



C.R.P.No.1396 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2023

DELIVERED ON: 20.10.2023

CORAM :

The Hon'ble Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1396 of 2013

and M.P.No.1 of 2013

1.K.R.Andu Gowder
2.Seenilakshmi
3.Drowpathi

... Petitioners

VS

1.Saroja
2.Kamala
3.Gangadevi

H.Krishnan (since deceased)
4.H.Nagulan
5.K.Subramani @ Saibaba
6.B.Devan
7.K.Sundari
8.K.Ranganath
9.K.Premkumar
10.Ammuammal
11.K.R.Chandran
12.K.R.Arjunan
13.K.R.Haldorai



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14.K.R.Ramesh

... Respondents

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Civil Revision Petition filed under Article 227 of Constitution of India against the judgment and decree dated 31.10.2012 in I.A.No.212 of 2009 in O.S.No.57 of 2008 on the file of Subordinate Judge, Nilgiris.

For Petitioners :Mr.P.R.Balasubramanian
For Respondents :M/s.AL.Gandhimathi
for M/s.Meenakshi Ganesan

ORDER

Some properties have the vexed luck of being litigated *ad nauseam*. The subject matter of the suit in the present revision is one such.

2. Originally, the property belonged to one S.G.Benett & Company. By way of a registered sale deed, the property was alienated in favour of the following persons:

- i) K.R.Andu
- ii)K.R.Raju
- iii)Minor.Korai
- iv)Minor.Sockraj
- v) Jahar Hali Mula Abdul Husaain Wagh



WEB COPY 3. The purchase was by way of a registered sale deed dated 12.10.1953.

The second purchaser Raju, who was managing the properties, sold them without the knowledge of the first purchaser, Andu. This constrained him to file a suit for partition and separate possession on 03.09.1984 in O.S.No.161 of 1984. The parties to this suit were K.R.Andu and K.R.Raju and Jahar Hali Mula Abdul Husaain Wagh.

4. The purchase being in common, a preliminary decree followed on 16.08.1985. The following issues were framed in the suit:-

1. Whether the plaintiff is entitled to partition and separate possession of 1/4th share in the suit properties?
2. Whether the plaintiff has released his undivided interest in favour of K.Rangai Gowder under a family arrangement dated 02.12.1975?
3. What is the correct share in the property etc.,

5. The trial Court while granting preliminary decree, declared that K.R.Andu is entitled to 1/4th share and further specifically held that K.Rangai



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Gowder did not get any right under the alleged family arrangement dated 02.12.1975.

6. This decree was challenged by R.Raju in A.S.No.888 of 1985. The appellate court held that the release deed dated 02.12.1975, relied upon by Raju is not true and valid and confirmed the preliminary decree. The appeal was dismissed on 09.11.2001. Subsequently, O.S.No.161 of 1984 was transferred to the file of District Munsif Court, Kothagiri and renumbered as O.S.No.46 of 1997.

7. In this suit, (i) Ammu Ammal, (ii) K.R.Chandran, (iii) K.R.Arjunan, (iv) K.R.Uraalthurai and (v) K.R.Ramesh have filed impleading application in I.A.No.361 of 2005 and the said application was dismissed on 08.02.2008. An application was taken in O.S.No.46 of 1997 for passing of a final decree in I.A.No.57 of 2008 and the said application was allowed on 13.02.2008.

8. Challenging the order refusing to implead the petitioners in I.A.No.361 of 2005, a Civil Revision Petition in CRP(PD) No.1624 of 2008 was filed before this Court. The said revision was dismissed on 28.01.2009.



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This does not put an end to the litigation in the family.

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9. Pending O.S.No.161 of 1984, a suit in O.S.No.80 of 1987 came to be filed. This suit was subsequently transferred and re-numbered as O.S.No.78 of 1996 on the file of District Munsif Court, Kothagiri. The plaintiffs in the suit were

- (i) K.R.Hala Gowder,
- (ii) K.R.Joghee,
- (iii) K.R.Haldorai,
- (iv) K.R.Ramesh,
- (v) Korini Ammal,
- (vi) Saroja,
- (vii) Kamla,
- (viii) Ganga and
- (ix) Ammu Ammal.

