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C.R.P. (PD) .No.3011 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.3011 of 2019

and

C.M.P.No.19423 of 2019

1.Panjalai (died)

2.Valli @ Valliammal

3.Arjunan

4.Chennammal

5.Venkatachalam

6.Maharajan

7.Nirmala

.. Petitioners

(1st petitioner died. Petitioners 5 to 7 are brought on record as LRS of the deceased 1st petitioner viz., Panjalai vide order of this Court dated 11.12.2024 made in C.M.P.Nos.18339, 18342 & 18344 of 2024 in C.R.P.(PD).No.3011 of 2019 & C.M.P.No.19423 of 2019)

Vs.



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1.V.Ezhumalai

2.E.Arulmani

3.Pachaiammal

4.Santha

5.Lakshmi

6.Bharathi

7.Minor. P.Gokul

8.Minor. P.Kokila

(Minor respondents 7 & 8 are represented by their next friend / Mother Bharathi, the 6th respondent herein)

9.C.Venkatesan

10.Sundarammal

11.Karribiriammal

12.Krishnamoorthy

13.Sakthivel

14.The District Collector,
Krishnagiri District,
Krishnagiri – 635 115.



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15.The District Revenue Officer,
Krishnagiri District,
Krishnagiri – 635 115.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to struck off the suit in O.S.No.86 of 2019 pending on the file of the learned Subordinate Court, Uthangarai.

For Petitioners 1 & 2	:	Mr.S.Subramaniya for Mr.S.Sathish Rajan
For Petitioners 3 & 4	:	Mr.S.Viswanathan
For RR 1 to 9	:	Mr.K.Thiruvengadam
For RR 14 & 15	:	Mr.N.Muthuvel Government Advocate

ORDER

This Civil Revision Petition seeks to strike off the suit in O.S.No.86 of 2019 on the file of the Sub Court, Uthangarai, Krishnagiri District, as an abuse of process of Court.

2.The civil revision petitioners 1 to 4 are the defendants 3 to 6 in the suit. Pending the revision, the 1st civil revision petitioner passed away and her



legal representatives have been brought on record as petitioners 5 to 7.

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3.It is the case of the civil revision petitioners that for the very same suit property, previously the parties have contested the proceedings from 1996 till 2003 and the civil revision petitioners and one Karibiri Ammal were successful in obtaining a declaration of title and for injunction against the predecessor in title and father of the plaintiffs herein. 16 years after the disposal of the appeal, she has been vexed with an other suit which seeks to strike off. This Court found a *prima facie* case in the plea made by the civil revision petitioners and ordered notice of motion and granted interim stay of the proceedings on 18.09.2019. Summons have been served and plaintiffs have entered appearance through Mr.Thiruvenkadam.

4.I heard Mr.S.Subramaniya for petitioners 1, 2 & 5 to 7, Mr.S.Viswanathan for petitioners 3 & 4, Mr.Thiruvenkadam for the respondents 1 to 9 and Mr.N.Muthuvel, Government Advocate for the respondents 14 & 15.



5.The facts necessary for the disposal of the revision are that a portion of the property situated in Survey No.71 of Kommampattu Village, Uthangarai Taluk, Krishnagiri District, belonged to one Munia Gounder. Munia Gounder died leaving behind his sons Vediappa Gounder and Chinnathambi Gounder. Vediappa Gounder sold the property to one Karibiri Ammal to an extent of 45 cents with specified boundaries and the 1st civil revision petitioner Panjalai. Subsequently, Karibiri Ammal had alienated the property in favour of one Valli @ Valli Ammal. Prior to Vediappa Gounder coming across 93 cents, he and his brother namely Chinnathambi Gounder were enjoying the entire extent of 1.86 acres together. Subsequently, by way of oral partition, the brothers divided the property equally among themselves. The effect of the partition was Vediappa Gounder and Chinnathambi Gounder were equally possessing 93 cents each. I have already narrated the alienation made by Vediappa Gounder.

6.Now I turn to the 93 cents which fell to the share of Chinnathambi Gounder. Chinnathambi Gounder was enjoying 93 cents and on his death, it devolved on his wife Sundarammal. On account of the disputes that arose



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between Karibiri Ammal and Sundarammal, a suit came to be presented before the District Munsif and Judicial Magistrate Court at Uthangarai, in O.S.No.107 of 1998. Similarly, as Vediappa Gounder has created some issues for the predecessors Karibiri Ammal and Panjalai, a suit for declaration of title and injunction came to be presented at their instance in O.S.No.412 of 1996 before the District Munsif and Judicial Magistrate Court Uthangarai. After Trial, O.S.No.107 of 1998 came to be decreed on 28.02.2002. On the very same day, the learned District Munsif dismissed the suit presented by Karibiri Ammal and Panjalai (suit in O.S.No.412 of 1996). Aggrieved by the judgment and decree, two appeals were presented before the learned Principal District Court at Dharmapuri in A.S.Nos.29 & 30 of 2002.

7.Insofar as the share of Chinnathambi Gounder is concerned, a compromise was entered into by his wife Sundarammal along with Karibiri Ammal, whereby, the declaration sought for by the Sundarammal was confined to 38 cents in Survey No.71/2B. The portions were demarcated and decrees were also granted. With respect to the remaining extent claimed by Sundarammal, the suit stood dismissed.



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8. Now turning to the case of the other appeal, Vediappa Gounder contested the appeal. The learned Appellate Judge came to a conclusion that the dismissal of O.S.No.412 of 1996 by the learned District Munsif Cum Judicial Magistrate, Uthangarai, is erroneous. He allowed the appeal and granted a decree for declaration that Karibiri Ammal and Panjalai are entitled to Survey No.71/2A to an extent of 48 cents, Panjalai is entitled to a decree of declaration with respect to 45 cents in the same Survey Number. No second appeal challenging the said judgment and decree had been preferred to this Court.

