

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 06.09.2021	Orders pronounced on 08.10.2021
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Coram

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.1553 of 2021
and
C.M.P.No.12174 of 2021

1. Rajkumar S. Mehta
2. Chandra A. Mehta
3. Rajashree N. Mehta
4. Sasikala R. Mehta
5. Naresh S. Mehta ... Petitioners

Vs

S.Renuka Devi ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.128 of 2020 on the file of the learned Principal District Judge, Chengalpet.

For Petitioners .. Mr.AR.L.Sundaresan
Senior Counsel
for
M/s.AL.Ganthimathi

For Respondent/
Caveator .. Mr.T.V.Ramanujam
Senior Counsel
for
M/s.V.P.Sengottuvel

ORDER

This petition is filed to strike off the plaint in O.S.No.128 of 2020 on the file of the learned Principal District Judge, Chengalpet.

2. Learned senior counsel for the petitioners submitted that the petitioners are the absolute owners of the suit properties in S.F.No.168/4, 168/5 and 168/6 comprised in Pattipulam Village, Thiruporur Taluk, Kanchipuram District, by purchase through a registered sale deed in 1993. They are in absolute possession and enjoyment of the suit properties. The respondent has filed several suits and after filing the suit, either withdrew the suit or not pressed the suit. Those proceedings are vexatious proceedings initiated against the petitioners. Respondent's mother Kamatchi Ammal filed O.S.No.269 of 1999 on the file of learned

District Munsif, Chengalpet in respect of the same suit properties. This suit was filed for the relief of declaration and injunction. Subsequently, the suits in O.S.No.34 of 2000, O.S.No.129 of 2011 and O.S.No.183 of 2017 were filed on the file of learned District Munsif, Chengalpet for the relief of permanent injunction. All these suits were dismissed as not pressed. There was yet another suit in O.S.No.207 of 1995 filed by the respondent and that was dismissed on 02.03.2005. Another suit in O.S.No.56 of 1996 was filed by the respondent's mother on the file of learned Additional District Munsif, Chengalpet, and that was dismissed on 18.08.2005. An appeal in A.S.No.13 of 2006 on the file of learned Additional Subordinate Judge, Chengalpet was filed and ended in dismissal on 26.03.2007. O.S.No.107 of 1994 filed by the respondent and her husband came to be dismissed. The dismissal of these suits show that these suits are only vexatious suits instituted only to harass the petitioners. The present suit in O.S.No.128 of 2020 is filed with the same earlier prayer with additional pleadings that there is a Memorandum of Understanding between the petitioners and respondent on 24.09.2008 in the previous proceedings. The suit in O.S.No.183 of 2017 filed in District Munsif Court, Chengalpet was struck off by this

Court in Civil Revision Petition No.2832 of 2017, however, with liberty to file a fresh suit disclosing the earlier suits and the Memorandum of Understanding. Therefore, this suit is filed taking advantage of the above observation made by this Court. This suit is barred in law and specifically under Order 2 Rule 2 CPC. It is barred by the principles of limitation as well, especially when the suits filed after the alleged Memorandum of Understanding said to have been not acted upon. There is no fresh cause of action for instituting the present suit. The filing of present suit and with an object to harass the petitioners is a clear abuse of process of law. Therefore, the plaint has to be struck off.

3. In response, learned senior counsel for the respondent submitted that in the suit proceedings in O.S.No.56 of 1996, the petitioners are not parties and therefore, filing of that suit cannot be considered as harassment to the petitioners. Other suits were all dismissed as not pressed on the basis of the insistence of the petitioners to settle the dispute between the parties. The respondent and her family members owned several acres of properties in the area. Therefore, there are some issues with regard to the identification of the property. The

Advocate Commissioner appointed in previous suit wrongly identified the property. Subsequently, another Advocate Commissioner has been appointed and he rightly identified the property. The petitioners and respondent reached an agreement with regard to settling the dispute and a Memorandum of Understanding was entered into between the parties on 24.09.2008. Because of the Memorandum of Understanding entered into between the parties, the suits filed by the respondent had been either not pressed or allowed to be dismissed. However, the petitioners have not honoured the terms of understanding entered into between the parties and started to give trouble in enjoyment of the property by the respondent. Therefore, the suit in O.S.No.183 of 2017 was filed. Petitioners filed petition in CRP No.2832 of 2017 to strike off the plaint in O.S.No.183 of 2017. Though the plaint was struck off in O.S.No.183 of 2017, this Court gave liberty to the respondent to file fresh suit. Against the said order, petitioners preferred Special Leave Petition before the Hon'ble Supreme Court in SLP (Civil) No.12886 of 2021. The Hon'ble Supreme Court observed that “.. except that the observation made by the High Court in paragraph-25 of the impugned judgment and the order will not come in the way of the parties to raise all contentions available in the

said suit, which will have to be decided on its own merits and in accordance with law.” “We reiterate the observation made in paragraph-25 of the impugned judgment and order which permits the respondent to file a suit if fresh cause of action had arisen because of Memorandum of Understanding.”

