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C.R.P.(PD).No.2256 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.03.2022

PRONOUNCED ON : 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD).No.2256 of 2017

and

C.M.P.No.10640 of 2017

Jayaseelan

... Petitioner

vs.

1.Sekar (Died)

2.Selvam

3.Selvi

4.Dinesh Kumar

[R3 and R4 brought on record as LR's of the deceased Sekar vide order in CMP No.3090/2022 in CRP No.2256/2017, dated 02.03.2022.]

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the plaint dated 25.04.2016 in O.S.No.145 of 2016 pending on the file of the District Munsif, Thiruvottiyur.

For Petitioner : Mr.J.Sudhakaran

For Respondents : Ms.S.Vidhya



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ORDER

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This Civil Revision Petition has been filed taking advantage of Article 227 of the Constitution of India seeking to strike off O.S.No.145 of 2016, now pending on the file of the District Munsif Court at Tiruvottiyur.

2. The defendant in the said suit is the revision petitioner herein.

3. The respondents herein are the plaintiffs in O.S.No.145 of 2016.

4. The first respondent/first plaintiff had died pending the revision petition and his legal representatives have been brought on record as third and fourth respondents.

5. The suit in O.S.No.145 of 2016 had been filed by the respondents herein viz., Sekar and Selvam, seeking a judgment and decree in the nature of permanent injunction restraining the defendant/Jayaseelan from interfering with peaceful possession and enjoyment of the suit mentioned agricultural land at Survey Nos.1420/1 and 1336/1 measuring 10 cents and 88 cents respectively at Madavaram Village, Chennai.



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6. In the plaint, they stated that the said land had been purchased by their maternal grandfather, Raja Naicker in his name and in the name of his wife Rajammal, by a registered Sale Deed dated 29.08.1929. After the death of Raja Naicker the lands were inherited by his wife Rajammal and daughters Nagammal, Radha and Pattu and son Chokalingam.

7. It had been stated that among the daughters, Nagammal was staying with her mother. The other two daughters had married and left to their marital house. The son Chokalingam led a wayward life and later committed suicide.

8. It was stated that there was a partition. However, the said Nagammal taking advantage of the fact that she was staying with her mother Rajammal, was able to get a Sale Deed in her favour dated 18.06.1979 with respect to the suit lands. There were further encumbrances over the land and finally the defendant/Jayaseelan had purchased the land.

9. It was stated that the mother of the plaintiffs/Radha had filed O.S.No.834 of 1991 on the file of the District Munsif Court at Ponneri seeking partition and separate possession. That suit was decreed. Permanent



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Injunction was also granted. Thereafter, the defendant therein filed A.S.No.11 of 2016, which was allowed. It was however, claimed that the possession of the plaintiffs were not disturbed and they continued to be in possession. Therefore, since there was a threat of dispossession, they filed the suit in O.S.No.145 of 2016 seeking protection of possession and permanent injunction restraining the defendant from interfering with peaceful possession.

10. The defendant had thereafter filed the present Revision Petition stating that the said suit is an abuse of process of Court and it should be struck off.

11. In the grounds of the Civil Revision Petition, it had been stated that there was an earlier suit in O.S.No.834 of 1990 filed by Rajammal, the mother of the plaintiffs herein and another sister Pattu before the District Munsif Court, Ponneri seeking partition and separate possession of the very same suit lands. The said suit was then transferred to the District Munsif Court at Tiruvottiyur and re-numbered as O.S.No.1031 of 1997. After trial, it was decreed and partition was granted.



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12. The fourth defendant therein/the revision petitioner herein had then filed A.S.No.11 of 2006 before the Sub Court at Ponneri. The learned Sub Judge had allowed the appeal by a Judgment dated 17.12.2007 and had set aside the decree of the Trial Court.

