

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2021

CORAM

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

CRP.PD.No.667 of 2018
and
CMP.Nos.3440 & 3449 of 2018

1.G.Ramesh
2.Anand
3.Babu
4.Devaraj @ Thiagarajan
5.Vasanth

..Petitioners

Vs.

M.S.Karnan

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to strike off the plaint in OS.No.45 of 2018 on the file of the Principal District Munsif, Tindivanam and thereby allow the revision.

For Petitioners : Mr.N.Suresh

For Respondent : Mr.R.Agilesh

ORDER

This Civil Revision Petition is filed to strike off the plaint in OS.No.45 of 2018 on the file of the Principal District Munsif, Tindivanam

2. The learned counsel for the petitioners submitted that the petitioners filed suit for declaration declaring that the sale deed executed in favour of the respondent is null and void and also for declaration declaring that the power of attorney executed by the respondent in favour of one, M.S.Babu as null and void. The petitioners also prayed for declaration declaring that the sale deed executed by the second defendant M.S.Babu in favour of the respondent herein as null and void with permanent injunction in respect of the suit properties in OS.No.13 of 2016. In fact, the court below ordered *status quo* to be maintained in respect of the suit property by fair and decretal order dated 17.06.2016 in IA.No.77 of 2016 and granted interim injunction as against the respondent herein. According to the petitioners, they purchased the suit property by the registered sale deed dated 12.12.2013 vide document No.3920 of 2013 to an extent of 7.61 cents comprised in new survey No.401/3 (old survey No.623/2) situated at Nadukuppam (East) Village, Tindivanam Taluk, Villupuram District. The respondent appeared through his counsel and duly contested the suit as well as the injunction petition. As against the order of injunction dated 17.06.2016, the respondent did not prefer any appeal before the appellate court. In fact, after granting interim injunction, the respondent attempted to

trespass into the suit property and as such the petitioners lodged complaint and the same was registered in Cr.No.7 of 2018 on the file of the Inspector of Police, District Crime Branch Police Station, Villupuram for the offences under Sections 423, 465 and 471 of IPC. While being so, after transferring the Presiding Officer before the trial court, the respondent suppressed the entire above materials and facts and simply filed suit for bare injunction in respect of the very same property and also obtained interim injunction in IA.No.167 of 2018 in OS.No.45 of 2018.

2.1 He further submitted that it is nothing but clear abuse of process of court, when the petitioners filed suit for declaration and injunction for the very same property, in which the respondent appeared through same counsel who filed present suit and suppressed the earlier suit filed by the petitioners and also interim order was granted in favour of the petitioners, the respondent filed present suit and obtained interim injunction. It is nothing but forum shopping and clear abuse of process of court. Therefore, he sought for strike off the plaint in OS.No.45 of 2018. In support of his contention, he relied upon the following judgments:

(i) ***S.P.Chengalvaraya Naidu(dead) by LR's Vs. Jagannath***

(dead) by LR's and others reported in ***AIR 1994 SC 853***

(ii) ***K.K.Modi Vs. K.N.Modi and others*** reported in

(1998) 3 SCC 573

(iii) ***Dalip Singh Vs. State of Uttar Pradesh and others***

reported in ***(2010) 2 SCC 114***

(iv) ***Oswal Fats and Oils Limited Vs. Additional Commissioner,***

Bareilly and others reported in ***(2010) 4 SCC 728***

(v) ***N.Babu Vs. S.Shanmugam*** reported in ***2013 (1) CTC 180***

3. Per contra, the learned counsel for the respondent submitted that the suit filed by the petitioners in respect of the property admeasuring 7.61 cents comprised in survey No.401/3 whereas the respondent filed suit for the property admeasuring 1.94 cents comprised in survey No.401/3 (old survey No.623/2,4). He further submitted that the petitioners filed suit in OS.No.13 of 2016 not only as against the respondent and also against the other parties. The present suit has been filed with different cause of action and it contains bundle of facts. Therefore, it cannot be struck off on its *limine*. However, it is open to the petitioners to approach the trial court under Order 7 Rule 11 of CPC in the manner known to law. Therefore, it

cannot be struck off by way of Article 227 of the Constitution of India. When there is specific provision under Order 7 Rule 11 of CPC, the petitioners cannot invoke Article 227 of the Constitution of India and prayed for dismissal of the civil revision petition.

