



C.R.P.(MD)No.956 of 2021 and batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)Nos.956 and 957 of 2021

and

C.R.P.(MD)Nos.2144 and 2145 of 2023

and

C.R.P.(MD)No.1869 of 2024

and

C.M.P.(MD)Nos.5382 and 5383 of 2021

and

C.M.P.(MD)Nos.10800 and 10801 of 2023

and

C.M.P.(MD)No.10580 of 2024

C.R.P.(MD)No.956 of 2021:

1.Roopan

2.Santhi Priya

... Petitioners / Defendants 6 & 7

Vs.

1.K.K.Ganesan

2.Arunkumar

... Respondents 1 & 2 / Plaintiffs

3.Senthil

4.Pichaiammal

5.Thangamani

6.Sangeetha

7.Bhuvaneswari

8.Balusamy



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9.Murugesan

... Respondents 3 to 9/
Defendants 1 to 5, 8 & 9

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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for records with respect to the proceedings in O.S.No.209 of 2020 on the file of the Additional District Judge, Karur and strike off the plaint and set aside the suit.

For Petitioners : Mr.K.Balasubramani,
For Mr.M.Suresh

For Respondents : Mr.V.Meenakshisundaram,
For Mr.D.Nallathambi for R1 & R2.
Mr.H.Lakshmi Shankar,
For Mr.L.Prabakaran for R8 & R9.
Mr.M.Mohaboob Athiff for R4.
No appearance for R7.

C.R.P.(MD)No.957 of 2021:

1.Roopan

2.Santhi Priya

... Petitioners / Defendants 6 & 7

Vs.

1.Nagaratnam

2.Senthil

3.Pichaiammal

4.Thangamani

5.Sangeetha

6.Bhuvaneswari

7.Balusamy

... 1st Respondent / Plaintiff



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8.Murugesan

... Respondents 2 to 8/
Defendants 1 to 5, 8 & 9

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Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for records with respect to the proceedings in O.S.No.232 of 2020 on the file of the Additional District Munsif, Karur and strike off the plaint and set-aside the suit.

For Petitioners : Mr.K.Balasubramani,
For Mr.M.Suresh

For Respondents : Mr.V.Meenakshisundaram,
For Mr.D.Nallathambi for R1.
Mr.H.Lakshmi Shankar,
For Mr.L.Prabakaran for R7 & R8.
Mr.M.Mohaboob Athiff for R3.
No appearance for R2 & R6.

C.R.P.(MD)No.2144 of 2023:

1.V.M.Balusamy

2.P.Murugesan

... Petitioners / Defendants 8 & 9

Vs.

1.K.K.Ganesan

2.S.Arunkumar

... Respondents 1 & 2 / Plaintiffs

3.S.Senthil

4.Pitchiammal

5.N.Thangamani

6.Sangeetha

7.M.Bhuvaneswari

8.V.Roopan



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9. Santhi Priya

... Respondents 3 to 9/ Defendants 1 to 7

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike the plaint in O.S.No.209 of 2020 pending on the file of the Additional District Judge, Karur.

For Petitioners : Mr.H.Lakshmi Shankar,
For Mr.L.Prabakaran

For Respondents : Mr.B.Prasanna Vinoth for R1 & R2
Mr.M.Mahaboob Athiff for R4
No appearance for R3

C.R.P.(MD)No.2145 of 2023:

1.V.M.Balusamy

2.P.Murugesan

... Petitioners / Defendants 8 & 9

Vs.

1.M.Nagarathinam

... 1st Respondent / Plaintiff

2.S.Senthil

3.N. Pitchiammal

4.N.Thangamani

5.Sangeetha

6.M.Bhuvaneswari

7.V.Roopan

8. Santhi Priya

... Respondents 2 to 8/ Defendants 1 to 7

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike the plaint in O.S.No.232 of 2020 pending on the file of the Additional District Munsif Court, Karur.



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For Petitioners : Mr.H.Lakshmi Shankar,
For Mr.L.Prabakaran

For Respondents : Mr.B.Prasanna Vinoth for R1
Mr.M.Mahaboob Athiff for R3
No appearance for R2

C.R.P.(MD)No.1869 of 2024:

1.Ruban

2.Shanthipriya

3.V.M.Balusamy

4.P.Murugesan ... Petitioners / Defendants 4 to 7

Vs.

1.S.Senthil

... 1st Respondent / Plaintiff

2.N.Pitchaiyammal

3.N.Thangamani

4.M.Bhuvaneswari ... Respondents 2 to 4/ Defendants 1 to 3

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.311 of 2023 on the file of the Principal District Munsif Court, Karur.

