



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP.PD.No.451 of 2006
and CMP.No.3895 of 2006

- 1.S.Thirupuram Ammal (deceased)
- 2.S.Parameswari
- 3.D.Pankajavalli
- 4.D.Periyanayaki
- 5.D.Saraswathi
- 6.D.Kotteeswari
- 7.S.Velayudham (deceased)
- 8.S.Singaravelan
- 9.D.Bhuvaneswari
- 10.Rosi Bai @ R.Revathi
- 11.Kamika Bai
- 12.Shamsundar
- 13.Naveen sundar

[Petitioners 2 to 6 and 8 to 10 recorded as LR's of the deceased 1st petitioner and petitioners 11 to 13 brought on record as LR's of the deceased 7th petitioner. Vide order of the Court dated 24.01.2013, made in M.P.Nos.1 to 4 of 2013 in CRP.No.451/2006.

..Petitioners

Vs

- 1.Kamatchi
- 2.Shankaran
- 3.C.Jawahar (Died)
- 4.Sukuma
- 5.B.Shanthi
- 6.A.Anbarasu
- 7.Kanagartinam Ammal
- 8.Bagyalakshmi
- 9.Priyanka Jawahar
- 10.Navin Jawahar

[R7 to R10 brought on record as LR's of the deceased R3 viz., C.Jawahar vide Court order dated 31.01.2020 made in C.M.P.No.6405/2019 in C.R.P.No.451/2006 (KRJ)]

..Respondents



PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order of dismissal in I.A.No.14157 of 2002 dated 16.11.2005 in O.S.No.7348 of 1996 on the file of the II Assistant City Civil Court, Madras.

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For Petitioners : Mr. ARL.Sundaresan
for AL.Ganthimathi

For Respondents : Mr.Palaniappan [for R7 to R10]
No Appearance [for R4 to R6]
R1 & R2 - Notice served

O R D E R

This Civil Revision Petition has been filed to set aside the order of dismissal in I.A.No.14157 of 2002 dated 16.11.2005 in O.S.No.7348 of 1996 on the file of the II Assistant City Civil Court, Madras and thereby allow the application for rejection of plaint.

2. Mr.ARL.Sundaresan, learned Senior Counsel appearing for the petitioners submitted that the petitioners 1 to 10 are the defendants in the suit filed by the respondents 1 to 3 herein for declaration and permanent injunction in respect of the suit properties.

3. The petitioners' father namely, V.Shanmuga Mudaliar, as plaintiff, already filed a suit in O.S.No.923 of 1962 as against the mother of the respondents 1 and 2 in respect of the very same suit property for declaration and recovery of possession and the same was decreed by judgment dated 03.03.1964. In the said suit, the mother of the respondents 1 and 2 contended that by virtue of the settlement in her favour, she is the absolute owner of the property and the same has been rejected and the suit was decreed in favour of the petitioners' father. Therefore, against the legal heirs of the said Doraivalli Ammal, the respondents 1 and 2 cannot maintain the present suit that too, in an order passed in the Execution Petition for delivery of possession in respect of the suit property. Insofar as the 3rd respondent is concerned, he is only a pendente lite purchaser in respect of portion of the suit property. In fact he also filed a petition under Section 47 of CPC in the Execution Petition and the same was also dismissed by an order dated 26.11.1990. The petitioners also filed a petition for removal of obstruction as against the 3rd respondent herein and the same was allowed by an order dated 11.04.1983 in E.A.No.1796 of 1982. In fact the respondents 1 and 2 also filed a petition under Section 47 of CPC in the execution proceedings in E.A.No.5705 of 1990 and the same was dismissed by an order dated 16.04.1991.



Therefore, the present suit is nothing, but clear abuse of judicial process and it is liable to be rejected.

4. He further submitted that as against the dismissal of the petition under Section 47 of CPC, the petitioners' father preferred a Civil Revision Petition in C.R.P.No.86 of 1991 before this Court. This Court, dismissed the Civil Revision Petition by an order dated 06.03.1991 and held that the property which was purchased by the 3rd respondent herein pendente lite was the same subject matter in the earlier suit in which the petitioners' father obtained a decree and also clearly held that the attempt of the respondents is a gross abuse of process of Court.

