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C.R.P.(PD).No.3912

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 26.07.2023

Pronounced On : .08.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.3912 of 2016

and

C.M.P.Nos.20105 and 20106 of 2016

1.B.Rajamani
2.R.Selvaraj
3.R.Devaraj
4.R.Dharmaraj
5.R.Varadhara.

...Petitioners.

Vs.

1.N.Gunasekaran

2.K.Varadharajan

...Respondents.

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Final Orders dated 24.10.2016 made in I.A.No.507 of 2016 in O.S.No.550 of 2016 on the file of the Second Additional Subordinate Court, Coimbatore and pray to set-aside the same.

For Petitioners : Mr.Kandhan Duraisamy
For Respondents : Mr.S.Venkatesh



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ORDER

This case has a checkered history. The Revision before me arises against an order passed by the Learned IInd Additional Subordinate Judge Coimbatore in I.A.No.507 of 2016 in O.S.No.550 of 2016 dated 24.10.2016. The said application was filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908. It was dismissed, hence, the revision.

FACTS LEADING TO THE CASE

2. There was a gentleman by the name of Nanjappa Konar. He got the suit schedule mentioned property by way of a registered partition deed in document No.2129 of 1929 dated 20.06.1929. The document is registered on the file of the Joint Sub-Registrar No.II, Coimbatore. Nanjappa Konar had two wives, his first wife was called Marudhiakkal & his second wife was one Palaniammal.

3. Nanjappa Konar sold the property to his first wife Marudhiakkal by way of a registered sale deed in document No.1053 of 1936 dated 25.05.1936. The document is registered on the file of the Joint Sub-Registrar Office, No.II, Coimbatore. The sale deed was a princely sum of Rs.4,000/- in the year 1936.

4. Marudhiakkal had two daughters, one was called Marudhiakkal, wife of Ramasamy and the other, one Saraswathi wife of Rangasamy. Having possessed and enjoying the property from 1936, Marudhiakkal registered a Will in favour of her



daughters on 29.11.1974. Thereafter, she executed two settlement deeds in favour of her daughters, on 16.10.1979 and 17.10.1979 respectively. The settler was Marudhiakkal, (wife of Nanjappa Konar) and the beneficiaries/settles were Marudhiakkal, (wife of Ramasamy) and Saraswathi (wife of Rangasamy).

5. Having parted with the property within a couple of years, Marudhiakkal, (wife of Nanjappa Konar) passed away on 07.02.1981. The settlement deed having been executed by the owner, Marudhiakkal, (wife of Ramasamy) and Saraswathi (wife of Rangasamy), became the owners of the property.

FIRST ROUND OF LITIGATION

6. The second wife of Nanjappa Konar, Tmt. Palaniammal trespassed into the suit property, constraining the owners, Marudhiakkal (wife of Ramasamy) and Saraswathi, (wife of Rangasamy) to present O.S.No.195 of 1982. It is pertinent to point out here that the vendor of the present plaintiffs, N.Subramaniam was a party/ 5th defendant to the suit.

7. O.S.No.195 of 1982 was a suit, for seeking declaration of title, recovery of possession and for permanent injunction. The defendants in the suit were Palaniammal and her four sons:-

(I). Rangasamy,

(II). Ramasamy,

(III). Seerangan and



(IV). N.Subramaniam.

The suit underwent an elaborated trial. It was decreed as prayed for on

03.10.1983.

8.Pending the suit, a portion of the property had been alienated in favour of one Venkateshwarlu. Therefore, Venkateshwarlu was also made as a party/6th defendant to the suit.

9.Aggrieved by the judgment and decree in O.S.No.195 of 1982, two regular appeals were filed. One appeal was at the instance of the second wife of Nanjappa Konar, namely the original defendant No.1 and her sons defendant Nos.2 to 5. This was in A.S.No.299 of 1983. The purchaser of a portion of the suit property, Venkateshwarlu filed A.S.No.329 of 1983. Both the appeal suits were taken up for joint hearing by the Learned District Judge at Coimbatore. The Learned Principal District Judge dismissed both the appeals on 29.06.1985. The dismissal of the first appeal in A.S.No.299 of 1983 was put in challenge before this Court in S.A.No.1538 of 1985. The subsequent purchaser, Venkateshwarlu did not file any appeal.