For Petitioners : Mr.H.Lakshmi Shankar,
For Mr.L.Prabakaran

For Respondents : Mr.B.Prasanna Vinoth for R1
Mr.M.Mahaboob Athiff for R3
No appearance for R4



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COMMON ORDER

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Heard both sides.

2.The petitioners want this Court to strike off the suits covered in their respective civil revision petitions.

3.It is not in dispute that the suit schedule properties originally belonged to one Ammaiyappa Gounder. He had a son by name Subburayan and daughter by name Pitchaiammal. Rasammal was Subburayan's wife. A registered partition deed dated 12.09.1972 was executed between Ammaiyappa Gounder, Subburayan and Rasammal. The properties were divided into “A” schedule and “B” schedule. “A” schedule property comprised in S.No.169/B measuring 2 acres and 2 cents was allotted to Ammaiyappa Gounder. Other properties (B schedule) were allotted to Subburayan and Rasammal. It is not in dispute that the suit schedule properties fall under “B” schedule.

4.Following the demise of Ammaiyappa Gounder, his daughter Pitchaiammal filed partition suit in O.S.No.246 of 2005 against her brother Subburayan. During its pendency, Subburayan died on 14.12.2006. Whiles, on 22.02.2007 a exchange deed was executed between Rasammal and her



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daughter Amaravathy on the one hand and the adjacent land owner Selvaraj on the other hand. S.Nos.232/4 and 232/5 came to be allotted to Rasammal and Amaravathy. On 11.06.2007, Pitchiammal's partition suit (O.S.No.246 of 2005) came to be dismissed for default. On 03.12.2007, Pitchaiammal executed power of attorney in favour of S.Senthil in respect of half share of the partition suit schedule properties. On 18.12.2007, Rasammal, Amaravathy and Amaravathy's husband S.C.Vaiyapuri filed suit against Pitchaiammal, her legal heirs and her power of attorney / Senthil (fourth defendant) for permanent injunction. Senthil (fourth defendant) remained *ex parte* in the suit. The suit came to be decreed on 03.01.2013 as prayed for except in respect of two items (4 and 8). This judgment and decree dated 03.01.2013 made in O.S.No.801 of 2007 on the file of the Principal District Munsif Court, Karur became final.

5.Vaiyapuri and Amaravathy had two children namely, Roopan and Santhi Priya. Pitchaiammal had two children namely, Bhuvaneshwari and Thangamani. Thangamani has a wife by name Sangeetha. On 26.12.2014, sale deed was executed by S.C.Vaiyapuri in favour of his son V.Roopan. On 13.12.2020, release deed was executed by Pitchaiammal, Thangamani, Sangeetha and Bhuvaneshwari in favour of Roopan and Santhi Priya. In the mean while, during the pendency of O.S.No.801 of 2007, S.Senthil, the power



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agent of Pitchaiammal, executed lease deed in favour of M.Nagarathinam. He also executed an unregistered sale agreement dated 16.12.2019 in favour of one K.K.Ganesan and S.Arunkumar.

6.M.Nagarathinam, lessee claiming under the unregistered lease deed dated 01.02.2009 executed by Senthil, Pitchaiammal's power of attorney filed O.S.No.232 of 2020 on the file of Additional District Munsif, Karur for permanent injunction in respect of the properties covered under O.S.No.801 of 2007 on the file of Principal District Munsif Court, Karur.

7.K.K.Ganesan and Arunkumar filed O.S.No.209 of 2020 on the file of the Additional District Court, Karur for specific performance of the sale agreement dated 16.12.2019 executed by S.Senthil, Pitchaiammal's power agent. It is not in dispute that the suit schedule properties are covered by the schedule in O.S.No.801 of 2007.

8.S.Senthil filed O.S.No.311 of 2023 on the file of the Principal District Munsif Court, Karur for declaration that the release deed dated 13.02.2020 executed by his principal Pitchaiammal and others is not binding on him and for permanent injunction restraining the revision petitioners from alienating or



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encumbering the suit schedule properties which are covered by the decree in O.S.No.801 of 2007.

9.The learned counsel for the revision petitioners contended that the very filing of the suits in question is an abuse of legal process and that they deserve to be struck off. On the other hand, the learned counsel for the plaintiffs contended that since there are triable issues, invocation of Article 227 of the Constitution of India is not appropriate. He relied upon the judgment of the Hon'ble Supreme Court reported in **(2019) 9 SCC 538 (Virudhunagar Hinu Nadargal Dharma Paribalana Samabi Vs. Tuticorin Educational Society)** and **2021 (3) MWN (Civil) 243 (Srihari Hanumandas Totala Vs, Jemant Vithal Kamat)** As far as S.Senthil is concerned, it is submitted that the power of attorney granted in his favour is coupled with interest.

