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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.07.2021

Pronounced on : 27.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P. (PD) (MD) .Nos.812 and 813 of 2021
and
C.M.P (MD) Nos.4391 and 4392 of 2021

C.R.P (PD) (MD) .No.812 of 2021

1. R.Ayyasamy Nadar
2.A.Saravanakumar : Petitioners/Defendants No.4 & 5

Vs.

1. Infant Raj
2. A.Thivianathan
3. B.Julia Margaret : Respondents No.1 to 3/Plaintiffs

4. P.Shanmugavel
5. S.Kulanthaivel
6. S.Tamilalagan : Respondents No.4 to 6/Defendants No.1 to 3

7. Rural Development Officer,
Vaiyampatti Panchayat Union,
Manapparai Taluk,
Trichy District. : Respondent No.7/Defendant No.7

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.144 of 2020 on the file of the Principal District Munsif Court, Manapparai.

For Petitioner : Mr.J.Jeyakumaran
For Respondents : Mr.D.Shamugaraja Sethupathy
For R1 to R3

C.R.P (PD) (MD) .No.813 of 2021

1. R.Ayyasamy Nadar
2. A.Saravanakumar : Petitioners/Defendants No.4 & 5

Vs.

1. A.Divyanathan
2. P.Julia Margaret : Respondents No.1 to 3/Plaintiffs

3. P.Shanmugavel

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



4. S.Kulanthaivel
5. S.Tamilalagan : Respondents Nos.4 to 6/Defendants No.1 to 3
6. The State Government of Tamil Nadu,
Rep by the District Collector,
Tiruchirappalli.
7. The District Registrar,
Tiruchirappali District,
Tiruchirappalli.
8. The Sub Registrar,
Manaparai,
Tiruchirappali District.
: Respondents No.6 to 8/Defendants No.6 to 8

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.431 of 2020 on the file of the Sub Court, Manapparai.

For Petitioner : Mr.J.Jeyakumaran
For Respondents : Mr.D.Shamugaraja Sethupathy
For R1 and R2

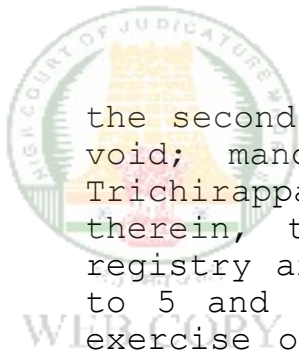
COMMON ORDER

These Civil Revisions are filed seeking orders to strike off the plaints filed in O.S.No.144 of 2020, pending on the file of the Principal District Munsif Court, Manaparai and in O.S.No.431 of 2020, pending on the file of the Subordinate Court, Manaparai.

2. The revision petitioners are the defendants 4 and 5, in both the suits in O.S.No.144 of 2020 and O.S.No.431 of 2020. The respondents 1 to 3 are the plaintiffs in O.S.No.144 of 2020, and the respondents 2 and 3 are the plaintiffs in O.S.No.431 of 2020.

3. The respondents 1 to 3 have filed the suit in O.S.No.144 of 2020, claiming the relief of declaration that B-schedule property therein, is the common pathway for the properties shown in A-schedule and also for consequential permanent injunction restraining the defendants therein from interfering with the plaintiffs and others using and enjoying B-schedule pathway and restraining the defendants from alienating or encumbering the B-schedule property.

4. The respondents 2 and 3 have filed the suit in O.S.No.431 of 2020, claiming the relief of declaration that the plaintiffs therein are entitled to exercise passage right over the B-schedule property for reaching A-schedule property from East-west National Highways Road on South and vice versa; declaring that the sale deed dated 10.09.2020, executed by the defendants 1 to 3, in favour of



the second petitioner in respect of B-schedule property is null and void; mandatory injunction directing the District Registrar of Trichirappalli and Sub Registrar of Manaparai, defendants 7 and 8 therein, to delete the sale deed, dated 10.09.2020, from their registry and for permanent injunction, restraining the defendants 1 to 5 and their men from interfering with the plaintiffs peaceful exercise of passage right over B-schedule property under the guise of obliterating or blocking suit B-schedule property.

