was also withdrawn. A fourth notification was again issued and a fourth suit was filed. The petitioner/Municipality had however filed a caveat. Still, an exparte injunction was granted. A counter was filed, but the exparte injunction was confirmed. A revision under Article 227 of the Constitution of India was then preferred before this Court.

41. A learned Single Judge of this Court (*S.S. Subramani J*) held as follows :

*“11. In **Sreedharan v. Seethala, 1988 (2) KLT 732** the Kerala High Court has an occasion to consider what is meant by abuse of the process of the Court and it was held as follows:-*

“The power of the court to make such order as are necessary to prevent abuse of the process of court is inherent in every court. The term “abuse of the process of the court” has not been defined. What then this terms means? Its meaning

therefore has to be gathered from other sources.

“A malicious abuse of legal process occurs where the party employs it for some unlawful object, not the purpose which it is intended by the law to effect in other words a perversion of it yet another shade of meaning is this: “Abuse of process is the malicious and improper use of some regular legal proceeding to obtain some advantage over an opponent.” This is a term generally used to proceeding which is wanting in bona fide and is frivolous, vexatious or oppressive. An abuse of the process of court can be committed by the court or by a party. It is therefore clear that where a court employed a procedure in doing something which it never intended to do, but resulted in miscarriage of justice, there is what is called an abuse of the process of the court. If a subordinate court commits an abuse of the process of the Court, a superior court has the power, nay the duty to prevent the said abuse becoming perpetual by interfering with the proceeding. What then is an abuse of the process of the court committed by a party to the proceedings? 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 one's own aggrandizement is yet another instance where a party could be said to have committed an abuse of the process of the court.””

42. On the facts of the case, the learned Judge then wondered as to the relief to be granted.

“21. Now that I have found that there has been a miscarriage of justice and the action of the plaintiff in filing litigations one after another is really an abuse of process of Court, what is the remedy to which the petitioner is entitled...”

43. The learned Judge finally held as follows on the facts of that case;

*“23. Under the above circumstances, as was approved by the decision in **Venkatacharyulu***

v. Yesoda, A.I.R. 1932 Mad. 263, the plaint filed in the suit is struck-off from the file. Injunction already granted by the lower Court will stand vacated. I further order that there will be a permanent prohibitory injunction against the respondent herein from interfering with the rights of the Local authority, petitioner herein, in the conduct of the market and their enjoyment of the same, in any manner. The Local Authority, even without any Order from Court, is entitled to police protection, to see that the respondent herein does not cause any obstruction either in the enjoyment of the market or in conducting the auction. Petitioner is also entitled to give necessary protection to the person who bids the market in auction, the right to collect fees from the market. On the request of the Local Authority, the police also will give adequate and necessary police protection to the successful bidder. It goes without saying that the petitioner is also entitled to take necessary steps against the respondent by way of legal action, for recovering the loss, if any, sustained by it, since it was prevented from holding the auction

of the market.”

44. Placing strong reliance on the observations extracted above, Mrs. Hema Sampath, learned Senior Counsel urged that this Court should also pass appropriate orders to ensure that the revision petitioner is able to get the fruits of a decree lawfully obtained two decades back.

45. Ms. V. Kamala Kumar, learned Counsel for the 1st respondent/obstructor was equally emphatic in her submission that the Rent Control Court which granted the decree in H.R.C.O.P. No. 37 of 2001 was *Coram Non Judice* and therefore the decree was a nullity and non-est in law. Learned Counsel pointed out that the schedule of property for which declaration of title and right to recover rent was granted in O.S. No. 803 of 1982 was ***vacant site*** and not building. Learned Counsel therefore stated that the revision petitioner/predecessors in title of the revision petitioner had committed fraud by inserting in the schedule of property a ***brick built building*** and then filing a petition under the Pondicherry Buildings (Lease and Rent Control) Act, when the said enactment was not applicable to vacant sites. Learned Counsel therefore stated that the 1st

respondent/obstructor, who was in possession had every right to question the very basis of the decree under which he is now sought to be evicted and forward an argument that the said decree had been passed by a Court without jurisdiction, thereby rendering the decree unlawful and incapable of being executed. Learned Counsel further stated that the 1st respondent/obstructor was admittedly in physical possession and therefore has locus to file a petition under Order XXI Rule 97 calling upon the Court to render a finding on all questions relating to the decree including its legality and further stated that such a petition can be filed at any stage of the proceedings. Learned Counsel further stated that since the application has been taken on file, it would only be appropriate that it goes through its normal course and the Rent Controller is permitted to render a finding on merits and urged that this Court should not short circuit such procedure.

