



C.R.P.(MD)No.800 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.11.2024

PRONOUNCED ON : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)(PD)No.800 of 2020

and

C.M.P.(MD)No.5428 of 2020

Pappa @ Shanthi

... Petitioner

vs.

Vijaya

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to call for the records and strike off the suit in O.S.No.19 of 2015 on the file of the District Munsif Court cum Judicial Magistrate No.1, Usilampatti from its file.

For Petitioner :Mr.J.Barathan
For Respondent :Mr.B.Prahalad Ravi

ORDER

The Civil Revision Petition has been filed seeking to strike off the plaint in O.S.No.19 of 2015 on the file of the District Munsif-cum-Judicial Magistrate



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Court No.1, Usilampatti.

2.The Revision Petitioner contended that the respondent/defendant had originally filed a suit in O.S.No.153 of 1999 against the respondent herein for a declaration that the suit property is the absolute property of the plaintiff and for declaration to declare the rectification deed vide Doc.No.1564/1991, dated 31.05.1999, as null and void and for permanent injunction. The said suit was decreed in favour of the Revision Petitioner vide judgment and decree, dated 16.04.2009, and the same was confirmed in A.S.No.139 of 2009.

3.On the other hand, a suit was instituted by the respondent herein in O.S.No.19 of 2015, before the District Munsif-cum-Judicial Magistrate Court No. 1, Usilampatti, where, the Revision Petitioner/plaintiff, in O.S.No.153 of 1999, was arrayed as sole defendant. The suit in O.S.No.153 of 1999 relates to 99 cents, whereas, the suit in O.S.No.19 of 2015 relates to 10 cents.

4.The Revision Petitioner contended that the respondent had filed the present suit by suppressing the earlier proceedings in O.S.No.153 of 1999, which



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had attained finality in A.S.No.139 of 2009 and had not mentioned anything about the filing of the suit in O.S.No.153 of 1999. By suppressing all material facts and contrary to the judgment and decree passed in O.S.No.153 of 1999, the respondent/plaintiff has filed O.S.No.19 of 2015 which is nothing but of abuse of process of law. On that score, the present Revision Petition has been filed to strike off the plaint in O.S.No.19 of 2015.

5.Ms.J.Barathan learned Counsel appearing for the petitioner submitted that since the earlier suit was decreed and the rectification deed was set aside in favour of the Revision Petitioner, the further continuation of O.S.No.19 of 2015, has to be struck down. The learned Counsel for the petitioner contended that since a categorical judgment has been delivered in O.S.No.153 of 1999 in favour of the Revision Petitioner, the further continuation of the present suit in O.S.No. 19 of 2015 is an abuse of process of Court.

6.The learned Counsel for the petitioner vehemently contended that when the suit is hit under *res judicata*, that cannot be over come by the respondent herein. Since the parties are one and the same and the prayer in the suits are one



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and the same and the relief claimed by the parties are one and the same and in view of the judgment in O.S.No.153 of 1999 in favour of the Revision Petitioner, the further continuation of O.S.No.19 of 2015 is squarely hit under principles of *res judicata*.

7.The learned Counsel for the petitioner relied upon an order of the learned Single Judge of this Court in ***C.R.P.(MD)No.2014 of 2024*** between ***M.Murugan vs M.Premavathi (Died) and others***, dated 19.09.2024, wherein, it had been held as follows:

“3.The Hon'ble Supreme Court in the decision reported in (2019) 9 SCC 538 (Virudhunagar Hindu Nadargal dharma Paribalana Sabai vs. Tuticorin Educational Society) had held that wherever the proceedings are under the code of Civil Procedure and the forum is the Civil Court, the availability of a remedy under the CPC, will deter the High Court, not merely as a measure of self imposed restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Therefore, the petitioner rightly invoked the remedy under Order 7 Rule 11 of C.P.C. It suffered dismissal. Merely because the said order was left unchallenged, the petitioner is not denuded of his right to independently seek quashing of the proceedings under Article 227 of the Constitution of India. This is because, there is fundamental distinction between the scope of the two remedies. When the defendant invokes remedy under Order 7 Rule 11 of C.P.C, the Court cannot travel outside the scope of the plaint averments and the plaint documents. However, when remedy under Article 227 of the Constitution of India is sought, there is no such restriction. The High Court can take into account the materials other than the plaint and the plaint documents to ascertain whether there is any abuse of



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legal process which question falls outside the scope and ambit of Order 7 Rule 11 C.P.C.”

