



C.R.P.(MD).No.510 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 18.04.2024

DELIVERED ON: 29.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(MD).No.510 of 2018
and
CMP(MD).Nos.2236 & 2237 of 2018**

S.K.J.Murugan

...Petitioner/3rd Party

Vs

1.Arunachalam

2.Ganesan

....Respondents 1, 2 /Plaintiffs

3.K.R.Paldurai

4.The Inspector of Police
Pavoor Chathiram Police Station
Pavoor Chathiram, Tirunelveli District

5.The Superintendent of Police
Office of the Superintendent of Police
Palayamkottai
Tirunelveli 627 002

6.The Executive Officer
Keezhapavoor Town Panchayat
Alangulam Taluk, Tirunelveli District

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7.The State of Tamilnadu
Through the District Collector
Tirunelveli District
Kokkirakulam
Tirunelveli

8.P.Amutha Thamizh Pandian

9.S.A.Sivan

...Respondents 3 to 7 /Defendants

(Respondents 8 & 9 impleaded vide Court
order dated 09.10.2018)

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India, to struck off the plaint in O.S.No.41 of 2017 on the file of the District Munsif Court, Tirunelveli.

For Petitioner	:Mr.G.Prabhu Rajadurai
For R1 & R2	: Mr.G.Radhakrishnan
R3	: No appearance
For R4 to R7	: Mr.D.Gandhiraj Special Government Pleader
For R8 & R9	: Mr.J.Barathan

ORDER

A third party to O.S.No.41 of 2017 on the file of the District
Munsif Court, Tirunelveli has filed the above revision petition seeking to

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strike off the plaint on the ground of re-litigation amounting to abuse of process of Court.

(A)Facts leading to the filing of the present revision petition are as follows:

2.The respondents 1 and 2 herein had filed the above suit as against the private person one K.R.Pauldurai who is the first defendant and against the revenue and police officials who are arrayed as defendants 2 to 5 in the suit.

3.It is the contention of the plaintiffs that they belong to Senthikantha Nadar Vagaiyara and the suit schedule properties are the absolute properties of the said Vagaiyara. However, the defendants are attempting to disturb their possession. Hence, they have filed the suit for permanent injunction that the defendants should not interfere in their peaceful possession and enjoyment of the suit schedule properties of the plaintiffs as well as Senthikantha Nadar Vagaiyara. The plaintiffs have further prayed that the official defendants should not permit any one other than Senthikantha Nadar Vagaiyara to conduct any function or permit for parking of the vehicles in the schedule property.



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4. Pending suit, the plaintiffs have filed I.A.No.124 of 2017 seeking interim injunction that the defendants or their agents should not disturb their possession or any permission should be granted to any one to conduct any meeting or function in the suit schedule properties. The said application was allowed on 29.04.2017. The present revision petition has been filed by the third party on 21.02.2018 alleging that the present suit is nothing but re-litigation amounting to abuse of process of Court.

(B).Contentions of the counsels:

5. According to the learned counsel appearing for the revision petitioner, one R.Arumugam had made an application to the Revenue Divisional Officer, Tenkasi seeking mutation of revenue records from the name of Mupidathi Temple to the name of A.Mupidathi Ammal. The temple officials have strongly objected for the said mutation and ultimately the request of the said Arumugam was rejected by the Revenue Divisional Officer, Tenkasi on 28.02.1999. Appeal was filed by the said Arumugam before the District Revenue Officer, Tirunelveli and the said appeal also came to be rejected on 03.05.1999.



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6.Challenging the said rejection order, the said Arumugam had filed W.P.No.10620 of 1999 before the Principal Seat. This Court by way of a detailed order, had confirmed the fact that the suit schedule properties belong to Keezhapavoor Hindu Nadar Community and they are in administration of Muppidathi Amman Temple and proceeded to dismiss the writ petition with liberty to the said R.Arumugam to approach the competent Civil Court if he claims any right over the suit schedule property.

7.The said Arumugam had filed O.S.No.339 of 2003 before the Principal District Munsif Court, Tenkasi in his personal capacity and also as representative of Senthikantha Nadar family in Keezhapavoor for the relief of declaration of title and permanent injunction and in the alternative for recovery of possession for the same schedule properties. In the said suit, Keezhapavoor Hindu Nadar community was made as a party. The said suit was dismissed on 21.12.2004. An appeal was filed by the plaintiff in A.S.No.15 of 2005 and the same was dismissed for default on 22.09.2005. Therefore, the exclusive claim made by Senthikantha Nadar Vagaiyara over the suit schedule property has been rejected by the civil



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Court and it has attained finality. Suppressing the said fact, the present suit has been filed by two plaintiffs claiming permanent injunction not only for themselves, but also for Senthikantha Nadar family not to permit any one to conduct any function or festival or parking the vehicles in the suit schedule properties. The patta stands in the name of Muppidathi Amman Temple and the said mutation had reached finality by way of order of this Court in WP.No.10620 of 1999. Suppressing the said fact, the present suit has been filed.