4. Learned senior counsel for the respondent further submitted that the order of the Hon'ble Supreme Court makes it clear that the respondent's right to file fresh suit, if fresh cause of action is made out is recognised by the Hon'ble Supreme Court. Therefore, there is no question of rejecting the plaint in O.S.No.128 of 2020. O.S.No.128 of 2020 is instituted on the basis of fresh cause of action arose after the disposal of the earlier suits. If at all, there are any issues like the suit is barred by limitation and under Order 2 Rule 2 CPC, these issues cannot be decided now at the threshold. Certain amounts of oral and documentary evidence is required for deciding these issues. Therefore, the respondent should be given an opportunity to present the case. Petitioners would have every opportunity to contest respondent's case by raising appropriate issues. Then it is open to the Court to decide the case on merits. At this

stage, this case cannot be thrown out from the consideration of the Court under the powers vested with this Court under Article 227 of the Constitution. Striking a plaint is not a routine order to be passed in every case. Only in rare cases, a plaint can be struck off. That rarity is not present here. Therefore, the learned senior counsel for the respondent prayed for the dismissal of this petition.

5. Considered the rival submissions and perused the records. It is necessary to find out the case of the respondent from the pleadings made in the plaint in O.S.No.128 of 2020 to appreciate the rival contentions.

6. The case of the respondent in O.S.No.128 of 2020 in brief is as follows:-

(i) The respondent is the absolute owner of the large extent of vacant land measuring an extent of 10.30 acres in S.No.168/3E1A1A1C2A at Pattipulam Village, Thiruporur Taluk, Chengalpet District. Her grand father Vedagiri Naicker owned extensive ancestral properties in Pattipulam Village. After his demise, his

properties were managed by his sons V.Balakrishna Naicker and V.Krishtappa Naicker. Vedagiri Naicker's wife Alamelu Ammal and his sons V.Balakrishna Naicker and V.Krishtappa Naicker mortgaged an extent of 4.50 acres in S.No.168 to one Ekambaram Chettiar, under a registered mortgage deed on 29.09.1930. They have also mortgaged an extent of 5.50 acres in S.No.168 to one Vedagiri Chettiar under a registered mortgage deed on 22.06.1934. Then Alamelu Ammal and Balakrishna Naicker mortgaged 3.75 acres in S.No.168 (part) within a specified four boundaries on 07.08.1946 through a registered document to Adhimoola Chettiar. An extent of 4.50 acres in S.No.168 was mortgaged to one Vedagiri Chettiar through a registered mortgage deed dated 07.08.1946. The recitals in this mortgage deeds show that Vedagiri Naicker owned larger extent of lands and thereafter, his sons V.Balakrishna Naicker and V.Krishtappa Naicker owned those lands and were in possession and enjoyment. Respondent's father Krishtappa Naicker became the absolute owner of the lands in S.No.168 (part) measuring 12.40 acres out of 407.16 acres within specified boundaries in Pattipulam Village. Krishtappa Naicker sold one acre in S.No.168 (part) to Raghava Naicker on 02.10.1953. When the pangalis of Krishtappa

Naicker claimed right over the trees in S.No.168 (part), he approached Settlement Tahsildar and the Settlement Tahsildar in his order dated 14.09.1966 held that Krishtappa Naicker has right over the property and he is entitled to sell the trees standing thereon. Patta No.27 came to be issued on 07.03.1979 in respect of S.No.168/3E1 measuring 11.40 acres.