9. When the matters were settled by a Judgment of the First Appellate Court, after a period of 16 years, the sons and legal representatives of predeceased children of Vediappa Gounder instituted O.S.No.86 of 2019 claiming the relief of partition and to set aside the aforesaid judgment and decree passed by the learned Principal District Judge, Dharmapuri, in A.S.Nos.29 & 30 of 2002 dated 28.11.2003. Further reliefs were also sought for.



WEB COPY 10. Challenging the same, the present Civil Revision Petition.

11. Mr. S. Subramaniya and Mr. S. Viswanathan, argued that the relief that has been sought for is a sheer abuse of process of Court. They point out that after the father of the plaintiffs have lost the suit and left it reach a finality, it is not open to the plaintiffs to reopen the said judgment and decree.

12. Mr. K. Thiruvengadam urges that these are the matters have to be gone into at the time of trial.

13. I have carefully considered the submissions on both sides.

14. The narration of the aforesaid facts shows that insofar as the properties situated in Survey No. 71/2A to an extent of 93 cents had already been discussed in detail by the learned Principal District Judge, Dharmapuri. He had come to a conclusion that the father of the present plaintiffs does not have any right, title and interest over the property. Having reached such a



conclusion, he set aside the dismissal of the suit by the learned District Munsif Cum Judicial Magistrate, Uthangarai, and decreed the suit as prayed for.

15. Even if I were to take the case of the plaintiffs in the present suit, they can only claim 93 cents. This is because that is the extent of the property which came to the hands of Vediappa Gounder, post the death of Munia Gounder and partition between himself and his brother Chinnathambi Gounder. Vediappa Gounder had decided to claim he is the owner of the property. Though, he succeeded before the learned District Munsif Cum Judicial Magistrate at Uthangarai, he lost before the learned Principal District Judge, Dharmapuri. If at all, Vediappa Gounder had felt that the judgment and decree of the learned Principal District Judge, Dharmapuri, is erroneous, he would have preferred a Second Appeal to this Court. Law does not permit an appeal to the learned Sub Court from the order passed by the learned District Judge. It is this Court under Section 100 of Code of Civil Procedure which has the power to set aside the judgment and decree passed by the First Appellate Court. When that judgment and decree had become final, I am not



able to understand as to how a suit can be presented challenging the very same judgment and decree before the learned Sub Judge. This suit too had not been instituted by the Vediappa Gounder as long as he was alive. The father, having lost the proceedings, today, his legal representatives, namely his children and legal heirs of his predeceased children are taking a claim to the property.

16.The issues to the title had been already discussed and had attained finality on 28.11.2003. The remedy is only to approach this Court. For the mere fact that Vediappa Gounder died does not mean his legal representatives are entitled to present a suit and stake a claim of the property which Vediappa Gounder himself has lost.

17.Re-litigation is a part of abuse of process of Court. Once the matter has been heard and finally concluded by a Court of competent jurisdiction, then to re-agitate the very same issue before the other Court falls under such category. The position of law with respect to re-litigation has been settled by the Supreme Court in ***K.K.Modi Vs. K.N.Modi & others, 1998 (3) SCC 573.***



It has also pointed out in the said judgment that it is the duty of the Court to prevent its process from being abused. If any attempt is made to abuse the process, then it is the duty of this Court to ensure that such attempts are nipped at the bud.

18.A decree passed against Vediappa Gounder is not only binding on him, but also persons who are claiming through him. The property in the hands of Vediappa Gounder came to him on account of the purchase made by his father in the year 1993. Being his self acquisition, he had alienated the property in favour of Karibiri Ammal, who in turn had also alienated the property in favour of Valli @ Valliammal. The issues having been settled, the present litigation cannot be permitted to continue and thereby attempt to reopen the decree and create utter confusion on the field. The plaintiffs are nothing but puppet plaintiffs, who are aware that their predecessor in interest had lost his right and yet are emboldened to present a suit seeking for partition.

19.A partition decree can be granted for a property in which the



predecessor has title and right. When a Court of competent jurisdiction has come to a conclusion that the predecessor has no right over the property, the issue of claiming partition over the very same property does not arise at all. As to what are circumstances which attract abuse of process of Court has been settled by the judgment of this Court in ***Ranipet Municipality Vs. Shamsheerkhan, 1998 (1) CTC 66.***

20.The suit in O.S.No.86 of 2019 attracts more than one of the instances illustrated by the learned Judge. If I were to push the parties to trial, that itself would amount to harassment of the parties, as they had contested the proceedings from 1996 and had obtained a decree in the year 2003 and this decree has attained finality. A party cannot be vexed again and again through the process of the Court.

21.If I were to dismiss the revision and permit the suit to go for trial, it would be a sheer harassment for the litigants apart from being wastage of precious judicial time.



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22.In the light of the above discussion, I am constrained to exercise the powers vested under Article 227 of the Constitution of India. Accordingly, this Civil Revision Petition is allowed. The suit in O.S.No.86 of 2019 on the file of the Sub Court, Uthangarai, Krishnagiri District, is struck off. The learned Subordinate Judge, Uthangarai, Krishnagiri District, shall record the order of this Court and draft a decree accordingly. The Cost in this revision of **Rs.25,000/- (Rupees Twenty Five Thousand Only)** shall paid by the respondents to the petitioners 1, 2 & 5 to 7. Consequently, the connected Miscellaneous Petition is closed.

12.12.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Sub Court,
Uthangarai,
Krishnagiri District.



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V.LAKSHMINARAYANAN, J.

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