



C.R.P.No.2251 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Date of Reserving Order 07.06.2023	Date of Pronouncing Order 1.09.2023
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THE HONOURABLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

C.R.P.No.2251 of 2021
and C.M.P.No.17096 of 2021

Kesavan

... Petitioner

-VS-

1.Pushpavathy
2.Boolagammal (Died)
3.Jayalakshmi
4.Selvalatha
5.Jayabal
6.Lakshmanan

... Respondents

(Respondents 4 to 6 brought on record as LR's of the deceased R2 viz., Boolagammal vide Court Order dated 23.02.2023 made in C.M.P.Nos.1722, 1729, 1735 of 2023 in C.R.P.No.2251 of 2021 by VBSJ)

PRAYER: Civil Revision Petition filed under Article 227 of the Indian Constitution, pleaded to call for the plaint in O.S.No.128 of 2019 on the file of the District Judge-II, Kanchipuram and strike - off the same as sheer



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abuse of process of law, barred by limitation, vexatious, non-joinder of necessary parties, concealing material facts.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for Mr.M.Muruganantham

For Respondent 1 : Ms.Gayatri for Mr.P.B.Ramanujam

For R2 : No Appearance

For R4 to R6 : Notice not ready

ORDER

This Civil Revision Petition is filed to call for the plaint in O.S.No.128 of 2019 on the file of the District Judge-II, Kanchipuram and strike - off the same as sheer abuse of process of law, barred by limitation, vexatious, non-joinder of necessary parties, and concealing material facts.

2. Brief facts which are necessary to decide this petition are as follows:

The Respondents in this Civil Revision Petition had filed O.S.No.128 of 2019 on the file of the learned District Judge - II, Kanchipuram seeking



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the relief of partition. The Petitioner was impleaded as second Defendant in the suit. Since the suit for partition itself is not maintainable, the second Defendant as Petitioner had approached this Court by filing petition under Article 227 of Constitution of India seeking to strike out the plaint from the file of the learned District Judge - II, Kanchipuram as it is an abuse of the process of the Court.

3. The Learned Senior Counsel Mr.R.Singaravelan appearing for the Revision Petitioner submitted his arguments stating that usually when the suit is not maintainable either on the interpretation of any law or when there is a bar for filing any suit as per any law under Order VII Rule 11 CPC, the person who is aggrieved by the suit had filed petition challenging the maintainability of the suit. Here, in this case, the Court had sought maintainability of this petition without agitating the right of the party under Order VII Rule 11 CPC and straight away petition having been filed under Article 227 of the Constitution of India. Therefore, the learned Senior Counsel Mr.R.Singaravelan submitted that it is a thin line of lineation which differentiate the filing of a petition straight away before this Court when



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there is an abuse of the process of the Court. A petition under Order VII Rule 11 is filed only when there are grounds available as per Order VII Rule 11 based on the pleadings in the plaint.

4. Based on the pleadings in the plaint itself if it is found that it is nothing but an abuse of the process of the Court, then the aggrieved party need not be pushed to by the trial Court for filing a petition under Order VII Rule 11 CPC instead this very same High Court shall exercise the discretion under Article 227 of the Constitution of India and strike out the plaint straight away, if the Hon'ble High Court arrives at a conclusion that the institution of the suit itself is an abuse of the process of the Court. The learned Senior counsel relied on the plaint averments. The Plaintiff Pushpavathy, is the sister of this Revision Petitioner.

5. The Plaintiff Pushpavathy had instituted the suit for partition against the Defendants, who are the sisters and brother of Pushpavathy by clever drafting. the suit had been instituted only with an intention to cause harassment to the Defendants. The Petitioner herein is the second



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Defendant in the suit. The Petitioner is aged about 70 years, now. As per the plaintiff averments in paragraphs 5 and 6 it is stated that

