



C.R.P.Nos.30 & 89 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

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

C.R.P.Nos.30 & 89 of 2015

M.P.Nos. 1 & 1 of 2015

C.R.P.No.30 of 2015 :-

S.Subbian

... Petitioner

Vs.

1. S.Kandasamy (Deceased)
 2. S.Rangasamy
 3. G.Subramani
 4. N.Jaganathan
 5. N.Selvaraj
 6. K.Balasundaran
 7. K.Moorthy
 8. R.Kalaivasu
 9. K.Chinnammal
 10. K.Subbulakshmi
 11. Suseela
- (R9 to R11 brought on record as LR's
of the deceased first respondent viz.,
S.Kandasamy, vide Court order dated
30.01.2018 made in C.M.P.No.12657
of 2016 in C.R.P.No.30 of 2015)

... Respondents



C.R.P.Nos.30 & 89 of 2015

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike of the pleadings in O.S.No.167 of 2014 on the file of the learned District Munsif of Mettupalayam.

For Petitioner : Mrs.R.Apoorva
For M/s.Sarvabhauman Asso.
For Respondents
R1 : Died
For R2 to R11 : Mr.S.Sithirai Anandam

C.R.P.No.89 of 2015 :-

S.Subbian

... Petitioner

Vs.

1. S.Ganapathy (Deceased)
2. S.Kandasamy (Deceased)
3. T.S.Nanjunda Gounder (Deceased)
4. S.Rangasamy
5. Subbammal
6. G.Subramani
7. Indrani

(R5 to R7 brought on record as
LRs of the deceased first
respondent viz., S.Ganapathy,
vide Court order dated
15.12.2017 made in C.M.P.Nos.
12651 to 12653, 12658 to 12663
of 2016 in C.R.P.No.89 of 2015)

8. K.Chinnammal
9. K.Subbulakshmi
10. Suseela
11. K.Balasundaram



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12. K.Moorthy

(R8 to R12 brought on record as
LRs of the deceased second
respondent viz., S.Kandasamy,
vide Court order dated
15.12.2017 made in C.M.P.Nos.
12651 to 12653, 12658 to 12663
of 2016 in C.R.P.No.89 of 2015)

13. N.Jaganathan

14. N.Selvaraj

15. Matherselvi

(R13 to R15 brought on record as
LRs of the deceased third
respondent viz., T.S.Nanjunda
Gounder, vide Court order dated
15.12.2017 made in C.M.P.Nos.
12651 to 12653, 12658 to 12663
of 2016 in C.R.P.No.89 of 2015)

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike of the pleadings in O.S.No.376 of 2011 on the file of the learned District Munsif of Mettupalayam.

For Petitioner : Mrs.R.Apoorva
For M/s.Sarvabhauman Asso.

For Respondents
R1 to R3 : Died
For R4 to R15 : Mr.S.Sithirai Anandam



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COMMON ORDER

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These Civil Revision Petitions have been filed to strike of the pleadings in O.S.Nos.167 of 2014 & 376 of 2011, respectively on the file of the learned District Munsif, Mettupalayam.

2. Heard Ms.R.Apoorva, learned counsel appearing for the petitioner and Mr.S.Sithirai Anandam, learned counsel appearing for the respondents in both C.R.Ps.

3. The petitioner in both Civil Revision Petitions is the defendant in the suits filed by the respondents for permanent injunction. The respondents in C.R.P.No.30 of 2015 filed suit in O.S.No.167 of 2014 with the following prayer :-

“It is therefore prayed that this Honourable Court may be pleased to pass a decree of permanent injunction.

a) restraining the defendant and his men, servant and agents, from in any manner, digging borewell inside the suit property particularly nearby the common agricultural well comprise in suit schedule A property S.F.No.900/2 of



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Maruthur Village.

b) restraining the defendant and his men servants, and agents from in any manner altering the physical features of the suit schedule properties.

c) directing the defendant to pay the costs of this suits to the plaintiffs and

d) pass such other order or orders as the Honourable Court may deem fit and proper in the circumstances of the case.”