Their claim in this suit was that they are the children of Rangai Gowder and that they should have been made a party to the suit in O.S.No.161 of 1984. According to them, the suit property had been purchased by Rangai Gowder as Benami in the name of his sons. When this suit came to the file of District Munsif Court, Kothagiri, it was renumbered as O.S.No.78 of 1996 and this suit for partition was dismissed on 08.04.2003.



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10. Yet another suit came to be filed between K.R.Andu and K.R.Raju.

This suit was for a partition of $\frac{1}{2}$ (half) share in the suit property. This was numbered as O.S.No.155 of 1996 on the file of Sub Court, Udagamandalam. The suit was dismissed, against which, an appeal was preferred in A.S.No.29 of 2000 before District Court, Nilgiris. K.R.Raju died on 24.03.2002. Claiming that K.R.Raju left behind a Will dated 12.02.2002, an application was filed in I.A.No.63 of 2003 seeking for impleadment in A.S.No.29 of 2000. The said application was dismissed on 26.02.2003.

11. Against which, a civil revision petition was preferred to this Court in CRP(NPD)No.546 of 2003. The said revision came to be dismissed by this Court on 25.07.2005. I am informed that probate proceedings have been initiated and the said proceedings are still pending consideration.

12. Subsequently, O.S.No.57 of 2008 (against which, the present revision has been filed) arose. The reliefs sought for in this suit are as follows:-

The plaintiffs, therefore, pray that the Hon'ble Court may



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graciously be pleased to pass judgment and Decree:

(a) Declare that the final decree passed on 8.2.2008 in I.A.No.267 of 2003 in O.S.No.46 of 1997 on the file of the District Munsif Court, Kotagiri is unsustainable and unenforceable in law.

(b) For a consequential injunction restraining the first defendant, his legal heirs or anybody claiming through him from executing the final decree passed in I.A.267 of 2003 dated 8.2.2008 in O.S.No.46 of 1997 on the file of the Hon'ble District Munsiff Court, Kotagiri since the same is unsustainable in law.

(c) For partition of the suit properties and allot 1/52nd share to each of the Plaintiffs 1,2 and 3 and 1/52nd share to the plaintiffs 4 and 5 together and 1/52nd share to the 6th plaintiff and 1/52nd share to the 7th plaintiff.

(d) For Appointment of a court Commissioner to divide and allot the suit properties in terms of the preliminary decree.

(e) Cost of the suit.



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(f) Such further and other relief as the Hon'ble Court may deem fit to grant in the circumstances of the case.

13. The suit in O.S.No.57 of 2008 has been filed by the following persons:

1. Saroja
2. Kamala
3. Gangadevi
4. H.Krishnan
5. H.Nagulan
6. K.Subramani @ Saibaba
7. B.Devan

14. They claim that they are the children and the grandchildren of the deceased Rangai Gowder and therefore, they are entitled to a share in the property. According to them, Rangai Gowder has a right in the property and since the legal heirs were not impleaded as parties, the final decree passed in I.A.No.267 of 2003 in O.S.No.46 of 1997 on the file of District Munsif Court, Kothagiri is unsustainable. Before I come to discuss on I.A.No.212 of 2009 i.e., the application filed for rejection of plaint, I have to narrate about two more proceedings.



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15. The plaintiffs in O.S.No.57 of 2008 along with three other persons presented O.S.No.16 of 2009 on the file of District Munsif Court, Kothagiri.

The reliefs sought for in O.S.No.16 of 2009 are as follows:-

“The plaintiffs, therefore, pray that the Hon'ble Court may graciously be pleased to pass judgment and Decree:

(a) Setting aside the preliminary Decree passed in O.S.No.161 of 1984 dated 16.8.1985 on the file of the Hon'ble District Judge of the Nilgiris at Udhagamandalam and renumbered as O.S.No.46 of 1997 on the file of this Hon'ble Court as the same was obtained by the first defendant by collusion, fraud, and misrepresentation.

(b) Setting aside the Final Decree passed in I.A.No.57 of 2008 dated 13.2.2008 in O.S.No.161 of 1984 on the file of the Hon'ble District Judge of the Nilgiris at Udhagamandalam and renumbered as O.S.No.46 of 1997 on the file of this Hon'ble Court as the same was obtained by the first defendant by collusion, fraud and misrepresentation.