"5. The plaintiff further submits that the plaintiff A schedule mentioned property is the ancestral house and B schedule properties are agriculture lands were purchased by Thepperumal Naicker through sale deeds. One of the property viz., house site situate in Mudichur, Tambaram Taluk, was acquired by the Government of Tamil Nadu. A power of attorney deed dated 02.05.2014 was executed by mother Sampath Ammal, plaintiff and 1 & 3 defendants in favour of the 2nd defendant, authorizing and empowering him to deal with the property including power of alienation. By getting the power of attorney from the plaintiff, shares of plaintiff and the defendants was candidly admitted. Further since the A schedule property is the ancestral property of the father, the father died on 27.11.2005 after the Amendment Act 39-2005 came into force. Thus the plaintiff is entitled for 1/4th share each in the plaintiff A & B schedule properties. A Xerox copy of the Registered Power of Attorney Deed is filed



along with the plaint and the certified copy will be filed at the time of trial.

6. The plaintiff further submits that the 2nd defendant on 11.05.2019 came to the plaint A schedule mentioned property where the plaintiff is residing and asked to quit, since father executed a settlement deed dated 30.04.1993 in his favour. The plaintiff obtained certified copy of the settlement deed which is executed on 30.04.1993. The father Thepperumal Naicker himself has no capacity to execute the gift deed, since it is an ancestral property and he died on 27.11.2005 after the amendment act came into force. Further the plaintiff is not a party to the deed and not bound by the same. The recital of the above said deed is silent about the ownership itself is a indicator that the property is an ancestral property."

and cause of action stated in plaint averments in paragraph 10 it is stated that

"10. The cause of action for the suit arose on 27.11.2005 the date of death of the father on 15.12.2018 the date of the death of mother' a



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registered power of attorney deed dated 02.05.2014 executed by mother Sampath Ammal, plaintiff and 1 & 3 defendants in favour of the 2nd defendant; on 11.05.2019 the date on which the 2nd defendant came and threatened the plaintiff to vacate from the plot A schedule mentioned property and de-die-en-diem at Konerikuppam and Kanchipuram Town, where the suit properties are situate within the jurisdiction of this Hon'ble Court."

6. The learned Senior counsel for the Revision Petitioner submits that the Plaintiff had filed the suit for partition which is nothing but a clever pleading. In paragraph 6 of the plaint, the Plaintiff had stated about a settlement deed executed by the father of the Plaintiff and Defendants dated 30.04.1993. The Plaintiff had not challenged the settlement deed. The cause of action is stated to arise on 27.11.2005, as the date of death of the father the suit is instituted in the year 2019. Without challenging the settlement deed executed by her father, in favour of the second Defendant, the Petitioner herein after 26 years after the date of execution of the registered settlement deed the suit for partition is filed without seeking or



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without challenging the settlement deed executed by the father. Similarly after 14 years after the date of death of the father the suit had been filed.

This is nothing but an abuse of the process of the Court to harass the Petitioner. Therefore, the Petitioner as second Defendant in the suit need not be forced to approach the trial Court, the Court of the learned District Judge - II, Kanchipuram by filing petition under Order VII Rule 11 CPC.

7. The Court of the learned District Judge - II, Kanchipuram on perusal of the plaint averments ought not to have entertained the suit as it is nothing but clever drafting. The cause of action is stated to be 2005 on the date of death of the father. After the date of death of the father i.e., after 14 years, the suit is instituted. The Plaintiff in the paragraph no.6 states about the settlement deed executed by the father in favour of the second Defendant, which is a registered settlement deed. The Plaintiff has not challenged the settlement deed as in the plaint and cannot claim ignorance of the settlement deed it is a registered settlement in the year 1993. Therefore, 26 years after execution of the settlement deed the Plaintiff is attempting to seek partition in which the settlement deed was already



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executed 26 years before. Subsequent to the settlement deed, the second