4. Heard, Mr.N.Suresh, the learned counsel for the petitioners and Mr.R.Agilesh, the learned counsel for the respondent.

5. The point for consideration is that whether the plaint in OS.No.45 of 2018 can be struck off?

6. The petitioners are the plaintiffs in OS.No.13 of 2016 filed as against the respondent on the file of the Principal District Munsif, Tindivanam. The petitioners prayed for the following reliefs:

(a) For a declaration that the sale deed executed by Pandurangan Gramany and his sons in favour of 1st defendant on 05.02.2004, registered as Marakanam Sub Registrar Office as Document No.129/2004 in respect of the suit property is improper without any right or title vitiated in law null and void abinitio and unlawful and not at all binding on the plaintiff or the suit property.

(b) For a declaration that the power of attorney deed executed by the first defendant to the 2nd defendant on 19.01.2015, registered at Marakanam Sub Registrar office as document No.89/2015 in respect of the suit property is improper without any right or title vitiated in law null and void abinitio and unlawful and not at all binding on the plaintiff or the suit property.

(c) For a declaration that the sale deed executed by the 2nd defendant on 02.03.2015, registered at Marakanam Sub Registrar office as Document No.942/2015 in respect of the suit property is improper without any right or title vitiated in law null and void abinitio and unlawful and not at all binding on the plaintiff or the suit property

(d) For a permanent injunction restraining the defendants, their men and agents, relatives, contractors, and any persons claiming or acting under them from any manner entering into plaintiff's peaceful possession and enjoyment of suit property and not to alienate the same.

7. They also filed petition for interim injunction in IA.No.77 of 2016 and the same was allowed and ordered the parties to maintain *status quo* till the disposal of the main suit in respect of the suit properties and the respondent did not prefer any appeal as against the order passed by the trial court. Thereafter, the respondent attempted to mutate the revenue records and as such the petitioners were constrained to lodge complaint and the

same was registered in Cr.No.7 of 2018 for the offences under Section 423, 465, 471 of IPC on the file of the Inspector of Police, DCB Police Station, Villupuram. While pending investigation, the respondent filed the present impugned suit in OS.No.45 of 2018 for the following reliefs in respect of the property comprised in new survey No.401/3, old survey No.623/2,4 admeasuring 1.94 cents.

வழக்கு சொத்தை வாதி அமைதியான முறையில் அனுபவிப்பதை
பிரதிவாதிகளாவது, அவர்களது ஆட்களாவது அல்லது அவரது முகவர்களாவது
எவ்வித தடையும் இடைஞ்சலும் செய்யாமலிருக்க நிரந்தர தடையுத்தரவு
பிறப்பிக்குமாறும்

8. In both the suits, the suit property is one and the same. Originally the suit property by way of partition deed registered vide document No.2032 of 1978 one, Kothandaraman Gramani derived title over the suit property. It was in possession and enjoyment of the said Kothandaraman Gramani and along with two sons, i.e. Karunamurthy and Krishnamurthy. They sold out the property jointly to Muthunarayanan, Kamalakannan and Narayanasamy. They jointly purchased the suit property and registered vide document No.903 of 2004. Thereafter, the said Narayanasamy sold his 1/3 of his share in the suit property to his co-sharers by the registered sale deed dated 21.03.2005 vide document No.477 of

2005. Thereafter, the other two persons i.e. Muthunarayanan and Kamalakannan have sold the suit property to one, Gopalan by the registered sale deed vide document No.2026 of 2005. In fact he was also issued patta in patta No.1391. On 12.12.2013, the plaintiff and one, Anand have jointly purchased the suit property along with other properties from the said Gopalan by the registered sale deed vide document No.3920/13. Whereas the respondent filed the present suit and averred that the suit property owned by one, Sekar S/o Pavadai Gounder. The said Sekar executed power of attorney in favour of one, Babu. In turn, on the strength of the power of attorney the said Babu executed sale deed in favour of the respondent by the registered sale deed dated 02.03.2015.

9. The petitioners already filed suit as against the said Sekar and power of attorney Mr.Babu along with the respondent herein. They mainly challenged the sale deed dated 05.02.2004 registered vide document No.129 of 2004 in respect of the suit property in favour of the said Sekar. They also challenged the power of attorney executed by the said Sekar in favour of M.S.Babu i.e. the second defendant in the suit registered vide document No.89 of 2015. Finally, they also challenged the sale deed dated 02.03.2015

executed by M.S.Babu i.e. second defendant in their suit in favour of the respondent herein vide document No.942 of 2015. Therefore, the sale deed registered in favour the vendor of the respondent and the power of attorney of his vendor along with the sale deed executed in favour of the respondent were challenged in the earlier suit. The suit was duly contested through their counsel one, Mr.A.Senthamarai Kannan. The present impugned suit was filed by the respondent through the same counsel Mr.A.Senthamarai Kannan suppressing all the facts and materials. It is pending before the same court and obtained interim injunction in IA.No.167 of 2018. It is nothing but clear abuse of process of court.

10. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person. That apart, the respondent played fraud on the court and filed fresh suit after transferring the earlier Presiding Officer. Therefore, this

Court can exercise powers under Article 227 of the Constitution of India to strike off the plaint. In this regard, it is relevant to extract the judgment of this Court in **CRP.PD.No2802 of 2016** dated **11.02.2021**, as follows:

12.The learned Senior Counsel relied upon the Judgment reported in 2020 SCC Online Madras 6229, in which this Court has held in the similar circumstance, which reads as follows:

?12. The Hon-ble Apex Court in 2020 (16) SCC 601 [Raghwendra Sharan Singh Vs.Ram Prasanna Singh (Dead) by LRs wherein it is held that:~

6.6 In the case of Sopan Sukhdeo Sable (supra) in Paras 11 and 12, the Apex Court has observed as under:

“11. In I.T.C Ltd. v.Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get of Order 7 Rule 11 of the Code.

12. The trial Court must remember 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, it should exercise the power under Order 7 Rule 11 of the Code 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 the Code. [see T.Arivandanadam v. T.V.Satyapal (supra)]

6.8. In the case of Ram Singh (supra), this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

....As observed and held by Apex Court in the cases of Sham Lal alias Kuldip (supra); N.V.Srinivas Murthy (supra) as well as in the case of Ram Prakash Gupta (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the C.P.C.

In, (2020) 7 Supreme Court Cases 366

[Dahiben Vs.Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others], wherein it is held that:~

(i) The remedy under Order 7 Rule 11 C.P.C is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

(ii) the power conferred on the Court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to. Under Order 7 rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint,

read in conjunction with the documents relied upon, or whether the suit is barred by any law.

(iii) Having regard to Order 7 rule 14 C.P.C, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint. In exercise of power under this provision, it should be treated as a part of the plaint. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

(iv)The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. It is not permissible to cull out a sentence of a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into.

(v)If, however, on a meaningful reading of the plaint, it is found that the suit does not

disclose right to sue, cause of action or suit is barred by any law and the Court has no option but to reject the plaint and without any merit, Order 7 Rule 11 C.P.C.

(vi) The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has not option, but to reject the plaint.

(vii) ... “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. While considering an application under Order 7 Rule 11 C.P.C what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory. What is required is that a clear right must be made out in the plaint. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that

bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the Court.

(viii) The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues. The use of the word “first” between the words “sue” and “accrued”, requires the Court to examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.

(ix) On a reading of the plaint, it is clear

that the cause of action arose on the non-payment of the bulk of the sale consideration, which event occurred in the year 2009. The plea taken by the plaintiffs is to create an illusory cause of action, so as to overcome the period of limitation.

(x)...The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action, and bring the suit within the period of limitation.

(xi) In Raghwendra Sharan Singh, (2020) (6) SCC 601, the Supreme Court held that the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

.....
29. In fine,

[1] The suit plaint in O.S.No.110 of 2020 is nothing but an outcome of clever drafting by a man of legal knowledge in manufacturing suit on time barred dead wood rights and mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for.

[2] The plaint prayer are reproduced, as it is, for proper appreciation of clever camouflaging as to how prayers are cleverly drafted to overcome partition suit for specific performance and to claim time barred claims and to create illusory cause of action by imagining words of pleadings.

[3] In essence, the respondent/plaintiff seeking to declare his entitlement to title to the suit to an oral agreement for oral partition after four years registered partition, on the basis of an unfilled and undisclosed agreement. In law, an agreement will not confer or create title over the property as per Section 54 of Transfer of Property Act. By device of clever drafting of the plaint, the respondent/plaintiff is attempting to file a fictitious suit on the basis of an illusory cause of action and suit of the present nature is nothing but camouflage to get over the bar of limitation and the present suit for re-opening the partition after final partition viz., time barred relief, as per Limitation Act.

