



C.R.P. No.1721 of 2016 &
C.M.P. No.9152 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM: JUSTICE N.SESHASAYEE

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Chemplast Sanmar Limited
now known as
Chemplast Cuddalore Vinyls Limited
Rep. by K.Rajendran and M.V.Ravikumar
9 Cathedral Road
Chennai 600086

... Petitioner

Vs.

1.Muniappan (Died)
2.Kasambu (Died)
3.Kalaiazhagan
4.Kuberasampath
5.Tamilarasi
6.Kala
7.Indiragandhi
8.Jayanthi @ Paranaswari

... Respondents

(Respondents 1 and 2 died. Respondents 3 to 8 brought on record as LRs of the deceased R1 and R2 vide court order dated 31.01.2023 made in C.M.P. Nos.12266 and 12270 o 2022 in C.R.P. No.1721/2016)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order of the Principal District Munsif, Cuddalore in dismissing I.A. No.979/2009 in O.S. No.583/2008 dated 05.04.2016 and reject the plaint in O.S. No.583 of 2008.



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For Petitioner : Mr.T.Ravichandran
For Respondents : Mr.R.Md.Nasurullah for R2
(No Appearance)
Mr.R.Dhanasekar for R3 &R4
(No Appearance)

ORDER

The present revision is filed by the 7th defendant in O.S. No.583 of 2008, which was filed for rejection of the plaint on the ground of abuse of judicial process. O.S. No.583 of 2008 was laid by one Muniappan (first plaintiff) and his wife Kasambu (second plaintiff) for declaration of their title described in 'A' & 'B' schedules to the plaint.

2. It is not in dispute that 'A' schedule property originally belonged to the first plaintiff and the 'B' schedule property belonged to the second plaintiff. On 20.03.2007, both the plaintiffs have entered into separate sale agreements for sale of their respective properties in 'A' and 'B' schedule to the plaint with the 7th defendant. In terms of the agreements, the 7th defendant ought to pay a sale consideration of Rs.5.51 Lakhs to 'A' schedule property, and for the 'B' schedule



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property, Rs.5.22 Lakhs is required to be paid. The entire sale consideration was paid and on 20.04.2007, and the plaintiffs had executed separate irrevocable Power of Attorney documents in favour of the 7th defendant. (This court was informed that at the relevant time there was a misconceived embargo on registering the sale deeds pertaining to these properties because of a notification for acquisition of lands had been issued. Later, this acquisition proceedings were quashed by the First Bench of this court vide order dated 05.03.2008 in W.P. No.11453 of 2007).

3. After the 7th defendant has obtained the irrevocable power of attorney documents referred to above, the four daughters of the present plaintiffs had laid O.S. No.93 of 2007 *inter alia* against the 7th defendant herein for partition on the ground that the properties are ancestral in character and that they, as daughters are entitled to a share in the same. According to the 7th defendant/revision petitioner, it was forced to purchase peace with the 7th defendant, and ultimately the suit was dismissed, as not pressed.

4. In the meantime, the present plaintiffs have filed O.S. No.622 of 2007 for declaration of their title over the suit properties herein against his children and



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the 7th defendant herein/the revision petitioner. The 7th defendant/revision petitioner on his part had laid O.S. No.90 of 2008 before the District Munsif Court, Cuddalore for bare injunction against the plaintiffs and their sons. On 11.03.2008, this suit was compromised, based on the consent terms filed by the plaintiff and the defendants, which are as below:

"1. Defendants 1 and 2 hereby agree to withdraw the suit OS No.622 of 2007 filed against the plaintiff and pending before this Honourable Court.

2. The defendants agree hereby and declare that they do not have any right, title or interest in respect of the suit property.

3. The defendants hereby revoke the Revocation Deed executed by them before the Sub Registrar, Chennai and registered as document numbers 1884 of 2007 and 1888 of 2007.

4. The defendants hereby agree and confirm that the Powers of Attorney executed by them in favour of the plaintiff on 23rd Apr 2007 registered as document numbers 883 of 2007 and 882 of 2007 shall continue to be valid and binding.

5. The defendants further confirm that they do not have any right to revoke the Power of Attorney since as at present they do not have any subsisting interest in respect of the suit property and the Power of Attorney is meant only for the purpose of conveying the suit property in favour of the



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plaintiff as may become necessary.