Defendant in whose favour the settlement deed was executed has acted upon the settlement deed. Based on which the revenue records had been transferred in the name of the Petitioner / second Defendant and he had been in enjoyment of the property. Only in his old age, to cause harassment and to wreak vengeance on him, this motivated suit having been instituted with an ulterior motive to except something in return. It is nothing but an abuse of the process of the Court, which have not returned the plaint but was entertained by the learned District Judge - II at Kanchipuram at the initial stage. Therefore, having entertained such a plaint it attracts the invocation of the Power of the Hon'ble High Court under Article 227 of the Constitution of India as per the submission of the learned Senior counsel for Revision Petitioner. The learned Senior counsel referred to the Judgment of this High Court reported in **2010(4) CTC 690 Southern and Rajamani Transport Private Limited, rep. by its Director, V.R.Venkataswamy, No.270, Goods Shed Road, Madurai - 625 001 and 33 others -vs- 1. R.Srinivasan, 2. Estate of B.V.Govindarajulu Naidu, rep. by its Intermeddler, G.Sanjeevi Rajan, 3. R.Vasantha, 4. V.R.Narasimhalu,**



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wherein the learned Judge of this Court had laid down grounds to the maintainability of revision petition without availing alternative remedy under Order VII Rule 11 of CPC, barred conditions have been stated to invoke the extraordinary powers of this Court under Article 227 of the Constitution of India.

"29. From the cumulative reading of the decisions referred to supra, it is easily discernible that Article 227 of the Constitution of India can be invoked by every High Court under the guise of superintendence, on the following grounds:

- (a) to prevent abuse of process of law*
- (b) to prevent miscarriage of justice*
- (c) to prevent grave injustice*
- (d) to establish both administrative as well as judicial power of High Court."*

8. Here the filing of the suit itself is not maintainable. Had the learned District Judge - II, Kanchipuram exercised discretion vested in him, her / she / he ought to have returned the plaint questioning the maintainability. Since he / she failed to exercise discretion vested in him /



her and numbered the suit, it had resulted in abuse of the process of the Court by the Plaintiff. Therefore, the second Defendant who has to face the rigour of a long lasting trial, is forced to approach this Court to strike out the plaint under Article 227 of the Constitution of India wherein all the four conditions laid down in the reported rulings cited above are formed. Also the learned Senior counsel relied on the reported ruling **2017 SCC Online Mad 4702: (2017) 8 Mad LJ 697 Rajendran and another -vs- Ettammal and others.**

"9. In Ranipet Municipality's case, cited second supra, a learned Judge of this Court has held that the suit filed by the plaintiff and order of injunction passed by the lower Court constituted abuse of process of the Court and therefore in exercise of power under Article 227 of the Constitution of India, the learned Judge has ordered to strike off the plaint in the above said suit from the file of the trial Court. He has also observed as under of course, for the term 'abuse of the process of this 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 Court, in any of the following cases:-

- (1) Gaining an unfair advantage by the use of a rule of procedure.*
- (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. The above are only some of the*



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instances, where a party may be said to be guilty of committing abuse of the process of Court."

Wherein, the learned Judge of this Court had relied upon an earlier ruling, wherein the twelve ingredients have been mentioned for invoking the extraordinary powers of this Court under Article 227 of the Constitution of India to strike out the plaint. Therefore, the learned Senior Counsel submits that this revision petition is maintainable, before this Court. As the circumstances stated in the said reported rulings are available in the facts and circumstances of this Court to invoke the extraordinary powers of this Court under Article 227 of the Constitution of India without the second Defendant approaching the learned Trial Judge under Order VII Rule 11 CPC CPC. Here is a case where the learned Judge failed to exercise discretion vested in him / her before entertaining the suit. As per the plaint pleadings itself, the learned Judge ought to have found out that the suit is nothing but an abuse of the process of the Court instituted by one of the sisters against the second Defendant and other sisters.