4. The respondents in C.R.P.No.89 of 2015 filed suit in O.S.No.376 of 2011 as against the petitioner with the following prayer :-

“It is therefore prayed that this Honourable Court may be pleased to pass a decree of permanent injunction.

a) restraining the defendant and his men, servant and agents, from in any manner, interfering with the peaceful possession and enjoyment of the common common agricultural well and service connection No.116 of M.G.Pudur distribution comprise in suit schedule A property S.F.No.900/2 of Maruthur Village.

b) restraining the defendant and his men servants, and agents from in any manner interfering with agricultural



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activities in the suit schedule B property by the plaintiffs.

c) directing the defendant to pay the costs of this suits to the plaintiffs and

d) pass such other order or orders as the Honourable Court may deem fit and proper in the circumstances of the case.”

In both suits, the suit properties are one and the same.

5. The petitioner and the respondents are bothers. Originally the suit property belonged to one Mookanna Gounder. In O.S.No.522 of 1938, the said Mookanna Gounder and others had partitioned the property and final decree also passed in the said suit. Thereafter, on 05.12.1942, the said Mookanna Gounder executed Will bequeathing the entire property to his only son Sivanappa Gounder with a life estate to his wife viz., Thirumakkal. On 25.08.1958, the said Thirumakkal died and the said Sivanappa Gounder and his all male heirs became owners of the property.

6. The said Sivanappa Gounder had two wives viz., Karakkal & Masakkal. Through the first wife viz., Karakkal, he had two sons viz.,



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Nanjunda Gounder & Rangaswamy Gounder. Through the second wife viz., Masakkal, he had four sons viz., Ganapathi Gounder, Kandasamy Gounder, Bujanga Gounder, Subbian Gounder viz., the petitioner herein. On 03.01.1973 & 04.01.1973, the said Sivanappa Gounder viz., the petitioner's father executed settlement deed in his favour and another brother Bujanga Gounder. Therefore, the respondents 3 & 4 in C.R.P.No.89 of 2015 viz., Nanjunda Gounder & Rangasamy filed suit in O.S.No.1356 of 1973 on the file of the learned District Munsif, Coimbatore, for declaration and recovery of possession in respect of the suit property, as against the petitioner and his father and other brothers.

7. In the said suit, the petitioner's father filed written statement stating that the suit property claimed by him through the Will executed by his father dated 05.12.1942 with all power of alienation. Therefore, he executed settlement deed in favour of the petitioner and another brother Bujanga Gounder, on 03.01.1973 & 04.01.1973, respectively. The said suit was dismissed by the judgment decree dated 18.07.1975. Aggrieved by the same, the respondents 3 & 4 in C.R.P.No.89 of 2015, filed an appeal suit in



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A.S.No.64 of 1976 and the same was also dismissed by confirming the judgment and decree passed by the trial Court in O.S.No.1356 of 1973.

8. As against said judgment, the respondents 3 & 4 in C.R.P.No.89 of 2015, preferred a Second Appeal before this Court in S.A.No.552 of 1977 and same was also dismissed by this Court by the judgment dated 21.03.1980. Accordingly, the absolute right, title and interest of the petitioner's father to the suit property and the validity of the settlement deed in favour of the petitioner and his brother have been confirmed up to this Court.

9. While being so, after the death of the petitioner's father on 22.09.1987, the respondents herein filed suit as against the petitioner in O.S.No.152 of 2011 for declaration declaring that the male legal heirs of the petitioner's father are the co-owners of the schedule mentioned property as per the Will dated 05.12.1942 registered vide document No.10 of 1942 on the file of the Sub Registrar, Mettupalayam. They also prayed to declare that the settlement deed dated 03.01.1973 registered vide document No.12 of



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1973 and the settlement deed dated 04.01.1973 registered vide document No.19 of 1973 are null and void. In that suit, the petitioner filed an application in I.A.No.679 of 2012 to reject the plaint in O.S.No.152 of 2011 and the same is also pending.

