



C.R.P.(PD)No.1743 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2024

PRONOUNCED ON : 15.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P.(PD)No.1743 of 2020
and C.M.P.No.10777 of 2020

1.Mrs.Shantha Devi
2.Mr.Veeraraghavan

... Petitioners

Vs

1.Sudhakar
2.Hemavathy
3.Sampath
4.D.Purushothaman
5.Jayalakshmi
6.Srinivasan

7.The Sub Registrar,
Pallavaram,
No.4, Second Main Road,
New Colony, Chromepet,
Chennai – 600 043.

8.The Tahsildar,
Tambaram,
at Taluk Office at Tambaram,
Chennai – 600 043.

9.The District Collector,
Anna Salai High Road,
Alagesan Nagar, Varadaraja Nagar,
Chengalpattu – 603 001.

... Respondents



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PRAYER: Petition filed under Article 227 of the Constitution of India praying to strike out the plaint in O.S.No.92 of 2020 pending on the file of the District Munsif Court, Alandur.

For Petitioners	: Mr.S.Vijayakumar, Senior Advocate for Mr.G.Bharadwaj
For Respondents	: Mr.R.Thiagarajan for R1 Mr.V.Jeevagiridharan, Addl. Govt. Pleader for R7 to R9 R2 & R5 notice served R3, R4 & R6 Batta due

ORDER

This Civil Revision Petition is filed seeking to strike out the plaint in O.S.No.92 of 2020, pending on the file of District Munsif Court, Alandur.

2. The petitioners in this revision are defendants 6 and 7 in the suit. The first respondent herein filed a suit seeking declaration that the settlement deed dated 10.02.2017, executed by the first petitioner in favour of the second petitioner as null and void and for consequential injunction, restraining the second petitioner from alienating or encumbering the suit property to the third party. The first respondent also



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sought for an injunction restraining the 8th respondent from changing the revenue records in respect of the suit property.

3. It is the case of the first respondent that the suit property originally belonged to his maternal grandfather Kulasekaran Pillai. After the death of Kulasekaran Pillai and his wife Ammani Ammal, the suit property devolved upon his two daughters and one son viz., Kamala, Vimala Bai and Santhanakrishnan. The said Kamala died intestate on 24.05.2002, leaving behind the respondents 1 to 6 as her legal representatives. The other daughter of Kulasekaran Pillai, viz., Vimala Bai, died intestate on 25.08.2017, leaving behind three sons and two daughters viz., Radhakrishnan, Rajendran, Ravichandran, Kirubavathy and Rajeswari and they have not been made as a party to the present suit. The only son of Kulasekaran Pillai viz., Santhanakrishnan, died intestate on 11.11.2016 leaving behind his wife Santhadevi, the first petitioner herein as his only legal representative. Thus, the first respondent/plaintiff claimed that respondents 1 to 6 have got 1/3rd share in the suit property.

4. It is the specific case of the first respondent/plaintiff that earlier there was litigation regarding the suit properties which was enjoyed in common by all the descendants of Kulasekaran Pillai and the above said



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Santhanakrishnan, husband of first petitioner filed a suit seeking declaration of title and injunction against one Nalladurai Vagaiyara in O.S.No.467 of 2007 on the file of Principal District Court, Chengalpattu and the said suit is pending.

5. It was further averred by the first respondent that for the purpose of filing the case to protect joint family property, above said Santhanakrishnan requested other legal heirs of Kulasekaran Pillai to execute power of attorney in his favour and accordingly, the first respondent and other heirs executed a document purported to be a power of attorney and registered the same in favour of said Santhanakrishnan. It was claimed by the first respondent that during August 2018, he was served with a Court summon in O.S.No.250 of 2018 filed by the fourth respondent herein against him and other legal heirs for partition of the suit property and for a declaration that the settlement deed executed by the first petitioner regarding the suit property in favour of second petitioner was null and void. Then only, the first respondent came to know that the first petitioner had fraudulently created a settlement deed in favour of second petitioner. After getting certified copy of the settlement deed, on verification, it got revealed that above said



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Santhankrishnan played fraud on the first respondent and other legal heirs and obtained their signatures in a release deed, in the guise of getting signature in the power deed. The first respondent also in his plaint averment referred to the suit filed by the fourth respondent seeking partition, declaration that the release deed in favour of above said Santhanakrishnan was null and void and also for declaration that the settlement deed executed by the first petitioner in favour of second petitioner was null and void. Thus, pleading the service of notice in the suit filed by fourth respondent as a source of knowledge about the impugned settlement, the suit was laid by the first respondent.