9. The learned Counsel for the first Respondent Ms.Gayatri for



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Mr.P.B.Ramanujam submitted that the Plaintiff need not seek declaration to declare the settlement deed executed by her father as null and void. Also, the learned Counsel for the Respondent / Plaintiff submits that a suit for partition shall be filed by a coparcenor without challenging any documents created by other coparcenors regarding the limitation. The learned counsel for the Respondent submits that a limitation is not purely mixed question of law and fact. Therefore this Court need not consider the submission of the learned Senior Counsel for the Revision Petitioner, when it involves mixed question of law and fact. It is to be decided by the trial Court after adducing evidence by the parties concerned. The second Defendant in the suit having approached this Court straight away without filing petition under Order VII Rule 11 of CPC, is not at all maintainable. The Petitioner had approached this Court stating that he is 70 years old and he has to face the rigors of the trial. That cannot be a ground to strike out the pleadings in the plaint before the trial Court. The fact that the settlement deed is in favour of the second Defendant in the suit and the Revision Petitioner herein, came to the knowledge of the Plaintiff, only when the second Defendant came to the property of the Plaintiff and asked her to vacate and handover the



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possession as there is a settlement deed in his favour. Only then, the Plaintiff came to know that the settlement deed was executed by the father.

Further, the learned Counsel for the Respondent submits that only the date of knowledge is mentioned in the plaint pleadings and whether from which date she had knowledge is subject to evidence before the trial Court and not before this Court. Based on the submission of the learned Senior Counsel for the Revision Petitioner that this Court cannot strike out the pleadings straight away without the second Defendant having exercised his remedy available before the trial Court under Order VII Rule 11 of the Code of Civil Procedure. The learned Counsel for the Respondent also submitted that the suit properties were ancestral properties in which the father of the Revision Petitioner had executed settlement deed in the year 1993. The father of the Plaintiff and the Defendant could not have executed settlement deed for the ancestral properties. Whether the properties are ancestral or self acquired, is subject of the evidence before the trial Court. This Court cannot exercise extraordinary powers under Article 227 of the Constitution of India to strike out the plaint without considering the facts involved as the subject matter of the suit is the mixed question of fact and law. The learned



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counsel for the Respondent relied on the ruling of this Court in

C.R.P.PD.No.2693 of 2018 dated 16.04.2019, V.Mahesh -vs- R.Dilli Babu

and others, wherein in a similar case, the learned Judge of this Court had allowed the Civil Revision Petition

"8. ---- However, considering the fact that the issue involved in the suit is with reference to the nature of the property i.e., ancestral property or self acquired property of late Radhakrishnan, for which evidence has to be let in, this Court is of the opinion that the plaint cannot be struck off at this nascent stage and the parties claim to have to establish their cases. -----"

Therefore, the learned counsel for the Respondent sought to dismiss this Petition as having no merit to challenge the document.

10.By way of rejoinder to the reply made by the learned Counsel for the Respondent, the learned Senior Counsel for the Revision Petitioner submitted that as per Article 59 of the Limitation Act, a party aggrieved by the document has to approach the Court within a period of three years. AS per Article 109, they have to approach the Court within twelve years. Here,



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applying both these Articles, the Plaintiff had approached this Court without considering the period of limitation ie., 26 years from the date of execution of the settlement deed and 14 years after the death of the father. Therefore, the institution of the suit itself is an abuse of process of the Court.

11. **Points for Consideration;**

Whether the Complaint in O.S.N.128 of 2019 pending on the file of the learned District Judge - II, Kanchipuram filed by the Respondent is to be struck off from the file of the learned District Judge - II, Kanchipuram?

12. On considering the rival submission and on perusal of the plaint averments, it is found that the suit is instituted by one of the sisters of the Revision Petitioner. The submission of the learned Senior Counsel that the suit had been instituted for partition after execution of a settlement deed in favour of the brother of the Plaintiff / second Defendant by the father of the Plaintiff in the year 1993, which is a registered settlement deed. Without challenging the settlement deed the suit had been filed for partition. After 26 years of the execution of the settlement deed, the suit had been



instituted. Therefore, it is hit by Article 109 of the Limitation Act. By the pleadings of the Plaintiff in the plaint, the cause of action is 2005 that is after 14 years of the cause of action, the suit is instituted. As per Article 109 the suit could have been entertained if it is within twelve years which is not so. Also, it is found that as per the law regarding coparcenary properties, the Hindu Women were granted right to claim partition in the ancestral properties, after the amendment to the Hindu Law in 2005. After the amendment, a Women has the right to seek partition in the ancestral properties. Here the father had already executed settlement deed in favour of the second Defendant in the year 1993. Therefore, whatever is left after the settlement deed alone the Plaintiff is entitled. If the father had not executed a settlement deed and the properties were enjoyed as it is, then the Plaintiff is entitled to suit for partition as per the amendment in the Hindu Succession Act regarding the right of the women to coparcenary properties. Therefore, it is nothing but a clever pleading. The submission of the learned Counsel for the Respondent is not found acceptable, in the light of the rulings cited by the learned Senior counsel Mr.R.Singaravelan for the Petitioner.