46. On the issue of *Coram Non Judice*, learned Counsel relied on ***Sushil Kumar Mehta –vs- Gobind Rm Bohar***, reported in ***(1990) 1 SCC 193***.

47. In that case, the respondent/landlord had taken on lease, land from the Municipal Corporation and constructed a shop covering a major

portion of the land and leaving only a small portion as the frontage of the shop. The shop was let out to the appellant/tenant. The respondent/landlord issued a notice under section 06 of the Transfer of Property Act determining tenancy. A suit was filed and decreed exparte. The application to set aside the exparte decree, an appeal and a revision, all failed. The appellant/tenant then filed an application under Section 47 of CPC, contending that the decree of the Civil Court was a nullity as the premises was governed by the Haryana Urban (Control of Rent and Eviction) Act 1973 and the Civil Court was divested of jurisdiction to take cognizance and pass the decree.

48. Allowing the appellant/tenant's plea, Hon'ble Supreme Court observed : *"Supreme Court would grant relief to the aggrieved party from injustice by setting aside the execution order."*

49. It was held as follows :

"26. Thus it is settled law that normally a decree passed by a court of competent

jurisdiction, after adjudication on merits of the rights of the parties, operates as res judicata in a subsequent suit or proceedings and binds the parties or the persons claiming right, title or interest from the parties. Its validity should be assailed only in an appeal or revision as the case may be. In subsequent proceedings its validity cannot be questioned. A decree passed by a court without jurisdiction over the subject matter or on other grounds which goes to the root of its exercise or jurisdiction, lacks inherent jurisdiction. It is a coram non iudice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings.....A question relating to jurisdiction of a court or interpretation of provisions of a statute cannot be deemed to have been finally determined by an erroneous decision of a court. Therefore, the doctrine of res judicata does not apply to a case of decree of nullity.”

50. Ms. V. Kamala Kumar, pointing out the above dictum argued

that in the instant case, the schedule had been fraudulently given as **brick built building** in the rent control proceedings and it was only because of that fact, did the Rent Control Court assume jurisdiction, whereas the decree in O.S. No. 803 of 1982 was with respect to **vacant site** and therefore invoking the jurisdiction of the Rent Control Court itself was erroneous and the decree passed therein is a nullity. Learned Counsel therefore justified filing application under Order XXI Rule 97 and urged that the Rent Controller should go into the question of executability of the decree in H.R.C.O.P. No. 37 of 2001, particularly since it is a nullity and passed by a Court having no jurisdiction.

51. On the same issue, learned Counsel also relied on **Dwarka Prasad Agarwal (D) by L.R.s –vs- B.D. Agarwal and others**, reported in (2003) 6 SCC 230, wherein the Hon'ble Supreme Court in a Writ Petition filed under Article 32 of the Constitution of India, examined a compromise recorded by the High Court and held that such an exercise undertaken by the High Court was beyond its jurisdiction under Article 226 of the Constitution of India and entrenched upon the civil Court's jurisdiction under Or. XXIII Rule 1 CPC.

52. The Hon'ble Supreme Court held as follows :

“37. It is now well settled that an order passed by a court without jurisdiction is a nullity. Any order passed or action taken pursuant thereto or in furtherance thereof would also be nullities. In the instant case, as the High Court did not have any jurisdiction to record the compromise for the reasons stated hereinbefore and in particular as no writ was required to be issued having regard to the fact that public law remedy could not have been resorted to, the impugned orders must be held to be illegal and without jurisdiction and are liable to be set aside. All orders and actions taken pursuant to or in furtherance thereof must also be declared wholly illegal and without jurisdiction and consequently are liable to be set aside. They are declared as such.”

53. It was reiterated by Ms. V. Kamala Kumar that the proceedings under Order XXI Rule 97 initiated by the 1st respondent/obstructor should be permitted to proceed.