(c) For an order of injunction restraining the first defendant, his legal heirs or anybody claiming through him or in trust for him from alienating or in any way



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encumbering or creating charge over the suit properties until partition is effected by metes and bounds between the plaintiffs and defendants in respect of the suit properties by giving final disposal to the partition suit pending before the Hon'ble Subordinate Judge's Court at Udthagamandalam in O.S.No.57 of 2008.

(d) Cost of the suit

(e) Such further and other relief as the Hon'ble Court may deem fit to grant in the circumstances of the case.”

16. It is pertinent to point out that apart from H.Krishnan, all the other six plaintiffs are already the plaintiffs in O.S.No.57 of 2008. The plaintiffs 7 to 9 in O.S.No.16 of 2009 are the legal representatives of Krishnan. The plaintiffs in O.S.No.57 of 2008 have once again vexed the Court by filing O.S.No.16 of 2009. This suit also seeks for the same relief in O.S.No.57 of 2008 with an additional relief viz., to set aside the preliminary decree in O.S.No.161 of 1984 on the file of District Court, Nilgiris.

17. I wonder how a District Munsif can decide and declare a decree that has been granted by the learned District Judge as null and void. However, I am



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not going into the merit of that suit as I am informed that an application for rejection of plaint in I.A.No.70 of 2009 is pending before the said Court.

18. One more proceeding came to be filed viz., O.S.No.99 of 2005 on the file of Subordinate Court at Udthagamandalam. This suit is for permanent injunction restraining the defendants from interfering with the possession of the plaintiffs until the disposal of O.S.No.46 of 1997 on the file of District Munsif Court, Kothagiri.

19. In this suit, an application was taken out for rejection of plaint in I.A.No.259 of 2008. The said application was allowed on 25.11.2008 as final decree has been passed in O.S.No.46 of 1997 on 13.02.2008 and therefore, nothing remains to be adjudicated in this suit.

20. Aggrieved by the rejection of plaint in O.S.No.99 of 2005, an appeal was filed in A.S.No.11 of 2009 on the file of District Court, Nilgris at Udthagamandalam. The appeal was dismissed on 28.07.2010, confirming the rejection of plaint in O.S.No.99 of 2005.



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21. Finding that one proceeding after another has been initiated and that the challenge is only to the final decree and not to the preliminary decree, an application was moved for rejection of plaint in O.S.No.57 of 2008 in I.A.No.212 of 2009. The said application in I.A.No.212 of 2009 came to be dismissed by the learned Subordinate Judge, Nilgiris on 31.10.2012 and consequently this Civil Revision Petition is filed at the instance of the defendants 1 to 3 in O.S.No.57 of 2008.

22. The ground on which the rejection of plaint was filed was that both the preliminary decree as well as final decree should be challenged, but in the present case, only the final decree has been challenged. The issues raised in the present suit had already been decided in O.S.No.161 of 1984, renumbered as O.S.No.46 of 1997 on the file of District Munsif Court, Kothagiri. The plea taken in the present suit of claiming title through K.Rangai Gowder had already been pleaded by K.R.Raju in O.S.No.161 of 1984 and concluded by High Court in A.S.No.888 of 1995. The plaintiffs are puppet plaintiffs and proxies for the defendants 4 to 8. It is an abuse of process of law and that the



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suit does not have cause of action.

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23. A counter was filed stating that

(i) since the proper and necessary parties are not impleaded, the decree in O.S.No.161 of 1984 on the file of District Munsif Court, Udthagamandalam (renumbered as O.S.No.46 of 1997 on the file of District Munsif Court, Kothagiri) is not executable.

(ii) since the written statement has been filed and issues have been framed, an application for rejection of plaint is not maintainable.

24. The trial Court dismissed the application on the ground that the suit cannot be rejected on the grounds of *res judicata* or abuse of process of law and that the judgment rendered in the case of ***The Church of Christ Charitable Trust and Educationial Charitable Society vs Ponniamman Educational Trust 2012 (4) CTC 308*** overrules the previous precedents and therefore, the petition deserves to be dismissed.

25. I heard Mr.P.R.Balasubramanian, learned counsel for the revision



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petitioners and M/s.AL.Gandhimathi and M/s.Meenakshi Ganesan for the respondents.

26. A perusal of the plaint shows that the challenge is only to the final decree. A final decree proceeding divides the property on the basis of preliminary decree. A Court dealing with a final decree proceeding cannot exceed the preliminary decree. A person who does not avoid preliminary decree, by seeking for a declaration to that effect, cannot get rid of the final decree alone. Therefore, the cause of action for the present suit has to be a challenge to the preliminary decree and final decree put together.