10.I carefully considered the rival contentions and went through the materials on record. C.R.P.(MD)No.2144 of 2023 and C.R.P.(MD)No.956 of 2021 target O.S.No.209 of 2020 on the file of the Additional District Court, Karur. V.M.Balusamy and P.Murugesan are the petitioners in C.R.P.(PD)(MD)No.2144 of 2023. Roopan and his sister Santhi Priya are the petitioners in C.R.P.(PD)(MD)No.956 of 2021. Balusamy and



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Murugesan had purchased 3.55 acres in S.F.No.232/2 measuring an extent of 3.55 acres at Emur Village, Karur from Roopan and it was registered as Document No.554 dated 13.02.2020. K.K.Ganesan and S.Arunkumar are the plaintiffs in the said suit. They seek specific performance of the unregistered agreement dated 16.12.2019 executed by S.Senthil in his capacity as power agent of Pitchaiammal. It is seen from the foregoing narration of facts that the suit schedule properties are covered in “B” schedule of the registered partition deed dated 12.09.1972. It was of course executed only between Ammaiyappa Gounder, his son Subburayan and daughter-in-law Rasammal. Pitchaiammal, the daughter of Ammaiyappa Gounder was not a party. “B” schedule had been allotted to Subburayan and Rasammal. Pitchaiammal kept quiet till the death of Ammaiyappa Gounder. She filed partition suit only in March 2005. The said partition suit in O.S.No.246 of 2005 suffered dismissal for default. It was never restored. The suit schedule set out in O.S.No.246 of 2005 is the subject matter of the power of attorney dated 03.12.2007 executed in favour of S.Senthil. It is beyond dispute that both Pitchaiammal as well as Senthil suffered a decree for permanent injunction in O.S.No.801 of 2007 on 03.01.2013. The suit itself was instituted on 18.12.2007. It is well settled that the grant of injunction decree would relate back to the institution of the suit. Copy of the judgment and decree dated 03.01.2013 in O.S.No.801 of 2007 has been enclosed in the typed



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set of papers. The suit schedule in O.S.No.801 of 2007 contained ten items.

Suit was dismissed only in respect of items 4 and 8. The disallowed items are not the subject matter before me. Rasammal, her daughter Amaravathy and S.C.Vaiyapuri are the plaintiffs in O.S.No.801 of 2007 and in the judgment rendered against Pitchaiammal, her children, her power agent / Senthil and others, the following finding has been rendered:-

*“13.As already pointed out item 1 and 2 of the suit properties belong to the plaintiffs as per Ex.A10 exchange deed dated 22.02.2007. Item 3, 5 to 7, 9 and 10 belong to the plaintiff through Ex.A1 partition deed dated 12.09.1972. Even though the 1st defendant happens to be the daughter of Ammaiappa Gounder, since the joint family properties were partitioned between Ammaiappa Gounder, his son Subbarayan and daughter in law, the 1st plaintiff through a registered document **the 1st defendant cannot stake any claim over the properties allotted to the 1st plaintiff and her husband Subbarayan.***

14.From Ex.A9, which is the certified copy of decree passed in the partition suit in O.S.No.246/2005 filed by the present 1st defendant against the husband of the 1st plaintiff, it is established that the 1st defendant claimed share in the suit properties. Since item 1 to 3, 5 to 7, 9 and 10 belong to the 1st plaintiff and her husband, the 1st defendant and children who



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are the defendants 2 and 3, cannot interfere with the plaintiffs possession and enjoyment over the above said item of the suit properties.”

11.The decree reads that the defendants and their men are restrained by way of permanent injunction from in any manner interfering with the plaintiffs' peaceful possession and enjoyment over suit items 1 to 3, 5 to 7, 9 and 10. As already noted, the power agent / S.Senthil was shown as the fourth defendant.

12.It is well settled that in an injunction suit, the Court is entitled to incidentally go into the question of title also. In the judgment rendered in O.S.No.801 of 2007, it had been categorically declared that Pitchaiammal has no claim over the “B” schedule property set out in the registered partition deed dated 12.09.1972. So long as this judgment and decree are holding good, the power of attorney executed by Pitchaiammal in favour of S.Senthil to deal with the suit schedule properties cannot have any legal effect. Any sale agreement executed by him is of no legal consequence. It cannot be enforced. K.K.Ganesan and S.Arunkumar claim through S.Senthil who in turn claims through Pitchaiammal. When Pitchaiammal and S.Senthil have already suffered decree in O.S.No.801 of 2007 at the instance of Rasammal, Amaravathy and Vaiyapuri, K.K.Ganesan and S.Arunkumar cannot make any claim against those



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claiming through the plaintiffs in O.S.No.801 of 2007. That would clearly amount to an abuse of legal process and re-litigation. The Hon'ble Supreme Court in ***Sulochana Amma V. Narayanan Nair [(1994) 2 SCC 14]*** had held that the injunction decree founded on equitable relief in which the issue of title was directly and substantially an issue and decided and attained finality would operate as *res judicata* in subsequent suit based on title where the same issue directly and substantially arises between the parties.