10.By a judgment dated 24.04.1987, the second appeal in S.A.No.1538 of 1985 was dismissed, confirming the sale deed executed by Nanjappa Konar in favour of his first wife Marudhiakkal and also the settlement deeds executed by



Marudhiakkal in favour of her daughters.

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11. Not being satisfied with the concurrent findings, Tmt. Palaniammal and her children preferred a special leave petition to the Supreme Court in S.L.P.(Civil).No.1607 of 1988. The Supreme Court dismissed the Special Leave Petition on 16.07.1990. This concluded the first round of litigation which upheld the judgment and decree in O.S.No.195 of 1982, whereby, the title declared in favour of Marudhiakkal, (wife of Ramasamy) and Saraswathi (wife of Rangasamy) were upheld.

SECOND ROUND OF LITIGATION

12. O.S.No.1962 of 1990 was presented by four unknown persons as against Rangasamy, Ramasamy, Marudhiakkal and Saraswathi. This suit was for bare injunction. The first and second defendants Rangasamy and Ramasamy respectively, are the sons of Tmt. Palaniammal and Nanjappa Konar who were the 2nd and 3rd appellants in A.S.No.299 of 1983 and also having the same rank in S.A.No.1538 of 1985. Not so surprisingly, the said Rangasamy and Ramasamy remained *ex-parte* in the proceedings.

13. On the strength of the decree obtained by them, which was confirmed till the Supreme Court, the third and the fourth defendants contested the suit.

14. The Learned District Munsif at Coimbatore dismissed O.S.No.1692 of 1990 by a judgment and decree dated 28.07.1991. This was challenged up till the High



Court in the second round of litigation. The High Court confirmed the dismissal of the suit by its judgment in S.A.No.1388 of 1994 on 18.11.1994.

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THIRD ROUND OF LITIGATION

15. Normally, it is expected that after two rounds of litigation, the parties will stop further litigation. However, the family of Tmt.Palaniammal and her sons exhibited indomitable spirit and insatiable appetite for litigation. In O.S.No.35/1995 another suit was instituted through the plaintiffs in O.S.No.1962 of 1990. It is pertinent to point out that in this suit, the successful plaintiffs in O.S.No.195 of 1982 were not made parties. The parties in this suit were the families of Tmt.Palaniammal and her children and the plaintiffs in O.S.No.1962 of 1990.

16. This suit ended in an *ex-parte* decree. On the strength of the *ex-parte* decree, the execution petition in O.S.No.195 of 1982 was closed. In O.S.No.35 of 1995, all the previous proceedings were entirely suppressed, constraining Marudhiakkal and Saraswathi to move this court by way of a revision under Article 227 of the Constitution of India to strike off the decree. The said Civil Revision Petition was entertained in CRP No.1042 of 1997.

17. This court, heard the plaintiffs in O.S.No.35 of 1995 as well as the defendants and by a judgment dated 14.07.1997 struck off the decree. The relevant portions of the judgment is extracted hereunder:-

“9. The conduct of the respondents in suppressing the judgment in a material fact which compels this court to invoke the powers under Article 227 of the Constitution of India. I therefore, set aside the ex-parte decree in



O.S.No.35 of 1995 and also hold that the institution of the said suit is nothing but an abuse of process of court and an exercise. Invoking the power under order 6 Rule 16 read with Section 151 of the Code of Civil Procedure along with Article 227 of the Constitution of India, I strike of the plaint in O.S.No.35/95 from the file of that Court. Consequently, I also direct the lower court to restore E.P.No.251/93 in O.S.No.195/82 on the file of the District Munsif, Coimbatore and pass appropriate orders therein. The Petitioner are also granted his costs in that proceedings.”

18.The relief that was sought for in O.S.No.35 of 1995 was for declaration that the judgment and decree in O.S.No.195 of 1982 was not binding on them. The 3rd round of litigation also ended in favour of Marudhiakkal and Saraswathi.