13. The plaintiffs in the suit then filed S.A.No.1690 of 2008 before this Court. That Second Appeal was also dismissed by a judgment dated 18.12.2013, confirming the dismissal of the suit in O.S.No.1031 of 1987. A further Special Leave to Appeal had been filed before the Hon'ble Supreme Court which was also dismissed on 17.10.2014.

14. It was therefore claimed that since the rights of the plaintiffs had been negated and rejected, a suit filed again for injunction against the true owner is not maintainable and an abuse of process of law. The title of the revision petitioner had been upheld in the Second Appeal and it was therefore claimed that a subsequent suit on the very same lands claiming injunction against the true owner has to be struck down.



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15. The revision petition was therefore filed under Article 227 of the Constitution of India seeking to strike off the plaint.

16. Heard arguments advanced by Mr.J.Sudakaran, learned counsel for the revision petitioner and Ms.S.Vidhya, learned counsel for the respondents.

17. The facts are simple. They are straight forward. The lands originally belonged to Raja Naicker, who had purchased it by a Sale Deed dated 29.08.1929 in his name and in the name of his wife Rajammal. They had three daughters namely Radha, Nagammal and Pattu and one son, Chokalingam. The said Nagammal stayed with her mother after the death of her father. The suit lands came to be sold by Rajammal to Nagammal by a Sale Deed dated 18.06.1979.

18. The plaintiffs in O.S.No145 of 2016 sought permanent injunction restraining the defendant/Jayaseelan from interfering with peaceful possession and enjoyment of the suit mentioned agricultural land at Survey Nos.1420/1 and 1336/1 measuring 10 cents and 88 cents respectively at Madavaram Village, Chennai.



19. Their mother Radha and her another sister Pattu had earlier filed O.S.No.834 of 1990 before the District Munsif Court at Ponneri seeking partition and separate possession of the same lands. That suit was re-numbered as O.S.No.1031 of 1997 on transfer to the District Munsif Court at Thiruvottiyur. There was no prayer seeking a declaration that the Sale Deed in favour of Nagammal was null and void.

20. Holding that the lands were not available for partition, even though the suit was decreed, the First Appellate Court had reversed that particular finding and dismissed the suit. A Further appeal by the plaintiffs before this Court in S.A.No.1690 of 2008 also suffered an order of dismissal. A further appeal before the Hon'ble Supreme Court in S.L.P.(C).No.16537 of 2014 had also suffered an order of dismissal on 17.10.2014.

21. The net result of those orders are that the suit properties do not vest with Radha or her sons who were the plaintiffs in O.S.No.145 of 2016. They are the lands which had been purchased by the other sister Nagammal. Her title and consequently the title of her successor in title had been upheld by the Courts up to the Hon'ble Supreme Court.



22. The plaintiffs have then filed the suit in O.S.No.145 of 2016 for permanent injunction against the true owner of the property. When the title of the property had already been decided adverse to the interest of the plaintiffs they cannot file another suit seeking injunction without any right or title. Their right to claim title stood foreclosed owing to the finality of the earlier round of litigation which ended with dismissal adverse to them by the Hon'ble Supreme Court.

23. Re-agitating or re-litigating the same issue had been frowned upon by the Hon'ble Supreme Court.

24. In *K.K.Modi v. K.N.Modi and others* reported in *AIR 1998 SC 1297 = 1998 (3) SCC 573*, it had been held with respect to abuse of process of Court by referring to the Supreme Court Practice, 1995 published by Sweet & Maxwell, as follows:

“ 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



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the process of 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 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 Court's 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 only in special cases. The Court should also be satisfied that there is no chance of the suit succeeding”.

25. In *T.Arivandandam v. T.V.Satyapal* reported in 1977 (4) SCC 467, the Hon’ble Supreme Court was concerned with re-litigation. In that particular case, the father of the appellant before the Supreme Court had challenged eviction proceedings, lost it, had appealed again and lost again and then filed a revision before the High Court. That was also dismissed. Thereafter, the son had filed a fresh suit for the very same property seeking protection from dispossession. The Hon’ble Supreme Court held as follows:



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“The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases.