5. He further submitted that in respect of very same property another C.R.P. was filed before this Court in C.R.P.No.81 of 1991 and this Court found that the objection of the respondents are untenable and rejected on the ground that they have no manner of right in respect of the suit property. While being so, the respondents 1 to 3 have again filed the present suit in respect of very same property that too suppressing all the orders passed by the Execution Court and also suppressed the fact that the possession of the property was already ordered to be delivered. The respondents averred that the petitioners are taking advantage of the decree obtained in O.S.No.923 of 1962 and attempting to dispossess the respondents from the suit schedule property. Therefore, the entire suit is nothing, but clear abuse of process of law. They are re-litigating the very same property by way of third round of litigation and it would amount to abuse of process of law. In support of his contentions, he relied on the following judgments reported in;

(i) AIR (1977) SCC 2421 [T.ARIVANDANDAM V. T.V.SATYAPAL AND ANOTHER] .

(ii) AIR (1998) SCC 1297 [K.K.MODI Vs. K.N.MODI AND OTHERS].

6. Per contra, the learned counsel for the respondents would submit that the suit which was filed by the petitioners' father was on a different cause of action and the present suit has been filed on a different set of cause of action and as such it is very much maintainable in the eye of law and it cannot be rejected in limine. Though in respect of the suit property, there were so many proceedings, the Court below as well as this Court failed to consider the share of the respondents' mother Doraivalli Ammal, since she is one of the heirs of the deceased Manicka Gramani. Admittedly, the sale deed executed by other legal heirs of Manicka Gramani was in favour of the petitioners' father and the mother of the respondents 1 and 2 did not execute any sale deed. Therefore, she is entitled for a share in the suit property. These issues have to be tried before the trial



Court by letting in evidence and it cannot be said to be abuse of process of law or re-litigating the same issue in respect of suit properties.

7. He further submitted that though the petitioners' father filed a suit for declaration and recovery of property, he failed to mention the excess of the suit property which was purchased by him in the suit schedule. Therefore, the disputed question of fact has to be tried before the trial Court and it cannot be decided in the petition for rejection of plaint. The petitioners took a specific plea that the present suit is hit by the principle of res-judicata and on that ground the plaint cannot be rejected in limine.

8. He further submitted that the present suit has been filed by the respondents 1 and 2 herein, in respect of share of their mother and these issues were never touched by the Court below or by this Court, while considering the application filed under Section 47 of CPC before the Execution Court. In fact the purchaser of the portion of property filed a suit for injunction in which the trial Court dismissed the petition for interim injunction. In the present suit, the respondents filed OSA as against the dismissal of the injunction petition, in which this Court observed that any of the observations made by this Court will not have a bearing on the trial Court to decide the suit. In support of his contentions, he relied upon the judgments reported in (2018) 5 SCC 544 [RAKESH BIRANI (DEAD) THROUGH LEGAL REPRESENTATIVES Vs. PREM NARAIN SEHGAL AND ANOTHER] and (2011) 3 MLJ 288 [V.KRISHNAMOORTHY Vs. BALAKRISHNAN AND ANOTHER].

9. Heard Mr.ARL.Sundaresan for AL.Ganthimathi, learned counsel appearing for the petitioners and Mr.Palaniappan, learned counsel appearing for the respondents 7 to 10.

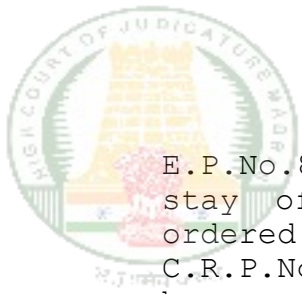
10. The petitioners' father purchased the suit property comprised in S.No.8/2-A, Palayakar Street, Kodambakkam, by a registered sale deed dated 17.12.1960 from the legal heirs of Manicka Garamani namely defendants 1 to 3 in O.S.No.923/1962. When the sale deed was executed, the 4th defendant in the said suit was not available and later he executed release deed in respect of the suit property in favour of the petitioners' father. The mother of the respondents 1 and 2 was the 5th defendant in the said suit and she claimed right over the suit property based on the oral gift made by her father during his life time some where in the year 1946. She further contended that therefore, the other brothers namely defendants 1 to 4 had no title over the property to confer in favour of the petitioners' father. Since she was given jewels at the time of her marriage in respect of her share, except her deposition, she