6. The learned Senior Counsel appearing for the petitioners submitted that the present plaint filed by the first respondent is frivolous and clear abuse of process of Court and hence, the same is liable to be rejected. The learned counsel submitted that the release deed by the first respondent and other legal heirs in favour of first petitioner's husband was executed on 11.06.2014 and after the death of her husband on 11.11.2016, the first petitioner executed the settlement deed in favour of second petitioner on 10.02.2017. The present suit was filed by the first respondent during March 2020 is well beyond the period of three years



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from the date of execution of the release deed and therefore, the suit prayer is barred by limitation.

7. The learned Senior Counsel appearing for the petitioners submitted that the suit filed by the fourth respondent in O.S.No.250 of 2018, with a prayer to declare the release deed dated 11.06.2014 and the settlement deed dated 10.02.2017 as null and void, was struck off from the file, by the order passed by this Court in C.R.P.(PD)No.2292 of 2020. The learned Senior Counsel submitted that the suit is liable to be rejected in limine as no relief was sought for to set aside the deed of release executed by the first respondent and other legal heirs in favour of Santhanakrishnan, husband of the first petitioner. The learned Senior Counsel further submitted that the first respondent deliberately avoided any prayer to set aside the release deed in favour of Santhanakrishnan and sought for declaration only in respect of subsequent document viz., settlement deed executed by derivative title holder, the first petitioner, just to avoid law of limitation. In support of his contention, the learned Senior Counsel relied on the order passed by this Court in C.R.P.(PD)No.2292 of 2020, dated 29.07.2021, to which 1st respondent / present plaintiff was party. The learned Senior Counsel also relied on the judgment of the Apex Court in ***Dahiben Vs. Arvinbhai Kalyanji***



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Bhanusali (Gajra) Dead Through Legal Representatives and Others

reported in **(2020) 7 SCC 366**.

8. Per contra, the learned counsel appearing for the contesting first respondent submitted that in case of rejection of the plaint, the Court is only concerned with the averments found in the plaint and it cannot refer to the other documents relied on by the defendant. The learned counsel submitted that the plea of *res judicata* requires consideration of the pleadings, issues and decision in the previous suit and such a plea cannot be considered at the stage of rejection of plaint. In support of his contention, the learned counsel for the first respondent relied on the judgment of the Hon'ble Apex Court in ***Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and Ors.*** reported in **2021 (9) SCC 99**. The learned counsel for the first respondent submitted that the power to strike out the plaint will have impact on the right of the party and hence, such power shall be exercised with great care and circumspection. In support of the said contention, the learned counsel for the first respondent relied on a judgment of the Hon'ble Apex Court in ***Abdul Razak Vs. Mangesh Rajaram Wagle and others*** reported in **(2010) 2 SCC 432**. The learned counsel for the first respondent submitted that the points raised by the



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petitioners involve disputed question of fact and the same requires recording of evidence and therefore, the parties shall be relegated to the trial.

9. The present suit has been filed by the first respondent seeking declaration that the settlement deed executed by the first petitioner in favour of second petitioner dated 10.02.2017 was null and void and for consequential injunction. In support of the said prayer, the first respondent pleaded that he and his siblings who are all children of Kamala, entitled to 1/3rd share in the suit property and the first petitioner's husband Santhanakrishnan obtained a release deed from them by misrepresenting the nomenclature of the document as power deed. The said release deed was dated 11.06.2014. The first respondent seeks a declaration that subsequent settlement deed was void only on the ground that the release deed obtained by Santhanakrishnan from him and his siblings was obtained by misrepresentation. However, for the reason best known to the first respondent, he has not prayed for any declaration to avoid the release deed dated 11.06.2014, to which he was a party. Unless the release deed executed by the first respondent and his siblings in favour of first petitioner's husband is challenged and declared as null and



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void, the first respondent is not entitled to challenge the subsequent settlement deed executed by the first petitioner, in her capacity as a derivative title holder. After the death of Santhanakrishnan, as his sole heir, the first petitioner executed a settlement deed in favour of second petitioner. If release deed held to be invalid, automatically, the settlement deed impugned in the suit will go. The release deed is dated 11.06.2014 and the present suit is filed on March 2020, well beyond the limitation period of three years. Therefore, as rightly pointed out by the learned counsel for the petitioners, in order to avoid law of limitation, the first respondent failed to seek any prayer regarding release deed and only sought for declaration in respect of subsequent settlement deed, the first respondent cannot be allowed to circumvent law by way of clever drafting.