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 plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11, C.P.C., taking care to see that the ground mentioned therein is fulfilled. And, if clever 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 Order 10, 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, (Cr.XI) and must



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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.”

6. The Trial Court in this case will remind itself of Section 35-A, C.P.C., and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.

7. ... Another moral of this unrighteous chain litigation is the gullible grant of ex-parte orders tempts gamblers in litigation into easy Courts. A Judge who succumbs to ex-parte pressure in unmerited cases helps devalue the judicial process.”

26. In Ranipet Municipality, rep by its Commissioner & Special Officer v. M.Shamsheerkhan reported in 1998 (1) CTC 66 : 1997 (2) LW 761, a learned Judge of this Court held that “when the intention of the party is only one, that is to re-agitate the very same matter already concluded, the subsequent suit has to be axed at the threshold.”



27. In *Mahadeo Savlaram Shelke v. The Puna Municipal Corporation* reported in 1995 (3) SCC 33, the Hon'ble Supreme Court held that “a person in unlawful possession has no right to claim injunction against the true owner. The same principle was reiterated in *Faridabad Complex Administration v. Yadu*, CDJ 1996 SC 674 : 1997 (3) SCC 491.”

28. It is thus very clear that O.S.No.145 of 2016 had been filed by the respondents herein as an attempt to re-open the issue of title which had already been decided against the respondents. They sought to file the suit seeking permanent injunction. But at the same time they had suffered a judgment from this Court in Second Appeal wherein, the title of the revision petitioner has been upheld.

29. The learned Single Judge of this Court while dismissing the Second Appeal by judgment dated 18.12.2013 had very categorically stated as follows:

“The fact of exclusion of suit property at the time of earlier partition is one of the circumstances to show that the plaintiffs do not have rights in the suit property. By means of sale deed Ex.A1 from her mother Nagammal, her daughter asserted her individual and absolute right



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over the suit property. Thereafter, from 1983/1985 onwards, the third parties viz., 3rd and 4th defendants have been in possession and enjoyment. The plea of ouster must be pleaded and proved in a case. There is no pleading as to ouster. There is no material to show that Rajammal has given share in her two daughters. The evidence is in abundant to show that ouster of plaintiffs from suit property. Though there is no plea of ouster, it must be presumed that the plaintiffs are ousted from the suit property. The legal effect or ouster of plaintiffs even in the absence of pleading of ouster would be operative as per the opinion of this Court. When the plaintiffs have been actually ousted from the possession even though in the absence of pleading. They could not be allowed to possess legally. In view of the above said situation, it has to be necessarily observed that the plaintiffs have to be non-suited for the relief of partition.”

30. The findings are clear that the respondents herein do not have any right over the suit property. They have no title. They are not in lawful possession, even if they are said to be in possession. They cannot seek any injunction as against the lawful owner. The suit is an abuse of process seeking to re-agitate and re-litigate the same issue of title over again in a round about



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manner seeking protection of alleged possession against the true owner. This cannot be permitted. It has to be prohibited and curtailed in the manner as stated by the Hon'ble Supreme Court, and that is by striking off the suit from the records.

31. I have no hesitation in exercising the power under Article 227 of the Constitution of India to interfere with further proceedings of O.S.No.145 of 2016 on the file of the District Munsif Court at Thiruvottiyur and in striking out the same. A direction is issued to make necessary entries in the suit register in the District Munsif Court at Thiruvottiyur striking off O.S.No.145 of 2016 as being an abuse of process of Court.

32. In the result, the Civil Revision Petition stands allowed. No order as to costs. Consequently, the connected miscellaneous petition is closed.

11.04.2022

Index:Yes/No
Speaking Order:Yes/No
ssi



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To:

- 1.The District Munsif,
Thiruvottiyur.
- 2.The Section Officer,
V.R.Section,
High Court of Madras.



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C.V.KARTHIKEYAN, J.

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