54. Learned Counsel also relied on ***Shreenath and another –vs- Rajesh and others***, reported in ***(1998) 4 SCC 543*** and ***Shamsher Singh and***

another –vs- Lt. Col. Nahar Singh (D) and others, reported in **2019 SCCOnline SC 938** to justify the filing of a petition under Order XXI Rule 97 by the 1st respondent/obstructor. That the 1st respondent/obstructor is in possession is not in dispute. His locus to file the application has not been put in issue by the revision petitioner.

55. Learned Counsel also relied on *Ganapathy Subramanian –vs- S. Ramalingam and others*, reported in (2007) 3 LW 515, for the proposition that mere filing of a petition would not be a ground to invoke Article 227 of the Constitution of India, and stated that the revision petitioner can very well agitate all the aspects before the Rent Controller.

56. A learned Single Judge (*K. Raviraja Pandian J*) had observed as follows :

“16. The supervisory jurisdiction of this Court could be invoked only when the trial Court has committed any error. Mere filing of a suit by the respondents and taking the suit on the file by the trial Court cannot be regarded as an act on the part of the trial

Court to transgress its jurisdiction or its bound. Of course, the party who files the suit might have filed the suit suppressing material facts or made up the suit to his convenience for seeking the relief which is not otherwise entitled to. But that fact has to be considered by the trial court during the relevant point of time. There is no impediment or embargo for the petitioner to put forth his contentions before the trial court to strike off the plaint at the threshold....”

57. Learned Counsel therefore argued that the revision petitioner may participate in the proceedings before the Rent Controller and urged that this Court should dismiss the Revision Petition.

58. I have perused the material records and given careful thought to the arguments advanced.

59. It all started with the filing of O.S. No. 803 of 1982. The suit was filed seeking declaration of title to the suit property and right to recover arrears of rent.

60. The revision petitioner herein claims through the plaintiff in that suit. The 1st respondent/obstructor does not claim through the defendants, but claims to be in possession from 1988

61. The Judgment in the said suit dated 31.08.1984 by the II Additional District Munsif, has been set out at the very beginning of this Order, with good purpose. The findings therein have been affirmed in S.A. No. 1710 of 1989 by judgment dated 17.07.2000.

62. Rule of Law mandates respect to the facts established. They are not open to denial, dispute or interpretation, oblique or otherwise.

63. The schedule of the property in O.S. No. 803 of 1982 had been given as *vacant site*.

64. However, in the judgment, it had been recorded that the plaintiff had averred that the defendants had put up a *wall* on the East and Western side and on Southern side of their portion.

65. It had also been recorded that the plaintiff had filed H.R.C.O.P. No. 189 of 1982 seeking eviction.

66. It had also been recorded that the defendants contended that since a rent control petition had been filed, the suit was not maintainable.

67. It had also been recorded that *the defendants claimed that they had put up a construction, by their own.*

68. It had also been recorded that the defendants claimed that they are the owners of the property and their possession cannot be questioned.

69. The fact which emerges is that though in the schedule, the property had been described as *vacant site*, there was a *wall* put up by the defendants and there was a *construction*, which the defendants claimed that they had put up.

70. The defendants claimed that having instituted a Rent Control Proceedings for eviction, the plaintiff cannot maintain a suit. The plaintiff

contended that the suit had not been filed for eviction, rather for declaration of title only.

71. A Rent Control Petition can be claimed to be maintainable only if there was a *building*, and the defendants contended that there was a *building*, and further contended that they had constructed it.

72. It has to be concluded that though in the suit schedule, the property was described as a vacant site, there was a constructed building at that place.

73. It has to be further concluded that a suit for declaration of title is maintainable and a Rent Control Petition for eviction is maintainable since there was a constructed building in the premises.

74. This conclusion is strengthened by the very pleading of the 1st respondent/obstructor himself.

75. Thereafter, in the year 2001, H.R.C.O.P. No. 37 of 2001 was filed for eviction of the respondents/defendants in O.S. No. 83 of 1982. They never claimed that the Rent Control Proceedings is not maintainable, since there was no building there.

76. They could never have claimed so, since the 1st respondent/obstructor has asserted that he has been in possession from 1988.