8.The learned counsel for the petitioner had further contended that the suit property is located in Keezhapavoor village which falls within the jurisdiction of Tenkasi Court. Without impleading the temple, the present suit has been filed. Without disclosing the previous litigation, the present appeal has been filed and therefore, it has to be rejected on the ground of suppression of material facts.

9.One K.R.Pauldurai who has been impleaded as first defendant, has no interest whatsoever over the suit schedule property. With an intention to get an ex parte decree, the present suit has been filed by



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impleading unnecessary parties. Hence, he prayed to strike off the plaint.

10.The learned counsel for the respondents had contended that the suit in O.S.No.339 of 2003 is collusive in nature and it would not be binding upon the present plaintiffs. He had further contended that the appeal filed by the said R.Arumugam was dismissed for default only because of the said collusive nature.

11.He had further contended that the order made in WP.No.10620 of 1999 would not in any way finalize the title dispute between the parties. The order only concluded that patta proceedings granting liberty to the said Arumugam to approach the competent civil Court. Therefore, the order of this Court in WP.No.10620 of 1999 cannot be relied upon to reject the present plaint.

12.The learned counsel for the respondents had further contended that the defendants have not filed any document whatsoever in O.S.No.339 of 2003 to establish their title. The previous suit filed by the said Arumugam was dismissed only on the ground that the original



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documents have not been produced, but along with the present suit, the original copper plate has been produced. Therefore, the judgment in O.S.No.339 of 2003 cannot be relied upon to non-suit the present plaintiffs. The first respondent who is an influential person in the said locality, had instructed the authorities to lay road over the suit schedule property which exclusively belongs to Senthikantha Nadar family. Only because of the said first defendant has been impleaded in the suit and therefore, the contention of the revision petitioner that an unnecessary party has been impleaded for the purpose of getting an exparte decree is not factually correct.

13.The learned counsel for the respondents had further contended that the revision petitioner is not a party to the suit. Therefore, the present attempt to strike off the plaint is an abuse of process of Court. In case, if they claim any right over the suit schedule properties, the proper course open to them is to file an impleading application before the trial Court. When the plaint displays, cause of action for filing the suit, it cannot be struck off on the basis of certain defence raised by a third party to the suit. The Court is expected to look into the plaint prayers as well as the document enclosed with plaint. No other material can be looked into to



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strike off the plaint. Hence, he prayed for dismissal of the revision petition.

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14.I have carefully considered the submissions made on either side and perused the material records.

(C) Discussion:

15.This Court in WP.No.10620 of 1999 confirmed the mutation of revenue records in favour of Mupidathi Amman Temple managed by Hindu Nadar Uravinmurai. However, liberty has been granted to the said R.Arumugam to approach the competent Civil Court to establish the exclusive right over the property in dispute. Based upon the said order, the said Arumugam had filed O.S.No.339 of 2003 not only in his individual capacity, but also as representative of Senthikanda Nadar family. The said suit was filed for declaration of title, permanent injunction or in the alternative for recovery of possession from the defendants.

16.A perusal of the plaint indicates that the suit was filed in a representative capacity on behalf of Senthikanda Nadar family. It is not the case of the present plaintiffs that the plaintiff in O.S.No.339 of 2003 does not belong to Senthikanda Nadar family. When a suit is filed in a representative capacity, it is not only binding upon the concerned representative, but also the group/vagaiyara or community which he



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represents. It is also not the case of the present plaintiffs that the procedure contemplated under Order-1 Rule 8 C.P.C was not followed. Therefore, it is clear that after paper publication was made calling upon objection from the member of Senthikanda Nadar family, the plaintiff in O.S.No.339 of 2003 was permitted to represent Senthikanda Nadar and family. At this length of time, it would be futile to contend that the decree in the said suit would not be binding upon Senthikanda Nadar family or their vagaiyara.

17.It is the further contention of the learned counsel for the plaintiffs that the said suit is a collusive suit and therefore, such a decree would not be binding upon them. In case, if the Senthikanda Nadar family had felt that R.Arumugam (who was the plaintiff in O.S.No.339 of 2003) is in collusion with the defendants therein they could have very well objected in Order 1 Rule 8 of C.P.C petition, objecting to the representative character of the said Arumugam. In fact, the said Arumugam had been contesting before the revenue authority from 1999 onwards. After having suffered an order in High Court in W.P.No.10620 of 1999, he had filed the suit in O.S.No.338 of 2003 and the same was dismissed only on 21.12.2004. Thereafter, he had chosen to file A.S.No.15 of 2005 which was later left to be dismissed for default. Therefore, it is clear that the said



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suit in O.S.No.339 of 2003 could never be considered to be a collusive decree or the decree in the said suit would not be binding upon the present plaintiffs.