27. It is pertinent to note here that the very same plaintiffs, who are the respondents before me, have also filed a suit in O.S.No.16 of 2009. That suit was presented after presentation of this suit and in a latter proceeding, they have sought for setting aside the preliminary decree as well as the final decree as unsustainable and unenforceable in law.

28. It is here I have to recollect the settled principles of law that there cannot be parallel remedies for a litigant. Having elected subsequently to



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challenge both the preliminary decree and final decree, it is not open to them to continue the suit challenging the final decree alone.

29. Apart from that, the basis of the claim raised in the suit are the very same defences that was raised by K.Raju, as a defendant in O.S.No.161 of 1984 which was renumbered as O.S.No.46 of 1997. K.Raju had raised the plea and suffered a decree. Thereafter, he preferred an appeal before this Court and the appeal was also dismissed. To seek for a relief on the basis of the very same pleadings that have been raised and reflected, is but a clever drafting creating an illusion of a new cause of action.

30. Order 7 Rule 11 of Civil Procedure Code calls upon the Court to read the plaint in a meaningful manner and not in a formal or for the sake of reading it. My reading of the plaint shows that the entire idea of the plaintiffs in the present case is to set at naught a decree which has attained finality by virtue of the orders of this Court.

31. Insofar as the contention that such an application is not maintainable once written statement is filed and issues are framed, I am unable to agree with the respondent. The petition for rejection of plaint is maintainable “during any



stage of the proceedings”. In fact, the Supreme Court held in the case of **ITC**

vs Depts Recovery Appellate Tribunal and others (1998) 2 SCC 70 that the

application is maintainable even at the time of pronouncement of the judgment.

Apart from that, it is well settled position of law that Order 7 Rule 11 of Civil

Procedure Code is not exhaustive and the Court has inherent power to see

vexatious litigation do not consume the precious time of the Court.

32. It is here that I would usefully recollect the judgment of the Supreme Court in the case of **K.K.Modi vs K.N.Modi (1998) 3 SCC 573**. The Supreme Court was pleased to hold as follows:-

“ Abuse of process of the Court connotes that the process of the court must be used bonafide and properly and should not be abused. The Court will prevent improper use of its machinery and will in a proper case summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.”

One of the examples cited as an abuse of the process of the 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 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 proceeding may also amount to 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.....The court should also be satisfied that there is no chance of the suit succeeding.”

33. As noted above, in this suit, the challenge is to the final decree alone. Unless and until the preliminary decree is also set aside, the issue of the plaintiffs succeeding does not arise. Further, this Court in paragraph No.5 in A.S.No.888 of 1995 has held as follows:

“ 5..... Exs.A.1 and B.1 relate to the same sale transaction namely, under the sale deed dated 12.10.53. I perused it. A large extent of landed property and some buildings have been purchased. The purchasers are the second defendant:the plaintiff:the first defendant and



two minor brothers of the plaintiff and the first defendant represented by their father Rangay Gowder. Therefore, even at the outset I would like to make it clear that the defence of the first defendant that the plaintiff is not the purchaser under Ex.A.1 is exposed as a false defence. In other words, Rangay Gowder is not a purchaser in his own capacity under Ex.A.1 and he was representing only his two minor sons. It is therefore clear that in the property purchased under Ex.A.1 corresponding to Ex.B.1, the second defendant has 1/2 share and the other 1/2 share had gone to the other branch of the plaintiff referred to above. To defeat the rights of the plaintiff, the first defendant relies upon Exs.B.2, B.3 and B.6. Ex.B.6 is the release deed stated to have been executed by the plaintiff in favour of Rangay Gowder. Ex.B.3 is the receipt dated 03.12.57 stated to have been executed by the releasor in favour of the releasee. Ex.B.2 dated 02.12.57 is another letter stated to have been sent by the releasor to the Thasildar, Conoor. If Ex.B.6 is established as a true document, then there cannot be any difficulty at all in holding that the plaintiff would be denied of his share in the property to the extent to which he has released under Ex.B.6. Ex.B.6 recites that on receiving a sum of