had no document to prove that the suit property was orally gifted to her by her father. The Court below further found that her mother never was in possession of the suit property and decreed the suit in favour of the petitioners' father and ordered delivery of vacant possession. Aggrieved over the same, the mother of the respondents 1 and 2 herein filed an Appeal Suit in A.No.311 of 1964 and the same was also dismissed by the judgment and decree dated 19.03.1971. Thereafter, she did not prefer any Second Appeal and the judgment and decree passed by the Court below became final. In pursuance to the decree, the petitioners' father filed an execution petition in E.P.No.831 of 1981. Pending execution petition, the respondents mother filed a petition under Section 47 of CPC in E.A.No.6332 of 1981 and the same was also dismissed by an order dated 12.02.1982. In the meanwhile, the 3rd respondent herein obstructed the delivery of possession and as such the petitioners' father filed a petition for removal of obstruction in E.A.No.1796 of 1982 and the same was allowed by an order dated 11.04.1983. The obstructor namely the 3rd respondent herein also filed a petition under Section 47 CPC in E.A.No.1487 of 1983 and the same was also dismissed on 26.07.1990. Thereafter, the petitioners' father filed a petition for removal of superstructure, police aid, breaking open the lock and also for amendment to include the New Door No. for the suit schedule property in E.A.No.479 to 482 of 1984.

11. The 3rd respondent herein filed a suit in O.S.No.786 of 1984 for permanent injunction restraining the petitioners' father from executing the decree passed in O.S.No.923 of 1962 on the ground that the property purchased by the plaintiffs' father is different from the property purchased by the 3rd respondent from Duraivalli Ammal. Thereafter, the suit was withdrawn after filing the present suit. Originally, it was filed before this Court in C.S.No.494 of 1991 and thereafter, it was transferred to the file of the City Civil Court, Chennai in O.S.No.7348 of 1996.

12. The petitioners' father filed I.A.No.14188 of 1986 for appointment of Surveyor-Commissioner for local Inspection and to identify the property with the help of surveyor and the same was allowed and aggrieved by the same, the 3rd respondent filed a Civil Revision Petition before this Court. This Court, by an order dated 22.12.1986 directed the trial Court to appoint a Surveyor-Commissioner to survey the suit property and submit a report. The Surveyor-Commissioner submitted his report stating that the property purchased by the 3rd respondent as well as the suit property are one and the same. In the mean while, the mother of the respondents 1 and 2 died on 27.02.1988. The respondents 1 and 2 were impleaded as legal heirs in E.A.No.2755 of 1988 by an order dated 08.02.1989 in the main Execution Petition. Finally, on 26.11.1990 delivery was ordered in



E.P.No.831 of 1981. Thereafter, the respondents 1 and 2 filed stay of delivery in E.A.No.5705 of 1990 and the same was ordered. Aggrieved by the same, the petitioners' father filed C.R.P.No.86 of 1991 before this Court and the same was allowed by an order dated 06.03.1991. This Court categorically held as follows:-

"10. Fourthly, on the facts, I have already referred to the report of the Surveyor-Commissioner filed on 11.03.1988 to the effect that the subject matter of the suit and the property against which the execution is proceeded are the same. In view of such a report, it is not at all necessary for the executing Court to go through another roving enquiry as to whether the property proceeded against in execution is different from the property for which the decree has been passed. There is absolutely no necessity for the executing Court to issue summons to the Tahsildar or any other official to bring the records to Court, which is for the purpose of protracting the proceedings.

11. Fifthly, the application for amendment of the description of the property in the execution petition had been ordered by the executing Court in EA.No.482 of 1984 on 26.11.1990. The judgment-debtor who lived for several years after the filing of the said application did not choose to oppose that application. The order was passed only after the legal representatives of the judgment-debtor came on record and it is not open to them to ignore the order and file an application under Section 47 C.P.C.

12. In the circumstances, the Civil Revision Petition is allowed with costs. Counsel's fee Rs.2,000/-.

13. I am told that the application under Section 47 C.P.C. Viz., E.A.No.5705/90 is posted to 30.04.1991. In this matter, the decree was passed in the suit in 1964 and affirmed on appeal by this Court in 1974. The execution petition has been pending from 1981. There is absolutely no justification for the executing Court to post a frivolous application under Section 47 C.P.C., at the instance of the legal representatives of the judgment-debtor to practically the last day before the closure of the Court for summer recess. Hence, I direct the executing Court to advance the hearing of E.A.No.5705/1990 to 22.03.1991. The parties and counsel appearing for both parties are given notice hereby that



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E.A.No.5705/1990 will be heard by the executing Court on 22.03.1991 and it is for them to make arrangements to be present in Court and argue the matter. The executing Court shall dispose of the said application by passing appropriate orders on or before 12.04.1991."