77. As recorded in the order in C.R.P.(NPD) No. 4531 of 2010, which order or findings of facts have not been questioned by the 1st respondent/obstructor, he claimed *“to run a Lathe works in the name and style of M/s.Quality Engineering Works in part of the EP schedule mentioned property under the permissive possession of the respondents/Judgment Debtors.”*

78. In paragraph 9 of the Order, the learned Single Judge had extracted the counter filed by the 1st respondent/obstructor to E.A. No. 98 of

2002 filed for removal of obstruction. The said para is extracted below in full :

“9. In the counter, at the risk of repetition however for the sake of clarity, the fourth respondent herein raised an objection that he is running a Lathe workshop in the disputed premises after getting proper license from the Municipality and after obtaining power connection in his name. This respondent has taken possession of the property in question in the year 1988 and he has been running the workshop therein without any let or hindrance from any person including the petitioner and other respondents for the past more than 13 years.”

79. In the face of such an assertion, it just does not lie in the mouth of the 1st respondent/obstructor that the Rent Control Proceedings are not maintainable because the character of the property had been given as *brick built building* when in the suit it had been given as *vacant site*.

80. I am certain that the 1st respondent/obstructor would not plead that he was and is running his Lathe workshop in a *vacant site*. The

improbability and the falsity of such a claim, if raised, would be evident to any novice,

81. One of the first principles to be upheld and maintained in any pleading is the element of honesty on the facts pleaded and disclosed.

82. In the year 2001, when H.R.C.O.P. No. 37 of 2001 was filed, the suit property consisted of a building, and in fact, the 1st respondent/obstructor was in possession of a building in a portion of the property. He claimed, as extracted above, to have been “*under permissive occupation of the respondents/Judgment Debtors.*”

83. He is bound by the decree in H.R.C.O.P. No. 37 of 2001. He cannot claim that it is null and non-est, since it was rendered by a *coram non judice*. Such a plea is false to his knowledge. He cannot claim not to be running a Lathe Workshop from 1988, since he had already so claimed, and cannot, now turn around and disclaim such fact. Viewed from any angle the claim of *coram non judice* will have to fail since the Rent Control Proceedings had been lawfully filed to evict the lessees from possession of a

building, in which *building*, the 1st respondent/obstructor himself was in possession running a Lathe Workshop.

84. His claim to lawfully obstruct execution of the decree in H.R.C.O.P. No. 37 of 2001 had been rejected in C.R.P. (NPD) No. 4531 of 2010.

85. There cannot be relitigation of the same issues again and again.

86. *In T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467*, the Hon'ble Supreme Court, was confronted with a case :

“where the father of the petitioner contested an eviction proceeding, lost it, appealed against it, lost again, moved a revision only to be rebuffed by summary rejection by the High Court.” Thereafter, “the petitioner, his son, set upon a clever adventure by abuse of the process of the court. The petitioner filed a suit before the Fourth Additional First Munsif, Bangalore, for a declaration that the order

of eviction, which had been confirmed right up to the High Court and resisted by the 2nd respondent throughout, was one obtained by “fraud and collusion”. He sought an injunction against the execution of the eviction order.”

87. The Hon’ble Supreme Court held :

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif’s Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of

a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.”

(Emphasis Supplied)

88. In *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573 at page 592, it had been held as follows :

“44. 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, or a spurious claim being made in litigation may

also in a given set of facts amount to an abuse of the 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 the 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 should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

(Emphasis Supplied)

89. In the instant case, as seen from the extract of the order in C.R.P. (NPD) No.4531 of 2010, the stand of the 1st respondent/obstructor has been negated. Thereafter, the 1st respondent/obstructor has taken up the stand now canvassed by him, namely that the decree in the Rent Control Proceedings is a nullity, since Rent Control Proceedings are not applicable

to a *vacant site*, when, as admitted by him, he is running a Lathe Workshop in a portion of the property from the year 1988, which obviously, and as clear as daylight indicates that there is a building in the premises, and therefore his contention that the decree is a nullity has to be rejected as an abuse of process of Court, on a plain reading of his own pleading.

90. In *T. Arivandandam, (1977) 4 SCC 467 (cited supra)* the Supreme Court expressed anguish in the following words at page 470 :

“7. ...We more than regret the circumstance that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. **It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients.** And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions.”

(Emphasis Supplied)

91. In *The Member Concern Department of Post, Government of India, Ministry of Communication, rep. by its Chief Post Master General, Anna Salai, Chennai – 600 002 –vs- Ms. Annapoorni and others*, reported in (2005) 4 LW 206, a learned Single Judge of this Court, (*R. Banumathi J, as Her Lordship then was*), had occasion to examine a Civil Revision Petition filed under Article 227 of the Constitution of India, questioning an order passed in an Interlocutory Application in O.S. No. 724 of 2003, then pending on the file of the XIII Assistant City Civil Court.