18.The prayer in the present suit would clearly reveal that the plaintiffs not only seek a decree on their behalf, but also on behalf of Senthikanda Nadar Vagaiyara. A careful perusal of the prayer in the plaint also indicates that the prayer is not against the defendants alone. The permanent injunction prayer seeks a direction as against the official respondents not to permit either the first defendant or any one else to use the suit schedule property for conducting any festival or function. Therefore, it is clear that the injunction prayer is directed as against the whole world and not restricted against the named defendants alone. In such circumstances the locustandi of the present revision petitioner as third party to the suit for filing the present revision petition to strike off the plaint cannot be questioned. In fact, the plaintiff has obtained an order of interim injunction pending suit which has affected the present revision petitioner also. Therefore, the contention on the part of the respondents/plaintiffs, the revision petitioner being a third party has no locustandi to file the present petition for rejection of plaint is not legally



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sustainable.

19.It is the further contention of the learned counsel for the respondents that the defendants have not filed any document in O.S.No. 339 of 2003. In the said suit, the plaintiff was not able to establish his title and possession over the suit schedule property. Therefore, the weakness of the defendants in the said suit cannot be cited as a reason for filing the present suit. The further contention of the learned counsel for the respondents is that since the original copper plate which declares the title in favour of Mupidathi Ammal was not filed in O.S.No.339 of 2003, the suit was dismissed. But in the present suit, the original copper plate has been filed and therefore, the said issue has to be adjudicated afresh. The plaintiffs cannot file their documents in instalment and call upon the competent civil Court to declare their rights. If they have not filed any document before the trial Court, it is for them to approach the First Appellate Court with an application to receive additional evidence. That will not entitle the plaintiffs to file a fresh suit by enclosing the relevant documents.

20.The prayer in O.S.No.339 of 2003 is for declaration of title and on behalf of the Senthikanda Nadar Vagaiyara and for permanent



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injunction or in the alternative for recovery of possession. The said suit has been dismissed. When a suit for declaration of title claiming exclusive right for Senthikanda Nadar Vagaiyara has been dismissed, the present suit for permanent injunction to protect their possession is not at all maintainable. Therefore, it is clear that the present suit is not only a re-litigation, but also an abuse of process of Court.

21. Our High Court in a decision reported in **1998 (1) CTC 66 (Ranipet Municipality Rep.by its Comer. and Special Officer, Ranipet Vs.M.Shamsheerkhan)** in paragraph No.9 has catalogued the circumstances which could be considered to be an abuse of process of Court which is extracted as follows:

“9. It is this conduct of the respondent that is attacked by the petitioner as abuse of process of Court. What is 'abuse of the process of the Court'? Of course, for the term 'abuse of the process of the 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 the 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.*



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- (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.*

(See The Code of Civil Procedure - A.I.R. Commentary to Section 151, C.P.C.) The above are only some of the instances, where a party may be said to be guilty of committing abuse of the process of Court. “

22. In the present suit, the institution of the suit is not only vexatious, but also obstructive in nature clearly falling within the term abuse of process of Court. The Hon'ble Supreme Court in a decision reported in **(1998) 3 SCC 573 (K.K.Modi Vs.K.N.Modi and others)** in paragraph No.44 has held as follows:

“44. One of the examples cited as an abuse of the process of the 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



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decided earlier against him. The reagitation 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 the 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 the 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. Undoubtedly, it is a matter of the Court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised and exercised only in special cases. The Court should also be satisfied that there is no chance of the suit succeeding.”

23.A careful perusal of the judgment of the Hon'ble Supreme Court would clearly indicate that the Court should not only be satisfied that it is a frivolous or vexatious litigation amounting to abuse of process of Court, but should also be satisfied that there is no chance for the suit to succeed. Admittedly, the previous suit filed by one R.Arumugam in



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O.S.No.339 of 2003 in a representative capacity on behalf of the Senthikanda Nadar Vagaiyara for declaration of title and for permanent injunction has been dismissed and has reached finality. The present suit filed by two other persons from the said Vagaiyara for the relief of permanent injunction on behalf of the same Senthikanda Nadar Vagaiyara is clearly frivolous and vexatious litigation warranting interference of this Court to strike off the plaint on the ground of abuse of process of Court.

24.In view of the above said deliberations, the plaint in O.S.No. 41 of 2017 on the file of the District Munsif Court, Tirunelveli is struck off from the file. This Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

29.04.2024

Index : Yes/No
Internet : Yes/No
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To

1. The District Munsif,
Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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