(ii) Respondent and her father sold 1.10 acres in S.No.168 (part) to K.Sivaji and two others on 25.03.1985. Remaining 10.30 acres was subdivided as S.No.168/3E1A1 in the name of Krishtappa Naicker. Krishtappa Naicker bequethed an extent of 10.30 acres in S.No.168 and other properties to respondent under a Will dated 15.11.1993. Krishtappa Naicker died on 29.12.1993 and after his death, the respondent is entitled to these properties. This 10.30 acres was subdivided as S.No.168/3E1A1A1C2A and patta No.467 was granted to respondent and her mother Kamatchi Ammal. These properties are in possession and enjoyment of Kamatchi Ammal and respondent. The petitioners tried to disturb respondent's possession and enjoyment of the suit properties and therefore, the suit in O.S.No.269 of 1999 was filed before the learned District Munsif, Chengalpet. When the petitioners

tried to trespass into the properties, a suit in O.S.No.34 of 2000 was filed before the learned District Munsif, Chengalpet. Both these suits were filed for the relief of declaration and injunction. Petitioners filed a suit in O.S.No.137 of 2000 in learned District Munsif, Chengalpet for cancelling the patta in respect of S.Nos.168/4, 168/5 and 168/6. The petitioners approached the respondent and her mother for 'out of court settlement'. Therefore, the suit in O.S.No.269 of 1999 was not pressed on 12.06.2000.

(iii) The petitioners and respondent entered into a Memorandum of Understanding on 24.09.2008. The original agreement is with Mr.Anilkumar Mehta, husband of the second defendant. Respondent has a photocopy of the agreement. Pursuant to this agreement, respondent got possession and enjoyment of the suit properties. Respondent made an endorsement in O.S.No.34 of 2000 that “suit may be dismissed as not pressed as settled out of court.”. Accordingly, the suit was dismissed as “settled out of court” on 30.09.2008.

(iv) The respondent through the power of attorney – Anil Kumar

Mehta issued a cheque for Rs.65,00,000/- (Rupees sixty five lakhs only) in terms of the Memorandum of Agreement. But, they failed to honour the cheque, the cheque was returned 'dishonoured'. At the instance of well wishers, respondent got possession of the property, restored by properly locating and identifying the property.

(v) Respondent's mother executed a registered settlement deed dated 01.06.2011 in favour of the respondent, so that the respondent becomes absolute owner of the property in S.No.168/3E1A1A1C2A measuring 10.30 acres. Petitioners have been looking for purchasers and negotiations were going till 2011. Suddenly, petitioners became evasive and attempted to interfere with the possession and enjoyment of the suit properties and attempted to trespass. Therefore, respondents filed O.S.No.129 of 2011 before learned District Munsif, Chengalpet for injunction. The injunction application in I.A.No.633 of 2011 was dismissed on the basis of Advocate Commissioner's report. Once again, petitioners approached the respondent for settlement and therefore, the suit in O.S.No.129 of 2011 was not pressed on 29.06.2016. It is claimed that they are experts in real estate and arrange for sale of the land for

good price. They filed O.S.No. 157 of 2016 on the file of learned District Munsif, Chengalpet against the respondent for permanent injunction. Respondent found that the report filed by the Commissioner in O.S.No.129 of 2011 was not correct. Then the respondent filed O.S.No.183 of 2017 against the petitioners and sought for appointment of an Advocate Commissioner. The Advocate Commissioner appointed by the Court inspected the suit properties on 22.07.2017. At the time of inspection, petitioners were represented by Advocate Mr.Sathish Babu and 25 other Advocates. Petitioners filed CRP (PD) No.2832 of 2017 for striking the plaint in O.S.No.183 of 2017. They also filed Crl.O.P.No. 21524 of 2017. CRP (PD) No.2832 of 2017 was dismissed. Petitioners preferred Review Application in R.A.No.225 of 2018. That was also dismissed.

(vi) Then, they preferred SLP (Civil) Diary No.22279 of 2019 before the Hon'ble Supreme Court. The Hon'ble Supreme Court remitted the matter to the High Court for fresh consideration. On 30.08.2019, CRP (PD) No.2832 of 2017 was disposed with the following observations:-

“25. In view of the above, the plaint in O.S.No.183 of 2017 is hereby struck off, however, the respondent is at liberty to file a fresh suit disclosing the earlier suits and the Memorandum of Understanding, which according to the respondent/plaintiff gives fresh cause of action for the fresh suit, if she so desire and the petitioners may also have a chance to defend their case.

26. With the above observations and directions, this civil revision petition is disposed of. Consequently connected miscellaneous petitions are closed. No costs. ”

(vii) Again SLP (Civil) No.17385 of 2021 was preferred by the petitioners. The Hon'ble Supreme Court on 19.08.2021 ordered as follows:

“ Except that the observation made by the High Court in paragraph-25 of the impugned judgment and the order will not come in the way of the parties to raise all contentions available in the said suit, which will have to be decided on its own merits and in accordance with law.”

“We reiterate the observation made in paragraph-

25 of the impugned judgment and order which permits the respondent to file a suit if fresh cause of action had arisen because of Memorandum of Understanding.”