92. The facts had been given in paragraph 2 of the Order :

“2. *The multifarious litigations relate to T.S. No. 8019/2 situate at T. Nagar, Chennai, measuring about 5 Grounds 446 Sq.Ft, which stood in the name of Ramasamy Chettiyar. The property was acquired by the Postal Department for the construction of Post Office and for other purposes of Postal Department like the construction of the Administrative Block and other purposes. Aggrieved over the acquisition of the land, Wife and Family Members of the Land Owner have entangled the*

*Postal Department in number of litigations. The numerous litigations appear to have been filed for the collateral purpose of either insisting the Postal Department to reconvey the land or for getting more rent or for the purpose of keeping the litigations alive. **Even at the outset, it is to be pointed out that it is a clear case of abuse of process of Court, re-litigating the matter.** The narration of facts and reference to the litigations would bring home the improper use of machinery of the Court. The tendency of the parties seem to be that filing of Writ Petitions by Seethalakshmi Achi, Wife of Ramasamy Chettiyar; filing of Civil Suits by other Members of the Family are as if the acquisition proceedings are not known to them. The tendency appears to be that in cases of number of writ petitions, the Postal Department has been impleaded as party. But, the Civil Suits are filed (without impleading the Postal Department) under the pretext as if they are simple suits for partition involved amongst the family members."*

93. In paragraph 25 again in paragraphs 27 and 28, the learned Judge observed and held as follows :

*“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.**”*

(Emphasis Supplied)

*“27. In the case of **Greenalgh v. Mallard (1947 (2) All E.R. 225)**, the Court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. **The Court held that if the Plaintiff has chosen to***

put his case in one way, he cannot thereafter bring the same transaction before the Court, put his case in another way and say that he relying on a new cause of action. In such circumstances, he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexatious and an abuse of the process of the Court.

28. In *McIlkenny v. 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.

(Emphasis Supplied)

94. In 2021 SCC OnLine SC 341, **Rahul S. Shah –vs- Jitrndra Kumar Gandhi**, the Hon'ble Sureme Court had occasion to express dismay at attempts to frustrate execution of a decree in the following words :

*"23. This court has repeatedly observed that remedies provided for preventing injustice are actually being misused to cause injustice, by preventing a timely implementation of orders and execution of decrees. This was discussed even in the year 1872 by the Privy Council in **The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing** reported in (1871-72) 14 Moo IA 605 which observed that the actual difficulties of a litigant in India begin when he has obtained a decree. This Court made a similar observation in **Shub Karan Bubna @ Shub Karan Prasad Bubna v. Sita Saran Bubna** reported in (2009) 9 SCC 689, wherein it recommended that the Law Commission and the Parliament should bestow their attention to provisions that enable frustrating successful execution. The Court opined that the Law Commission or the Parliament must give effect to*

*appropriate recommendations to ensure such amendments in the Code of Civil Procedure, 1908, governing the adjudication of a suit, so as to ensure that the process of adjudication of a suit be continuous from the stage of initiation to the stage of securing relief after execution proceedings. **The execution proceedings which are supposed to be handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.***

(Emphasis Supplied)

95. In the instant case the following are the observations and findings :

1. The right of the 1st respondent/obstructor had been finally negatived and rejected by the comprehensive order in C.R.P. (NPD) No. 4531 of 2010.

2. The plea that the 1st respondent/obstructor came to be aware of the description of the properties as given in O.S. No. 803 of 1982 and in H.R.C.O.P. No. 37 of 2001 only during the proceedings of the said Civil

Revision Petition is rejected. The 1st respondent/obstructor claims to be running a Lathe Workshop from 1988, and therefore pleas of innocence or ignorance and seeking indulgence are straightaway rejected.

3. The plea that the decree passed in H.R.C.O.P. No. 37 of 2001 is a nullity is rejected since, the 1st respondent/obstructor himself is carrying on business in a building and Rent Control Proceedings, even according to him can be resorted only on properties where there is a building, and it is his own case that there is a building in the petition premises which building, he himself is occupying for running business, and therefore, it is held that the Rent Control Petition has been rightly instituted.

4. There is no dispute regarding the identity of the property. The addresses are the same, the boundaries are the same, and the survey number is the same.