6. The defendants confirm that they have no right to alienate the suit property to any person whomsoever.

7. The defendants shall extend all necessary cooperation whenever demanded by the plaintiffs for the registration of the sale deed in respect of the suit property.

8. The defendants shall forthwith issue a "No Objection Certificate" to the plaintiff so as to enable it to obtain a 22 KVA electric connection in the suit property.

9. The defendants shall immediately write a letter to the Tamil Nadu Electricity Board for disconnecting the agricultural power connection in the suit property.

10. The defendants hereby authorize the plaintiff to apply to the Tamil Nadu Electricity Board for taking steps for disconnecting the agricultural power connection in the suit property and also enabling it to approach Tamil Nadu Electricity Board for obtaining a 22 KVA electric connection in the suit property.

11. The defendants also agree and undertake to sign and execute any further documents that may be required by the plaintiff.

12. The defendants hereby agree that the plaintiff is entitled to receive the compensation from the government in the event of the land being acquired by the state government under the provisions of Land Acquisition Act.



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13. The defendants agree and undertake that the plaintiff has every right to use the suit property in any manner whatsoever including using the same for laying pipelines for their project and will not be questioned by the defendant."

On 11.03.2008, the learned Principal District Munsif, Cuddalore made due enquiry as required under Order XXIII Rule 3 CPC, satisfied himself about the legality of the terms of compromise and decreed the suit in terms thereof.

5. As per clause 1 of the consent terms, the present plaintiffs withdrew O.S. No.622 of 2007. Thereafter, the same plaintiffs would now institute O.S. No.583 of 2008 for declaration of their title yet another time. This suit was laid against all his children, besides the revision petitioner herein.

6. It is in this setting, the revision petitioner had took out an application in I.A. No.979 of 2009 for rejection of the plaint on the ground of abuse of judicial process. The plaintiffs resisted the same. This was dismissed by the trial court on the ground that the plaintiffs have raised triable issue and hence dismissed the application filed by the revision petitioner. This is now under challenge in this revision.

7. During the pendency of the revision, both the plaintiffs have passed away



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and on their demise, the revision petitioner took out necessary application for impleading the LRs, who are already stand impleaded as defendants 1 to 6 in the suit. In the meantime, this court is informed that these defendants 1 to 6 have transposed themselves as plaintiffs in the suit.

8. Heard the learned counsel for the revision petitioner. None appeared for the respondents.

9. If the doctrine of *res ipsa loquitur* can be extended to understand the case on abuse of judicial process, then this case qualify for such application. In whichever combination the facts of the case are approached, every where the plaintiffs have checkmated themselves by their earlier action. The daughters (the defendants 1 to 4 as was their original rank) laid O.S. No.93 of 2007 for partition and withdrew that. Then comes O.S. No.622 of 2007 which the plaintiff themselves had filed, but withdrew it in terms of the compromise in O.S. No.98 of 2008 and in the present suit, they have not challenged the compromise dated 11.03.2008 either. In a scenario such as this, to let the present suit filed at the instance of the same plaintiffs will be a mockery of judicial process more so after the withdrawal of O.S. No.622 of 2007 pursuant



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to the compromise decree passed in O.S. No.90 of 2008. It needs to be underscored that it is not just the plaintiffs herein have compromised O.S. No.90 of 2008 but also their sons.

10. This court has earlier dealt with the supervisory power under Article 227 of the Constitution of India earlier in its order in ***Abdul Rashid Sahib vs. Ramachandran and Another [(2022) 2 CTC 667 : (2022) 4 MLJ 561]***. The relevant paragraphs are as below:

"On the Supervisory power under Article 227

10.1 The power of superintendence of the High Court which the Constitution speaks of is more an aspect of duty than an idea of authority. Courts may have been a creation of the Constitution and the statutes, but the force that sustains their vitality and institutional relevance is defined not by the authority which are vested in them by the sources of their creation, but by the public trust in them. If rights are wronged, then the Courts, as an impartial arbiter, assure the aggrieved that the wrong would be set right. It is a promise they hold for justifying their establishment, and is the consideration they pay the public for investing its trust in them. In a republic under a normative constitution, this process is open and transparent as they guarantee greater clarity to the litigants that justice is both done and is also seen to be done ? both substantive and procedural. -Justice must be seen to be done- is not an ordinary statement on the optics of



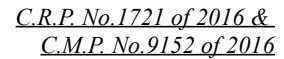
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justice dispensation but is an inalienable aspect of judicial accountability that reassures the public of the commitment of the Court to sustain the faith reposed in it. The power of superintendence, nay the duty to supervise which the Constitution has enjoined this Court with under Article 227 of the Constitution, in essence, is intended to secure and sustain the public faith in the judicial system. It may be understood as a duty to drone~cam the functioning of the courts subordinate to it to ensure that the quality of its functioning is effective and is worthy of sustaining the trust of the litigant public.