(viii) In the said circumstances, the present suit is filed narrating previous litigations, the circumstances under which the Memorandum of Understanding dated 24.09.2008 was entered and not acted upon by the petitioners and on the basis of the fresh cause of action arose for filing the suit. The cause of action for the present suit is distinct from the cause of action for earlier suits. The petitioners have suppressed the suits filed by them. When an alternative remedy is available, extra-ordinary jurisdiction under Article 227 of the Constitution of India cannot be invoked for striking of a plaint. In support of this submission, learned senior counsel for the respondent pressed into service the judgments reported in

(a) 2013(2) SCC 218 (Kishore Samrite ..vs. State of UP & others), wherein it is held as follows:-

32. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where

it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

and

(b) 2019 (9) SCC 538 (Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others ..vs.. Tuticorin Educational Society and others). The relevant portion is extracted hereunder:-

“12. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special

enactments and/or statutory rules and the fora provided therein happen to be quasijudicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Article 227, even a decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai vs. Ram Chander Rai², pointed out in Radhey Shyam Vs. Chhabi Nath³ that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts.

13. Therefore wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227

especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.”

7. From the submissions made, learned senior counsel for the petitioners' submission is that the respondent is in the habit of filing suits after suits against the petitioners, only with a view to grab money and get unjust enrichment. She has no right whatsoever in the suit properties. Earlier suit filed by the respondent and his mother were all dismissed as not pressed. Respondent claims that there is Memorandum of Understanding dated 24.09.2008 and the petitioners have failed to honour the Memorandum of Understanding. However after the alleged Memorandum of Understanding dated 24.09.2008, respondent filed O.S.No.129 of 2011 against the petitioners and others for the relief of permanent injunction. Nothing is said about the Memorandum of Understanding dated 24.09.2008 in this suit. Another suit in O.S.No.183 of 2017 was filed by the respondent against the petitioners. Even in this suit, nothing is said about the Memorandum of Understanding dated 24.09.2008. If there had been any Memorandum of Understanding and if it is admissible in law, suit should have been filed within three years

from the date of execution of Memorandum of Understanding for enforcing the terms of Memorandum of Understanding, that has not been done. Earlier suit filed by the respondent had been dismissed as not pressed, without reserving the right to institute/to file a suit for a larger relief. Therefore, the present suit in O.S.No.128 of 2020 is barred under limitation and Order 2 Rule 2 CPC.

8. Admittedly, both the petitioners and respondent claim title and possession to the suit properties in S.No.168/3E1A1A1C2A etc., It was already explained in detail. Respondent claims right, title and possession in respect of this property. The petitioners also claim right, title and possession in respect of the same property. Both the parties have filed suits against each other. Respondent filed the following suits against the petitioners in respect of the suit properties.

1. O.S.No.269 of 1999 (by respondent's mother)
2. O.S.No.34 of 2000 (by respondent's mother and respondent)
3. O.S.No.129 of 2011 (by respondent)
4. O.S.No.183 of 2017 (by respondent)
5. O.S.No.128 of 2020 (present suit by respondent)

Petitioners filed O.S.No.137 of 2000, O.S.No.157 of 2016 against the respondent. Other suits filed, which according to respondent, not related to this suit properties are:-

1. O.S.No.207 of 1995 (by respondent)
2. O.S.No.56 of 1996 (by respondent's mother)
3. O.S.No.107 of 1994 (by respondent and her husband)

9. None of the suits relating to this suit properties had been disposed after examination of parties and on merits. The suits filed by the respondent were not pressed, according to the respondent, for the reason that an understanding was reached with the petitioners to amicably resolve the issue. The main issue is that there is some dispute with regard to the identification of the property. Earlier commissioner has wrongly identified the property. Subsequently, commissioner was appointed in O.S.No.183 of 2017 and at the time of inspection by the Advocate Commissioner, petitioners' Advocate was present along with 25 Advocates. The issue of identification is not yet resolved. O.S.No.183 of 2017 was filed for the relief of permanent injunction against the petitioners. CRP No.2832 of 2017 was filed for striking of

this plaint. This Civil Revision Petition came to be dismissed on 02.07.2018. Thus, they preferred SLP (Civil) Diary No.22279 of 2019 before the Hon'ble Supreme Court and the Hon'ble Supreme Court remitted the matter to the High Court for fresh consideration. On 30.08.2019, CRP (PD) No.2832 of 2017 was disposed with the following observations:-

“25. In view of the above, the plaint in O.S.No.183 of 2017 is hereby struck off, however, the respondent is at liberty to file a fresh suit disclosing the earlier suits and the Memorandum of Understanding, which according to the respondent/plaintiff gives fresh cause of action for the fresh suit, if she so desire and the petitioners may also have a chance to defend their case.