19.As per the directions of this court, the execution petition filed in E.P.No.251 of 1993 in order to execute a decree for recovery of possession in O.S.No.195 of 1982 was restored on to the file. In the execution proceedings, the vendor of the present plaintiffs filed a Section 47 application, and sought for declaration that the decree was in-executable. Subsequently, an obstruction petition was also filed in E.A.No.22 of 2007. While a Section 47 application and one under Order 21 Rule 97 were pending, yet another suit was filed in O.S.No.73 of 2007.

FOURTH ROUND OF LITIGATION

20. O.S.No.73 of 2007 was for declaration of title of N.Subramanian, the son of Nanjappa Konnar and Tmt.Palaniammal (the 5th defendant in O.S.No.195 of 1982). The relief he sought in O.S.No.73 of 2007 was for declaration of his title over the property and for a permanent injunction, restraining the defendants from interfering with his possession and to set aside the decree in O.S.No.195 of 1982 on



the file of the Principal District Munsif at Coimbatore as invalid and inexecutable in law.

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21.Challenging this fresh suit, a civil revision petition was filed before this court in CRP.PD.No.1808 of 2007. After hearing both sides, the civil revision petition was allowed on 21.04.2008 striking of O.S.No.73 of 2007 from the file of the first Additional District Judge at Coimbatore. It is pertinent to point out that the legal heirs of Marudhiakkal (wife of Ramasamy) and Saraswathi (wife of Rangasamy) were the petitioners therein.

22.Now let us turn to the execution proceedings in E.P.No.251 of 1993 proceeded. Despite the several road blocks placed by the judgment debtors, finally delivery was ordered, in favour of the decree-holders. The said decree was put into execution and the property was delivered to the decree-holders. On 05.04.2014 , the court recorded the handing over of possession and the EP stood terminated.

FIFTH ROUND OF LITIGATION

23.One would have expected the litigation would come to an end at least at that stage. Unfortunately, it did not happen. Yet another suit has been presented in O.S.No.550 of 2016. This is the subject matter of this revision. The present suit is at the instance of the purchasers of the property from N.Subramaniam, the son of Tmt.Palaniammal and Nanjappa Konnar (the 5th defendant in the suit) in O.S.No.195 of 1982 & the plaintiff in O.S.No.73 of 2007.



24.N.Subramaniam, after having lost the litigation up till the Supreme Court, had executed a power of attorney with respect to the suit property in favour of one Somasundaram. The said Somasundaram had executed sale deeds on 05.06.1988 and 08.06.1988 in favour of N.Veluchamy (Item No.4), S.R.Subramaniam (Item Nos.2 and 3) and AC.Thangasamy (Item No.1). The statement of facts set-forth above would show that the sale had taken place, pending the execution and after the title of Marudhiakkal (wife of Rangasamy) and Saraswathi (wife of Ramasamy) had been upheld by the High Court and when the SLP was pending before the Supreme Court.

25.The purchasers of the property *pendente lite* Thangasamy, Subramaniam and Veluchamy executed a general power of attorney, in favour of one Veluchamy. The said Veluchamy in exercise of the power of attorney granted, sold the property in favour of the plaintiffs namely N.Gunasekaran and Varadharajan.

26.Being frustrated with their properties and being consistently litigated upon, through one suit after another and one obstruction after another and finding abuse of process of law and misuse of process of court, the defendants (who are the legal representatives of Marudhiakkal wife of Ramasamy and Saraswathi wife of Rangasamy) filed an application in I.A.No.507 of 2016 for rejection of plaint. This application came to be dismissed against which the present civil revision petition has been filed.

POSITION OF LAW



27.I have to preface this judgment with a famous statement of **Lort Williams**

J. in Bhagat Singh Vs. Jagbir Sawhney, AIR. 1941 Calcutta 670 which reads as

follows:-

“The Code is not exhaustive; there are cases which are not provided for in it, and the High Court must not file its hands and allow injustice to be done. The law cannot make express provisions against all inconveniences, and the court has, therefore, in many cases where the circumstances warrant it, and the necessities of the case require it, to act upon the assumption of the possession of an inherent power to act Ex debito justitiae and to do that real and substantial justice and the administration of which alone it exists.”