10. In fact, the first respondent's own brother fourth respondent herein filed a suit seeking partition in respect of the suit properties along with the prayer to declare the release deed dated 11.06.2014 as null and void and to declare subsequent settlement deed dated 10.02.2017 executed by the first petitioner in favour of second petitioner also as null and void. Therefore, for the very same prayer made by the first



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respondent in the preset suit, the fourth respondent herein filed another suit earlier in O.S.No.250 of 2018 on the file of the Sub Court, Tambaram. The first respondent was arrayed as fourth defendant in that suit. The said suit filed by fourth respondent was struck off from the file, by this Court in C.R.P.(PD)No.2292 of 2020. While passing order to strike off the plaint filed by the fourth respondent, this Court clearly held that the prayer to avoid release deed dated 11.06.2014 was barred by limitation. It is also held that the release deed was signed by all the siblings of the first respondent in stamp papers and the nomenclature of the document was clearly mentioned in every page. Therefore, on merits also this Court came to the conclusion that the averment made by the fourth respondent, as if he signed the document on the belief that it was a power deed was not acceptable. The first respondent / plaintiff herein was a party to the above said Civil Revision Petition and he was arrayed as fifth respondent therein. However, he failed to appear before the Court. Since the first respondent/plaintiff was a party to the order passed by this Court in C.R.P.(PD)No.2292 of 2020, striking off the suit plaint filed by his brother fourth respondent herein seeking similar relief, the same is binding on the first respondent, he is not entitled to maintain a separate suit on the same set of facts and averments.



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11. In fact, the first respondent filed the earlier plaint filed by the fourth respondent as document No.11, in the present plaint along with the plaint. A perusal of plaint document No.11 would indicate that the pleadings in the plaint filed by the fourth respondent which was struck off by this court and the pleadings in the present suit are identical. It is pertinent to note that in the cause of action paragraph of the present plaint, the first respondent claimed that he came to know about the impugned settlement, only on service of summons in O.S.No.250 of 2018 filed by the fourth respondent. Therefore, the main cause of action for maintaining the present suit was said to be the service of summons in the suit filed by the fourth respondent which was struck off by this Court. It is also brought to my notice that the order passed by this Court in C.R.P.(PD)No.2292 of 2020, striking off the plaint filed by the fourth respondent for similar relief was affirmed by the Hon'ble Apex Court by dismissal of the SLP filed by fourth respondent in Special Leave to Appeal (C)No.11778 of 2022. Therefore, the present suit filed by the first respondent for identical relief is a nothing but a vexatious one. Allowing continuation of the present suit would amount to re-litigation and abuse of process of the Court. Therefore, this Court is inclined to exercise its



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power under Article 227 of the Constitution of India to strike out the
plaint in O.S.No.92 of 2020 filed by the first respondent.

12. I am conscious of the fact that petitioners are having a remedy under Order 7 Rule 11 of the Code of Civil Procedure. However, in peculiar facts of this case, the brother of the first respondent / plaintiff filed a separate suit with a similar relief and the same was struck off by this Court by exercising power under Article 227 of the Constitution of India. The Special Leave Petition filed against that order was also dismissed. In such circumstances, I do not think the petitioners shall be directed to avail the alternative remedy in view of the order passed by this Court in earlier occasion to which the first respondent/plaintiff was a party. Viewed from any angle, the present suit is a sheer abuse of process of Court and re-litigation. This kind of re-litigation, especially in the light of order passed by this Court cited supra, needs to be nipped in bud. Hence, this is an exceptional case, warranting exercise of power under Article 227 of the Constitution of India. Therefore, the case laws relied on by the learned counsel for the first respondent would not help him.



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13. In view of the discussion made earlier, the Civil Revision Petition is allowed and the suit in O.S.No.92 of 2020 pending on the file of District Munsif Court, Alandur is struck off from the file. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

NCC : Yes / No
Index : Yes / No
vsm

To

1.The District Munsif Court, Alandur

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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S.SOUNTHAR, J.
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Order in
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