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13. The submission of the learned counsel for the Respondent placing reliance on the Judgment of ***C.R.P.PD.No.2693 of 2018 dated 16.04.2019, V.Mahesh -vs- R.Dilli Babu and others*** is not applicable to the facts of the case. In the facts of the case in the reported ruling, that the Plaintiff / the Revision Petitioner had purchased the properties and plaint pleadings were silent about ancestral properties. Therefore, the learned Single Judge of this Court had allowed the Revision Petition with a direction of limitation question of the ancestral properties, subject matter of the suit to be considered and adducing evidence that will not help the Respondent herein. The Respondent by her own pleadings had stated as the father had executed a settlement deed during his life time in the year 1993. She questions the execution of the settlement deed for the ancestral properties and she claims that they are ancestral properties. The right of the Hindu Women to claim partition of the coparcenary property came into force as per amendment to the Hindu Succession Act in 2005. Long prior to the amendment to Hindu Succession Act, 2005 to that, the father of the Plaintiff had executed the settlement deed in favour of his son as per the prevailing customary practice. Therefore, the Respondent / Plaintiff having filed the suit, after 26



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years of the execution of the registered settlement deed, is not maintainable.

It is nothing but an abuse of the process of the Court as per the ruling of this Court reported in **2010(4) CTC 690 Southern and Rajamani Transport Private Limited, rep. by its Director, V.R.Venkataswamy, No.270, Goods Shed Road, Madurai - 625 001 and 33 others -vs- R.Srinivasan and others**, also in another reported ruling the learned Single Judge of this Court **2017 SCC Online Mad 4702: (2017) 8 Mad LJ 697 Rajendran and another -vs- Ettammal and others**. Therefore, in the light of the above two rulings, the facts and circumstances of this case attracts the circumstances stated in the above rulings. The Respondent as Plaintiff had filed the suit only to cause harassment to the Petitioner. It is nothing but abuse of the process of the Court and by clever pleadings the suit was filed for partition. The learned Judge before entertaining the suit, ought to have returned by questioning the maintainability of the partition suit based on the pleadings of the plaint. Since the learned Judge had not exercised the discretion, the vested in him or her it had resulted in abuse of the process of the Court forcing the second Defendant to approach this Court straight away under Article 227 of the Constitution of India, to strike out the plaint. In the light



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of the above, the points for consideration is answered in favour of the
Petitioner.

14. In the light of the above discussion in paragraphs 12 and 13 and in the light of the reported rulings cited by the learned Senior Counsel for the Revision Petitioner, the rulings cited by the learned Counsel for the Respondent reported in **2023 SCC Online SC 521 Ramisetty Venkatanna -vs- Nasyam Jamal Saheb and others** is found not applicable to the facts of this case and hence rejected.

15. The point for consideration is answered in favour of the Petitioner and against the Respondent. The Plaint in O.S.N.128 of 2019 pending on the file of the learned District Judge - II, Kanchipuram filed by the Respondent is to be struck off from the file of the learned District Judge - II, Kanchipuram.

In the light of the above discussions, this **Civil Revision Petition is allowed**. The Plaint in O.S.No.128 of 2019 on the file of the District Judge-



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II, Kanchipuram is struck off. Consequently, the connected

C.M.P.No.17096 of 2021 is closed.

1.09.2023

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Index : Yes / No

Internet : Yes / No

To

The District Judge-II,
Kanchipuram.



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SATHI KUMAR SUKUMARA KURUP., J.

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Pre-delivery Order made in

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and C.M.P.No.17096 of 2021

1.09.2023