26. With the above observations and directions, this civil revision petition is disposed of. Consequently connected miscellaneous petitions are closed. No costs.”

10. Again SLP (Civil) No.12886 of 2021 was preferred by the petitioners and in the SLP, it was directed that the contentions available

in the fresh suit (O.S.No.128 of 2020) will have to be decided on own merits and in accordance with law.

11. The case of the respondent is that O.S.No.128 of 2020 is not based on Memorandum of Understanding dated 24.09.2008, but based on the title of the respondent in the suit property. Therefore, there is no question of limitation in this case. Even otherwise, the question of limitation and whether the suit is barred under Order 2 Rule 2 CPC are matters required to be established by oral and documentary evidence, because these issues involve mixed question of fact and law. Without giving opportunity to the respondent to prove that the suit is within the period of limitation and it is not barred by limitation and the respondent has cause of action to file the suit, the plaint cannot be struck off from the file using extraordinary jurisdiction under Article 227 of the Constitution of India. In the considered view of this Court, this Court finds that the submission of the learned senior counsel for the respondent has merits. The issue of limitation and bar under Order 2 Rule 2 CPC are mixed questions of fact and law and require some evidence, oral and documentary to decide these mixed questions of fact and law.

Admittedly both the parties claim right, title, interest and possession in respect of the suit properties. Both trace their title to the property through their respective title deeds. There is an issue with regard to the identification of the properties claimed by both. Therefore, these issues must necessarily go for trial. Respondent has made out a case for instituting the case against the petitioners by cataloguing the cause of action. This Court is of the considered view that the issues raised for consideration of this Court requires oral and documentary evidence and therefore, the plaint cannot be struck off.

12. In this view of the matter, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.10.2021

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Index : Yes / No
Internet : Yes / No
Speaking order : Yes / No

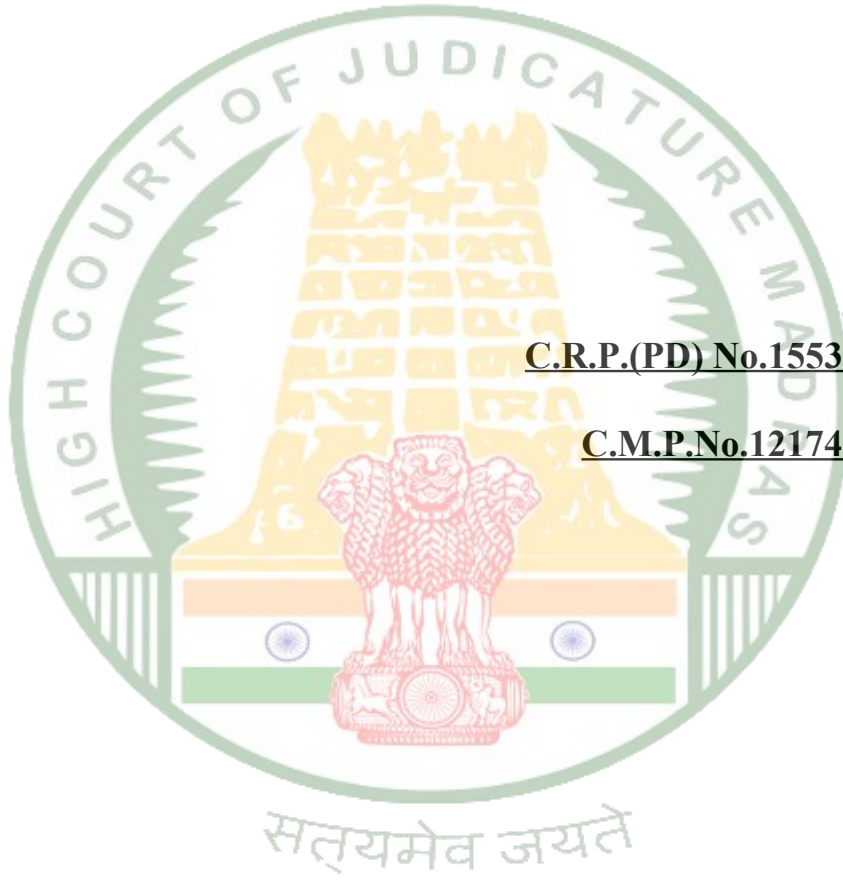
To,

1. The Principal District Judge, Chengalpet.

C.R.P.(PD) No.1553 of 2021
and
C.M.P.No.12174 of 2021

G.CHANDRASEKHARAN, J.

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order in
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