28.I also have to remember the verdict of the Supreme Court in **Dahiben vs. Arvinbhai Kalyanji Bhanusali 2020 (7) SCC 366**. In the said judgment the Court had

held as follows:-

“ 23.2.The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3.The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4.In Azhar Hussain v. Rajiv Gandhi this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any



cause of action.”

23.5.The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6.Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.”

29.The learned Trial Judge dismissed the application for rejection of plaint on the ground that the averments made in the plaint necessarily has to push the parties to trial. Going through the series of litigation commencing from 1982, I am not in agreement with the same.

ARGUMENTS

30.Mr.Kandhan Duraisamy, learned Counsel appearing for the civil revision petitioners would submit that the Court will have to nip the litigation in the bud itself, as it is a classic case of re-litigation.

31.Mr.Venkatesh, learned Counsel for the plaintiff/respondents would submit that this Court does not have the power to nip the litigation in the bud because a plain reading of the plaint, discloses the cause of action and the suit necessarily have to proceed for Trial.

32.On a query from the court, as to how the plaintiffs are entitled to maintain a suit, especially when their vendors had lost the litigation till the Supreme Court, the learned counsel for the respondent answered that his clients are purchasers of the suit property in a *bona-fide* manner.



DISCUSSION

33.Before I deal with the cause of action, I will have to state that the submission of Mr.Venkatesh that they are *bona-fide* purchasers of the property and therefore, they are not bound by the decree, begs Section 52 of the Transfer of Property Act, 1952. A *lis pendens* purchaser gets whatever his vendor obtains in a suit. If his vendor's claim is denied by the Court, then his purchase is of no value. In this particular case as seen from the facts stated above, Mr.N.Subramaniam was the 5th defendant in O.S.No.195 of 1982. He suffered a decree which went in favour of the predecessors-in -title of the civil revision petitioners.

34.He filed an appeal in A.S.Nos.299 of 1983 and he lost. His further appeal in S.A.No.1538 of 1985 also went against him. His Special Leave Petition to the Supreme Court in SLP (Civil) No.1607 of 1988 was also dismissed.

35.Apart from that, he filed a suit in O.S.No.73 of 2007 for declaration of his title which also went against him. His petitions before the Executing Court were also dismissed and delivery was taken through the process of Court. In other words, all available remedies were availed by N.Subramanian and he failed in all of them. Therefore, the sale deed executed by N.Subramanian through his power of attorney in favour of Mr.A.C.Thangasamy, Mr.S.K.Subramaniam and Velcuhamy were not worth the paper on which it was written upon.

36.If Mr.N.Subramanian could not convey any title to the aforesaid three persons, they could not have conveyed any title to the present plaintiffs.



37. Apart from that, *lis pendens* does not know of a *bona-fide* purchase. No person can take a defense that he is a *bona-fide* purchaser of the property without being aware of the suit and thereafter claim that even if the vendor has lost the litigation, he can still assert his title to the property. Therefore, I have to necessarily reject the argument on the *bonafide* purchase.

38. Mr. Venkatesh, now turns to the cause of action in the suit. I have to take note of the fact that if a plaint suffers from a clever drafting or an illusory cause of action is sought to be projected, it is my duty to reject the plaint and not burdening the Court with frivolous litigation.

39. The aforesaid statement of facts would show that, the cause of action in the present case is a non-existing one that has been created for the purpose of presenting O.S.No.550 of 2016. This would fall under the scope of Order 7 Rule 11.

40. The classic statement made by Justice V.R. Krishna Iyer in ***T. Arivandandam Vs. T.V.Satyapal & Another (1977) 4 SCC 467*** resounds in this case. I do not have to reproduce the authority other than for the fact to note that the Courts at Coimbatore have been flagrantly misused by Tmt. Palaniammal and her children or by purchasers from them. Apart from that, had the Learned District Munsif referred to the previous verdicts of the Court between the petitioners and the predecessors in title of the plaintiff herein, then, I am sure he would not have come to the conclusion of dismissing the rejection of plaint application.

41. Recently, the Supreme Court of India reiterated the principles under Order 7



Rule 11 which I extract verbatim. In ***Raghwendra Sharan Singh Vs. Ram Prasanna***

Singh(Dead) (2020) 16 SCC 601, the Court held as follows:-

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6.3. While considering the scope and ambit of the application under Order 7 Rule 11 CPC, few decisions of this Court on Order 7 Rule 11 CPC are required to be referred to and considered.