5. It has been admitted by the defendants in O.S. No. 803 of 1982 under whose permission the 1st respondent/obstructor is occupying the premises that there was a building even at the time of institution of O.S. No.

803 of 1982, as stated by them in their written statement, and as recorded in the judgment of the said suit.

6. There is therefore no bonafide in the averments in the affidavit filed in support of E.A. No.90 of 2020 in R.C.E.P. No. 8 of 2002. The said application is a sheer abuse of process of Court, and filed with sole aim to protract further proceedings of the Execution Petition.

96. I hold that in view of the reasons stated above, E.A. No. 90 of 2020 in R.C.E.P. No. 8 of 2002 in H.R.C.O.P. No. 37 of 2001 now pending on the file of the Principal District Munsif, Puducherry should be struck off as being an abuse of process of Court and is accordingly struck off.

97. The Principal District Munsif is directed to proceed with R.C.E.P. No. 8 of 2002 forthwith and record delivery of possession. The Jurisdictional Revenue/Police authorities are directed to assist the Court in taking vacant possession of the schedule mentioned property in R.C.E.P. No. 8 of 2002.

98. The Principal District Munsif is directed to record taking of

delivery of possession of the schedule mentioned property in R.C.E.P. No. 8 of 2002 by 31.07.2021, at the latest.

99. In the result, the Civil Revision Petition is allowed. Since delivery of vacant possession of the property mentioned in the schedule to R.C.E.P. No. 8 of 2002 is directed, I would spare costs. Consequently, connected Miscellaneous Petition is closed.

03.06.2021

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Index: Yes/No

Internet: Yes/No.

Speaking / Non speaking

C.V.KARTHIKEYAN, J.

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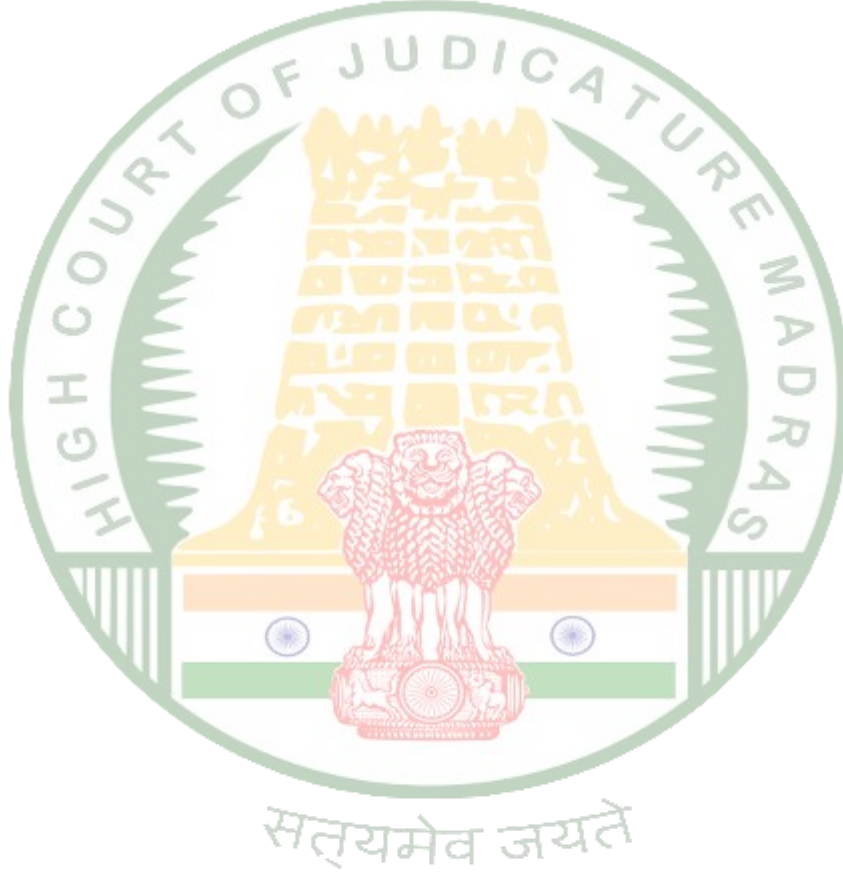
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C.R.P. (NPD) No. 134 of 2021

And

C.M.P.No. 1280 of 2021



03.06.2021

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