5. The case of the plaintiffs is that A-schedule property in both the suits and other properties were originally owned by the defendants 1 to 3, that the defendants 1 to 3 have plotted their properties into house-sites, that the defendants 1 to 3 have sold some properties to the plaintiffs in both the suits and also to some other persons, that the defendants 1 to 3 while forming house-sites have earmarked North-South and East-West pathway to the width of fifteen feet, starting from Trichy-Dindigul National Highways Road on South towards North for ingress and egress for the purchasers, referred as B-schedule properties in both the suits, that the first revision petitioner has also purchased property from the defendants 1 to 3 along with pathway rights in B-schedule property, that subsequently the defendants 1 to 3 in collusion with the revision petitioners have applied before the Block Development Officer of Vaiyampatti for issuing no objection certificate to sell the B-schedule property, that the said Block Development Officer without proper enquiry has issued no objection certificate, dated 14.07.2020, fraudulently, that the defendants 1 to 3, have then executed a sale deed, dated 10.09.2020, in favour of the second petitioner in respect of B-schedule property, that the defendants 1 to 3 have absolutely no right to sell the common pathway land to the second petitioner and that therefore the plaintiffs were constrained to file the above suits.

6. It is not in dispute that the first plaintiff in O.S.No.144 of 2020 has filed a Writ Petition in W.P(MD)No.14423 of 2020, claiming a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders passed by the Block Development Officer of Vairampatti Panchayat Union, dated 14.07.2020 and consequential registration of sale deed, dated 10.09.2020 and quash the same and directing the Sub-Registrar of Manaparai, to delete the entries relating to the sale deed from the 'A' Register, maintaining in their office and that the same is pending. It is also not in dispute that recently the second revision petitioner has filed a suit in O.S.No.154 of 2021 on the file of the Sub Court, Manaparai, against the plaintiffs in both the suits referred above and two others claiming the relief of declaration that the suit property, i.e., common pathway now in dispute belongs to the plaintiff and for consequential permanent injunction restraining the defendants and their men from disturbing the plaintiffs using and enjoying the suit property and that the same is pending on the file of the Subordinate



7. When both the suits are pending for trial, the fifth defendant, who purchased the property shown in B-schedule of the suit properties in both the suits, has invoked the jurisdiction of this Court, under Article 227 of the Constitution of India, for striking off the complaints, raising the following two grounds:

(1) The plaintiffs have miserably failed to submit any documents or revenue records to prove that B-schedule property is a public pathway and as such the suits are clear abuse of process of law.

(2) Re-litigation - the plaintiffs 1 to 3, after filing the suit in O.S.No.144 of 2020, the plaintiffs 2 and 3 have filed another suit in O.S.No.431 of 2020 and the first plaintiff has filed a Writ Petition in W.P(MD)No.14423 of 2020, for the very same relief and that therefore the above proceedings would amount to re-litigation, which in turn, would amount to abuse of process of law.

8. Before entering into further discussion, it is necessary to consider the main legal objection of the plaintiffs that the civil revision petitions filed under Article 227 of the Constitution of India are not maintainable, since the petitioners are having alternative efficacious remedy under Order 7 Rule 11 of the Code of Civil Procedure. But, as rightly contended by the learned Counsel for the revision petitioners, any party aggrieved by the initiation of proceedings can very well invoke Article 227 of the Constitution, to challenge the same, if it is shown that the proceedings would amount to abuse of process of law. It cannot be said that the party cannot straight-away approach this Court under Article 227 of the Constitution, as he should have exhausted the alternative remedy available under Order 7 Rule 11 CPC, but at the same time, when the aggrieved person has not shown any sufficient ground or reason for straight-away invoking Article 227 of the Constitution, as rightly contended by the learned Counsel for the respondent, this Court cannot entertain the civil revision petition filed under Article 227 of the Constitution.

9. In the case on hand, the revision petitioners by alleging the ground of abuse of process of law, have filed the present civil revision petitions. The learned Counsel for the revision petitioners has relied on the following decisions in support of his contention:

(i) **2013 (1) CTC 180:**

N. Babu Vs. S. Shanmugam and Others:

"24. Further, though an alternative remedy is available to the revision petitioner, for striking off the suit under Order 21 Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of Court and when the facts are not controverted and admitted by the plaintiff/first respondent,



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the Court can exercise the extra ordinary jurisdiction of the Court under Article 227 of the Constitution of India and strike off the plaint and as a matter of fact, this Court and Honourable Supreme Court held that the right conferred under Article 227 must be exercised very sparingly and it is also settled law that when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of Article 227 of the Constitution of India. Hence, the revision petitioner has brought out a clear case to enforce the right under Article 227 of the Constitution of India and the first respondent cannot claim to be in possession of the property from a lawful owner and therefore, his possession cannot be termed to be lawful and the first respondent also cannot said to be in settled possession so as to protect his possession and the revision petitioner has got a decree in his favour and after the decree was confirmed in the second appeal, the first respondent/plaintiff was put in possession of the property and therefore, the first respondent is not entitled to the relief of injunction against the revision petitioner."