6.4. In *T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467]* , while considering the very same provision i.e. Order 7 Rule 11 CPC and the decree of the trial court in considering such application, this Court in para 5 has observed and held as under: (SCC p. 470)

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly 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 complaint 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 CPC 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 CPC. An activist Judge is the answer to irresponsible law suits.”

6.5. In *Church of Christ Charitable Trust & Educational Charitable Society [Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612]* , this Court in para 13 has observed and held as under: (SCC p. 715)

“13. While scrutinising the complaint averments, it is the bounden duty of the trial court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

6.6. In *ABC Laminart (P) Ltd. v. A.P. Agencies [ABC Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163]* , this Court explained the meaning of “cause of action” as follows: (SCC p. 170, para 12)

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It



does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

6.7. *In Sopan Sukhdeo Sable [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] in paras 11 and 12, this Court has observed as under: (SCC p. 146)*

“11. In ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] .)”

6.8. *In Madanuri Sri Rama Chandra Murthy [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] , this Court has observed and held as under: (SCC pp. 178-79, para 7)*

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”



6.9. In *Ram Singh [Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364]*, this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

42. Bearing in mind those principles, I have to necessarily come to the conclusion that one dispute after another has been initiated only in order to somehow or the other deny the fruits of the decree to the Civil Revision Petitioners.

43. Insofar as possession of the property is concerned, the Executing Court in E.P.No.251 of 1993 has shown that the possession has been handed over to the decree holders in O.S.No.195 of 1982 on 05.04.2014.

44. Under the provisions of Section 114 of the Indian Evidence Act, a court is duty bound to presume certain facts. One such presumption that I can draw is that judicial and official acts have been regularly performed (114 (f)). By interpreting this Section, the Hon'ble Mr. Justice M. Srinivasan in ***C.Ramasami Vs. Kuruva Boyan & Ors. (1991) 1 LW 244*** held that a court has to apply this provision to deliver “*athakshis*” issued by executing courts. The said judgment has been applied by this court in ***Govindasamy Pillai Vs. Maruddayakkal (2002) 1 LW 113***.

45. A perusal of the judgments would go to show that unless and until “*a plea of fraud*” is raised, the Court must presume that the proceedings of the Court are genuine. It is always a plea of the judgment debtor to state that delivery has not been taken. It is also not the argument of Mr. Venkatesh, that a fraud had been played on the court, while executing the decree which had been confirmed till the Supreme Court.



46.By virtue of this discussion, the conclusion that I have to come to is that the civil revision petitioners had taken possession of the property pursuant to the execution of the decree in O.S.No.195 of 1982 and that they are in possession of the property. If they are in possession of the property, then a suit for bare injunction against them, claiming possession on the basis of a sale deed executed *pendente lite* is not maintainable.

47.I also have to take note of the fact that the schedule property mentioned in this suit and the schedule of property in O.S.No.195 of 1982 are one & the same.

48.In other words, the discussion above shows that the parties in both the suits are one and the same or are litigating under the same title and the schedule of property are also one and the same. All these facts lead me to an irresistible conclusion that the suit presented in O.S.No.550 of 2016 not only suffers from the vice of abuse of process of Law but also does not have any cause of action. Consequently, I have to set aside the order passed in I.A.No.507 of 2016 in O.S.No.550 of 2016 dated 24.10.2016.

49. This Civil Revision Petition is allowed. The order passed in I.A.No.507 of 2016 is set aside. The plaint shall stand rejected with a cost of Rs.1,00,000/- payable by the respondents to the petitioners. No Costs. Connected civil miscellaneous petitions are closed.

10.08.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No



C.R.P.(PD).No.3912

V. LAKSHMINARAYANAN, J,
nst

To:

The II Additional Sub Judge,
Coimbatore.

Pre-Delivery Order In

C.R.P.(PD).No.3912 of 2016
and
C.M.P.Nos.20105 and 20106 of 2016



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C.R.P.(PD).No.3912 -----

10.08.2023