13. Thereafter, on 11.04.1991 the respondents 1 to 3 herein filed the present suit in C.S.No.494 of 1991 for declaration in respect of very same property. Along with the suit they also filed an injunction petition in O.A.No.348 of 1991. Though initially injunction was granted, subsequently by order dated 23.10.1991, it was dismissed. Aggrieved by the same, the respondents 1 to 3 herein filed O.S.A.No.24 of 1992 and the same was also dismissed by an order dated 24.02.1992. Thereafter, the suit in C.S.No.484 of 1991 was transferred to the file of II Assistant Judge, City Civil Court, Chennai and re-numbered as O.S.No.7348 of 1996.

14. In view of the dismissal of the injunction petition, possession of the suit property was taken on 04.11.1991. Thereafter, the EP was terminated after recording delivery of possession on 27.02.1992.

15. A perusal of the averments made in the present plaint would revealed that the mother of the respondents 1 and 2 in pursuance to the oral gift deed by her father had sold an extent of one ground and 1236 sq.ft., in favour of the 3rd respondent herein. That being so, the suit is filed for declaration in respect of A schedule property namely measuring at 2 grounds and 1236 sq.ft., comprised in S.No.8/2A at Kodambakam village.

16. The earlier suit filed by the petitioners' father in O.S..No.923 of 1962 was for the property comprised in S.No.8/2A, in Palayakara Street, Kodambakam, to an extent of 6548 sq.ft. Therefore, both the properties are one and the same. In fact, this Court already categorically concluded that both the properties are one and the same and said portion of the order also extracted above. Further, when the 3rd respondent purchased half of the property from the total extent of 6545 sq.ft., again the respondents 1 and 2 cannot seek a declaration in respect of the entire suit property to an extent of 6545 sq.ft. Further, they put forth that the A schedule property owned by them is completely distinct property from B schedule property purchased by the petitioners' father for which he had obtained a decree. The Executing Court had not applied its mind judicially, but had superficially negatived the plaintiffs' claim. Therefore, the issues which are raised in the present suit have already been dealt by the Court below as well as confirmed by this Court in various orders as stated supra. As such, the present suit is



only a re-litigation for the very same property and it would amount to abuse of process of law. In this regard, the learned counsel relied upon the following judgments reported in;

(i) AIR 1977 SCC 2421 [T.ARIVANDANDAM V. T.V.SATYAPAL AND ANOTHER], the relevant portion reads as under:

"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 O. VII R.11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear 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 O.X.C.P.C. 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. The Penal Code is also resourceful enough to meet such men, (Ch.XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi.

"It is dangerous to be too good.""

(ii) AIR 1998 SCC 1297 [K.K.MODI Vs. K.N.MODI AND OTHERS], the relevant portion reads as under:

"44. One of the examples cited as an abuse of the process of Court is re-litigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, 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



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abuse of the process of 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 Courts' 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."

17. The Hon'ble Supreme Court of India held that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the Court should exercise the power under Order 7 Rule 11 of the CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of CPC.

18. It is an abuse of process of Court and contradict and justice public policy for a party to relitigate the same issue which has already been tried and decide earlier against him. If the same issue is sought to be relitigated its amounts to abuse of process of Court. The above judgments are squarely applicable to the present case on hand. As stated supra, the present suit has been filed in respect of the very same property and for re-litigating the very same issues which were already dealt by the Court below. Therefore, the present suit is nothing, but clear abuse of process of law and it cannot be sustained as against the petitioners and liable to be rejected.

19. In view of the above discussion, I.A.No.14157 of 2002 dated 16.11.2005 in O.S.No.7348 of 1996 on the file of the II Assistant City Civil Court, Madras, is set aside. The Civil Revision Petition is allowed. The plaint in O.S.No.7348 of 1996 on the file of the II Assistant City Civil Court, Madras, is hereby struck off. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

bri



To

The II Assistant,
City Civil Court,
Chennai.

+1cc to Mr.AL.Ganthimathi, Advocate, S.R.No.15096

CRP.PD.No.451 of 2006
and CMP.No.3895 of 2006

SR-II (CO)
RVM(22/07/2021)