10.2 Contextually the phrase -seen to be done- is an aspect of procedure. Procedure is the path, travelling through which substantive justice in a cause is attained. When a procedure is mishandled or manipulated to derive an unmerited advantage by one of the parties to the litigation, it, in effect, corrodes the public faith in the judiciary. It will sound a knell that this Court cannot afford to ignore. Power of superintendence, therefore, is not ornamental, but are facets of serious Constitutional responsibility. It is an internal check to assure the litigants that their faith in the judiciary is rewarding.

10.3 The power of superintendence is not a free~roaming authority since the Courts subordinate to the High Court are independent within their spheres of power, function and authority. It is not an invisible string for this Court to pull from behind or above as if in a puppet~show. Hence, power of superintendence may not be construed as authorising the High Court to shadow~participate in every judicial proceeding of the courts subordinate to it, nor



10.4 When Article 227 is invoked, this Court scans the judicial process applied in a litigation to ascertain the quality of processual justice and evaluates the consequences produced. Not all the mishandled procedure affects the substantive right to litigate or defend or produce unfair results, as many may fall within the domain of the discretionary space made available to the courts subordinate to this Court. Where the procedure is mishandled, or manipulated (commonly understood as abuse of judicial process or fraud on court) to produce an unfair result adverse to one of the litigants with the potential to impair the litigant-s faith in the Court, it will be a clarion call for this Court to step in. This Court-s claim that it is a sentinel on the qui vive in protecting the rights of the citizens will then go hollow and weather beaten, if it compromises its Constitutional conscience, and forsakes its duty to correct a wrong in exercise of its powers under Article 227 of the Constitution. This is the soul of its supervisory power: of identifying a wrong which holds the potential to imperil the public faith in the judiciary or challenges its own purity and effectiveness of its functioning, and then following



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it with curial measures. To complete the narrative, it is necessary to point out that allegations of fraud is not rain seeding power of courts to come down and wash away all procedural and substantive aspects in a suit. Fraud on court empowers the same court as well as this Court to interfere in appropriate cases under Article 227 of the Constitution of India. However, fraud on a party is a voidable act and it has be investigated and dealt with by way of an appropriate application or a separate suit.

11. When can this Court engage in a process of identifying a wrong to contemplate a correction? Here, it needs to be emphasised that the legitimacy of judicial process may not be evaluated solely by its validation in an apparent or ostensible procedural compliance, but by its proximity to fairness needed for its compliance. A procedure represents the body of rules navigating through which justice could be obtained. It is the means to an end and not an end in itself. Any understanding of the procedural law as a mere statute providing a check~list for mandatory compliance is an oversimplification of what it signifies. The soul of procedure is its fairness, which the expressions embodying it may not adequately highlight. Indeed, procedural law is written with fairest of inks on the parchment of fairness, and if fairness is separated from the procedural law ~ its application and handling, the judicial process will be at the risk of losing its vitality and relevance. An unfair procedure is per se oppressive and is anathema to substantive justice. Accordingly, if unfairness is seen manifest in an apparent procedural compliance which is shown to have produced unfair consequences, and thereby threatens the faith the litigant has in judicial system, then



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notwithstanding what may pass for procedural compliance, this Court may find a moment to exercise its powers under Article 227 of the Constitution.

11. The game plan involved by the plaintiffs or his children are far too obvious and neither this court nor the legal system of this country can aid their over ambition.

12. In conclusion, the civil revision petition is allowed. The fair and decretal order of the Principal District Munsif, Cuddalore dated 05.04.2016 passed in I.A. No.979/2009 in O.S. No.583/2008 is set aside. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

15.03.2023

Asr

To
The Principal District Munsif, Cuddalore

N.SESHASAYEE, J.,



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