[4] The suit, as such framed and filed ought not to have taken on file and number it as the same is nothing but -pure- abuse of process of Court (as held in Dahiben case reported in 2020 (7) SCC

366 and Raghwendra Sharan Singh case reported in 2020 (6) SCC 601.

[5] Normally, this Court will exercise “Judicial restrain” to exercise the powers conferred under Article 227 of the Constitution of India, to reject the plaint pending before the lower Courts. However, on facts and circumstances of the case, continuation of trial of suit shocks the -Judicial Consciences- of this Court, as in the present one, I am of the view that, it amounts to --abuse of process of Court“ and the same is to be “nipped in the bud, as held by the Hon-ble Supreme Court, 2017 (13) SCC 174 [Madanuri Sri Ramachandra Murthy V.Syed Jalal]“

13.The above Judgment is squarely applicable to the case on hand. The contention of the present suit is sheer abuse of process of Court and it has to be struck off. Though there is alternative remedy under Order 7 Rule 11 CPC, it is an independent and special remedy, whereas the Court is erred to summarily dismissing the suit at the threshold without proceeding to record evidence and taking a trial on the basis of the evidence adduced. If it is satisfied then the action should be terminated on any of the ground contained in this provision. As

held by the Hon?ble Supreme Court of India, in the case of Madanuri Sri. Ramachandra Murthy Vs. Syed Jalal reported in [2017 13 SCC 174], which is relied upon by this Court in the above Judgment had held that on facts and the circumstances of the case, continuation of trial of suit shocks the -Judicial Consciences- of this Court, as in the present one, and the Court is of the view that, it amounts to “abuse of process of Court” and the same is liable to be “nipped in the bud”.

11. Accordingly, this civil revision petition is allowed and the plaint in OS.No.45 of 2018 on the file of the Principal District Munsif, Tindivanam is hereby struck off. Consequently, connected miscellaneous petitions are closed. No order as to costs.

15.06.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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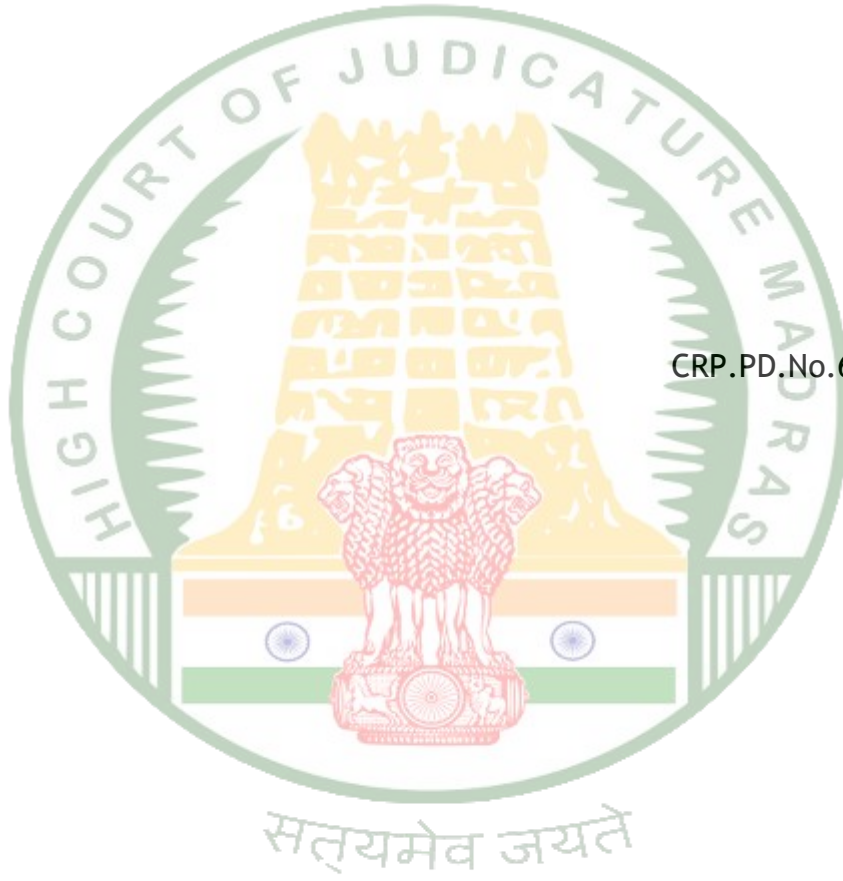
To

The Principal District Munsif,
Tindivanam

19/20

G.K.ILANTHIRAIYAN,J.

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