13.M.Nagarathinam, the lease holder is claiming under Senthil. Nagarathinam is the plaintiff in O.S.No.232 of 2020 on the file of District Munsif Court, Karur and this is targeted in C.R.P.(MD)No.2145 of 2023 and C.R.P.(MD)No.957 of 2021. What applies to the agreement holders with S.Senthil would apply to Nagarathinam also.

14.Re-litigation amounts to abuse of the process of Court and has to be put down. In ***K.K.Modi Vs. K.N.Modi (AIR 1998 SC 1297)***, the Hon'ble Supreme Court held as follows:

“44.One of the examples cited as an abuse of the process of court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same



issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.”

15. In **2013 (1) LW 491 (N.Babu Vs S.Shanmugam & Others)**, it has been held as follows in paragraph 24:

“24. Further, though an alternative remedy is available to the revision petitioner, for striking off the suit under Order 21 Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of Court and when the facts are not controverted and admitted by the plaintiff/first respondent, the Court can exercise the extra ordinary jurisdiction of the Court under Article 227 of the Constitution of India and strike off the plaint and as a matter of fact, this Court and Honourable Supreme Court held that the right conferred under Article 227 must be exercised very sparingly and it is also settled law that when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of Article 227 of the Constitution of India.”



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16.O.S.No.311 of 2023 filed by S.Senthil cannot fare any better.

S.Senthil is after all an agent in terms of the power of attorney dated 03.12.2007 executed by Pitchaiammal. Copy of the said document has been enclosed in the typed set of papers. There is nothing on record to show that it is coupled with interest. It has been executed on two stamp papers valued at Rs.50/- each. It is well settled that such a power of attorney is revocable and terminable at any time. Such transactions cannot be treated as conveyance [(2012) 1 SCC 656 (*Suraj Lamp and Industries Private Limited Vs. State of Haryana*)]. Even after execution of power of attorney, the principal can act independently and need not take the consent of the agent [*AIR 2011 SC 1653 (Deb Ratan Biswas v. Anand Moyi Devi)*]. If the principal deals with the property dehors the power of attorney, there is an implied termination of the agency [(2023) SCC Online Mad 8124 (*N.Sivakumar Vs. R.Peter Pereira*)]. If at all the power agent has any claim against the principal, it can be only for damages. Arraying of Roopan, Santhi Priya, Balausamy and Murugesan as defendants 4 to 7 in O.S.No.311 of 2023 on the file of the Principal District Munsif Court, Karur indicates that it is a shadow boxing between Senthil and Pitchaiammal and the target of Senthil's attack are the defendants 4 to 7. It would be a repetition to point out that Senthil cannot have any higher claim than Pitchaiammal against the revision petitioners since he is claiming through



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Pitchaiammal. Pitchaiammal has two facts staring at her. She filed a suit for partition in 2005 but allowed it to be dismissed for default in 2007. She neither took steps to revive the same nor she filed a fresh suit for partition within 12 years. She suffered an injunction decree in O.S.No.801 of 2007. Adverse findings on title were rendered against her in the said suit. When Pitchaiammal herself could not have laid any claim against the revision petitioners, her proxies also cannot achieve anything against the revision petitioners. Such attempts clearly fall within the ambit of “abuse of process of the Court” as it tantamounts to re-litigation and re-agitation of the same issues already decided. Permitting the suits to be prosecuted would only lead to a colossal waste of precious judicial time. The case projected by the revision petitioners can be properly considered only under Article 227 of the Constitution of India. The cause of justice would not be served if the petitioners are relegated to avail the remedy under Order VII Rule 11 of Civil Procedure Code. All the three suits in question are struck off from the file of the respective Courts. The civil revision petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

18.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

- 1.The Additional District Court,
Karur.
- 2.The Principal District Munsif Court,
Karur.
- 3.The Additional District Munsif Court,
Karur.



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C.R.P.(MD)No.956 of 2021 and batch

G.R.SWAMINATHAN,J.

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C.R.P.(MD)Nos.956 and 957 of 2021
and
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