Rs.5,000/- from the releasee, the releasor had released his rights in the properties mentioned therein. Therefore, the value of the property over which the releasor's right was extinguished is definitely in excess of Rs.100/-. Therefore, Ex.B.6 ought to be compulsorily registered. A reading of Ex.B.6 does not show that the releasor parted with his possession. To deny the plaintiff's title to the extent of his share which had been released, Ex.B.6 had been pressed into service. Ex.B.6 also does not show tht possession followed either to the releasee, or on the death of the releasee, to his legal heirs, which includes the first defendant as well. Therefore the learned trial Judge rightly refused to act upon Ex.B.6, though that document, along with Exs.B.2 and B.3, had come to be marked by consent. Ex.B.6 is used as a document to extinguish the rights of the plaintiff and therefore the rejection of that document for want of registration cannot be assailed in any manner.”

This Court has held that the deceased Rangai Gowder, the father of K.R.Raju and the person, through whom the parties claim, has no right to the suit property. To add, Rangai Gowder did not claim any right to the property as



along as he was alive.

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34. Apart from that, reading of paragraph No.8 of the plaint goes to show that they relied upon the last Will and Testament for the purpose of staking a claim to the suit. This issue had been gone into by the High Court on the second occasion in CRP.(NPD).No.546 of 2003 and the revision came to be dismissed by this Court on 25.07.2005. It specifically held that no right can be claimed on the basis of an unprobated Will. If the suit is allowed to be proceeded on the basis of an unprobated Will, it will not only be contrary to Sections 213 of the Indian Succession Act, but would also be contrary to the judgment of the High Court in CRP (NPD) No.546 of 2003.

35. The learned Judge was correct in applying the principles in Order 7 Rule 11 of Civil Procedure Code, but he had failed to see that the suit does not have any cause of action. He had also failed to see that the case that is projected before him today was the same case projected by K.R.Raju in the trial Court in O.S.No.161 of 1984 and before the High Court in A.S.No.888 of 1995.



36. To reiterate the very same issue before a Munsif Court, which has been settled by the High Court, is a classic case of re-litigation. Furthermore, reading of the plaint shows that it is an attempt made by the plaintiffs to assist the defendants 5 to 8 in achieving the benefits which they could not obtain in the previous litigation, despite the plea raised by K.R.Raju. They are puppet plaintiffs.

37. This Court has held in the case of ***Ranipet Municipality vs M.Shamsheerkhan 1998 (1) CTC 66*** that the following are the instances of abuse of process of Court:-

“ 9. It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the Court' the Code of Civil Procedure has not given any definition. A party to a litigation is said to be guilty of abuse of process of the Court, in any of the following cases:-

(1) Gaining an unfair advantage by the use of a rule of procedure.



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- (2) Contempt of the authority of the Court by a party or stranger.*
- (3) Fraud or collusion in Court proceedings as between parties.*
- (4) Retention of a benefit wrongly received.*
- (5) Resorting to and encouraging multiplicity of proceedings.*
- (6) Circumventing of the law by indirect means.*
- (7) Presence of witness during examination of previous witness.*
- (8) Institution vexatious, obstructive or dilatory actions.*
- (9) Introduction of Scandalous or objectionable matter in proceedings.*
- (10) Executing a decree manifestly at variance with its purpose and intent.*
- (11) Institution of a suit by a puppet plaintiff.*
- (12) Institution of a suit in the name of the firm by one partner against the majority opinion of other partners etc. (See The Code of Civil Procedure - A.I.R. Commentary to Section 151, C.P.C.) The above are only some of the instances, where a party may be said to be guilty of committing abuse of the process of Court.*



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38. I think this case comes within Categories 1, 5, 6, 8 and 11 of the illustrations set forth above.

39. In the light of the discussions, the order passed by the Subordinate Judge, Nilgiris at Udthagamandalam in I.A.No.212 of 2009 in O.S.No.57 of 2008 dated 31.10.2012 is set aside and the Civil Revision Petition is allowed. The suit in O.S.No.57 of 2008 stands rejected on the ground of abuse of process of law as a tool of re-litigation and also as it is a litigation launched at the instance of puppet plaintiffs.

No costs. Consequently, connected miscellaneous petition is closed.

20.10.2023

Index: Yes/No
Internet : Yes/No
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To
The Subordinate Court, Nilgiris

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V.LAKSHMINARAYANAN,J.,

SI

Pre-Delivery Order in
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