10. At this stage, the present suits were filed by the respondents with the above said reliefs. Therefore, the action of the respondents is nothing but clear abuse of process of law since, the validity of the Will executed in favour of the petitioner's father dated 05.12.1942 and the validity of the settlement deeds executed by him on 03.01.1973 & 04.01.1973 have already been confirmed up to this Court.

11. While being so, the present suits were filed along with the petitioner's own brother in respect of the very same suit property. In fact, the petitioner's own brothers viz., respondents 1 & 2 in C.R.P.No.89 of 2015, were the parties in the suit filed by the respondents 3 & 4 in O.S.No.1356 of 1973 on the file of the District Munsif Court, Coimbatore. Now they also colluded with the respondents 3 & 4 filed these suits as against the



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petitioner. Admittedly, the petitioner is in possession and enjoyment of the suit property in which the Court below ordered status quo to be maintained as against the petitioner herein. Therefore, both the suits are nothing but clear abuse of process of law and it is liable to be rejected.

12. Further the first objection raised by the learned counsel for the respondents is that in respect of maintainability of Civil Revision Petition under Article 227 of Constitution of India to struck off the plaint. In this regard, it is relevant to rely upon the Judgment reported in **(2022) 1 CTC 505** in the case of ***Rt.Rev.Timothy Ravinder Dev Pradeep Vs. Rev. Charles Samraj and other.,*** and this Court, after analysing the various Judgments of the Hon'ble Supreme Court of India, held that the availability of appeal remedy is not a blanket bar or total bar for invoking the constitutional remedy under Article 226 and 227 of Constitution of India.

13. Further in another Judgment reported in **(2019) 9 SCC 538** in the case of ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others.,*** the Hon'ble Supreme



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Court of India held that the availability of appeal remedy in terms of the provisions of CPC, may have to be construed as a near total bar. In the case of ***L.Chandrakumar Vs. Union of India*** reported in ***(1994) 2 SCC 401***, the Hon'ble Supreme Court of India held that Article 226 and 227 form part of the basic structure of the Constitution and the power of High Court under them cannot be abrogated even by a Constitutional Amendment.

14. This Court further held that the jurisdiction under Article 227 of the Constitution of India is far more wider than the jurisdiction under Article 226 of the Constitution of India and the power of superintendence for the High Court can be used even to correct the errors which are patent of manifest. It is clear that a discretion to exercise a constitutional power/power of superintendence deposited in it under Article 227 of the Constitution of India is with a Court.

15. In the case of ***Saraswathy Ammal Vs. Govindan*** reported in ***(2020) 5 CTC 781***, this Court held that an application under Order 6 Rule 16 of Code of Civil Procedure, empowers the Court to strike out pleadings



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which are necessary scandalous, frivolous or vexatious or which amount an abuse of the process of the Court. A reading of the plaints in the case on hand would show that the entire plaint would come within the scope of the words 'abuse of the process of the Court'. Therefore, the plaints will have to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. Even otherwise, this Court, sitting under Article 227 of the Constitution of India, has the power to strike out the plaint if it finds that it is an abuse of the process of the Court.

16. In view of the above facts and circumstances, it is sufficient to demonstrate that the present suits are clear abuse process of Court and amounts to challenging the title of the petitioner. Therefore, the suits are nothing but a clear abuse process of law and it is liable to be struck off. Accordingly, both the plaints in O.S.Nos.167 of 2014 & 376 of 2011, on the file of the learned District Munsif, Mettupalayam, are hereby struck off.



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WEB COPY 17. In the result, both the Civil Revision Petitions are allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

15.12.2022

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The District Munsif,
Mettupalayam.



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G.K.ILANTHIRAIYAN, J.

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