(ii) **(2017) 6 MLJ 560:**

P.Srikanth Vs. R.Venkatesan:

"27.The above judgments are squarely applicable to the facts of the present case and this Court has power not only under Section 115 of CPC and has power under Article 227 of the Constitution of India to reject the plaint but also has power to strike off the plaint, when it is brought to the notice of the Court that the suit is abuse of process of Court. The Honourable Apex Court held that it is the duty of the courts to prevent the said abuse of process of Court becoming perpetual by interfering with the proceedings. The abuse of process of Court is 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 enhancing one's own wealth is yet another instance where a party could be said to have



committed an abuse of the process of the Court."

(iii) In C.R.P(PD)(MD)No.2802 of 2016, dated 11.02.2021 **[Sarathambal @ Saratha and others Vs. Muthuganesan and others]**, this Court has held as follows:-

"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 Honourable 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'."

10. There is absolutely no dispute about the legal position stated in the above decisions, but whether the said decisions are applicable to the case on hand or not is the point to be considered.

11. As already pointed out, the first contention of the revision petitioners is that the plaintiffs have failed to show that the B-schedule property is a public pathway. It is necessary to refer the contentions of the revision petitioners raised in the grounds of revision, which read as follows:-

"(g) The Trial Court has failed to note that the main allegation in the suit is that the plaintiffs are claiming the B-schedule property as a public pathway. But, in order to ascertain the B-



schedule property is a pathway, there must be a document/revenue records to prove the said pathway as a public pathway. But no such document was relied by the plaintiff to show that the B-schedule property as public pathway. Hence, the suit is a clear abuse of process of law".

12. It is pertinent to mention that the plaintiffs have nowhere described the B-schedule property as a public pathway. The plaintiffs have also nowhere whispered that the public is using the B-schedule property as pathway and that the pathway has been earmarked as a public pathway in the revenue records. As already pointed out, it is the specific case of the plaintiffs that the defendants 1 to 3, while forming the house-sites, formed a pathway to a width of fifteen feet meant for the purchasers of the property from the defendants 1 to 3 for reaching their property from Trichy-Dindigul National Highways Road. Moreover, as rightly pointed out by the plaintiffs' side, the sale deeds produced would contain recitals that the B-schedule property is a pathway available to the purchasers. Considering the above, the non-production of documents/records to prove B-schedule property as a public pathway, by no stretch of imagination, can be considered as abuse of process of law.

13. Nodoubt, as already pointed out, after filing of the suit in O.S.No.144 of 2020, the plaintiffs 2 and 3 have filed another suit in O.S.No.431 of 2020 and the first plaintiff has filed the Writ Petition before this Court and that the above two suits and the writ petition are pending. At the outset, it is pertinent to mention that for raising a plea of re-litigation, there must be a prior proceeding, determining a particular issue and if the same issue is sought to be re-agitated the same would amount to re-litigation, which in turn, would amount to abuse of process of law. No doubt, it is an abuse of 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.

14. In the case on hand, both the suits are still pending and it is not the case of the revision petitioners that the issue involved in the above suits were already tried and decided. It is evident from the typed set filed by the respondents 1 to 3 that the plaintiffs' side in O.S.No.144 of 2020, filed a memo to exonerate the plaintiffs 2 and 3 and the same was recorded and that the learned District Munsif has passed an order exonerating the plaintiffs 2 and 3 from the said suit. As rightly pointed out by the learned Counsel for the respondents, the first plaintiff alone is now prosecuting the suit in O.S.No.144 of 2020 and the plaintiffs 2 and 3 are prosecuting the suit in O.S.No.431 of 2020. Even otherwise, since both the suits are pending, this Court is at loss to understand as to how the petitioners have taken the plea of re-litigation. Except the above two grounds, the revision petitioners



have not canvassed any other reason or ground for striking off the plaints.

15. Considering the above, this Court has no hesitation to hold that the civil revision petitions are absolutely devoid of merits and the revision petitioners have filed the above revisions with sole intention to stall and protract the proceedings pending before the Trial Court and that therefore the civil revision petitions are liable to be dismissed.

16. In the result, the Civil Revision Petitions are dismissed. No Costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (Cs-I)

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Sub Assistant Registrar(CS)

lr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal District Munsif Court, Manapparai.
2. The Sub Court, Manapparai.
3. The Section Officer, V.R.Section, (2C)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-30547[F] dated 28/09/2021)

C.R.P. (PD) (MD).Nos.812 and 813 of 2021and
C.M.P (MD)Nos.4391 and 4392 of 2021
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NSN (CO)

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