8.*Per contra*, the learned Counsel appearing for the respondent contended that the factum of rectification deed and the extent of 99 cents in O.S.No.153 of 1999 and the extent of the lands in the suit in O.S.No.19 of 2015 is with regard to 10 cents are all matter of fact, which has to be adjudicated by the trial Court by producing sufficient documents.

9.The learned Counsel appearing for the respondent further contended that the prayer in O.S.No.153 of 1999 was for a permanent injunction and declaration of title and to declare the rectification deed as null and void. It is not in dispute that the Revision Petitioner had succeeded in O.S.No.153 of 1999, whereas, on the strength of O.S.No.153 of 1999, the claim made by the petitioner to strike off O.S.No.19 of 2015 cannot have any any legal force.

10.The learned Counsel appearing for the respondent submitted that the contentions raised by the Revision Petitioner are all matter of facts, which has to be proved before the trial Court by marking sufficient documents. It is not in



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dispute with regard to the fact that the parties are one and the same, however, the learned Counsel for the respondent contended that in the suit in O.S.No.53 of 1999, apart from Vijaya, the plaintiff in O.S.No.19 of 2015, who was arrayed as first defendant along with other defendants, who are not made as parties in the present suit.

11.The learned Counsel for the respondent further submitted that the Revision Petitioner has already filed an application in I.A.No.85 of 2015 under Order VII Rule 11 CPC to reject the plaint in O.S.No.19 of 2015. The trial Court had considered the contention of the Revision Petitioner that the suit itself is a re-litigation by suppressing material facts and held that the re-litigation does not come within the purview of principles of *res judicata*. The trial Court while dismissing the petition filed under Order VII Rule 11 CPC had relied upon a judgment of this Court reported in **2013 (2) LW 84** between **Arumugam vs P.R.Palanichamy**, and the relevant portion is extracted hereunder:

“A reading of the said rule will show that neither suppression of fact nor misrepresentation not even fraud, has been made a ground for rejection of plaint. Even the rule does not include abuse of process of Court as a ground for rejection of plaint. Clauses (a) and (d), which deal with absence of disclosure of cause of action and the suit appearing from the statement to be barred by any law. Whether the



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plaint discloses a cause of action for the suit or not, has got to be decided only based on the averments made in the plaint and the documents produced along with plaint. The cause of action alleged may not be true or may be a deliberate falsehood. The course dealing with a petition under Order VII Rule 11 cannot go into the question whether cause of action alleged in the plaint is true or false and take a decision based on the defence plea taken by the defendant or based on the documents produced by the defendant.”

12.The learned Counsel for the respondent had relied upon the order of this Court reported in **2017 SCC OnLine Mad 5893** between **C.Kuppusamy vs C.Baby and others**, wherein, this Court had held as follows:

“12.The first respondent/plaintiff has not given any reason for filing the earlier suit in O.S. No. 763 of 2010 and for filing the present suit in O.S. No. 176 of 2012 while filing reply to the IA. No. 306 of 2013 in O.S. No. 176 of 2012. Moreover, she has not given any reply about the suppression of earlier suit in the reply filed by her. The argument advanced by the first respondent also does not give any reply as to why the first respondent/plaintiff has filed earlier suit and present partition suit for the same properties. The learned counsel for the first respondent has not given any reason regarding why the earlier judgment and decree in O.S. No. 763 of 2010 was suppressed in O.S. No. 176 of 2012.

13.In view of the above prevailing circumstances, this Court has to come to the conclusion that the plaint in O.S. No. 176 of 2012 is clear abuse of process of Court and this Court in a compelling circumstances has to exercise its power under Article 227 of the Constitution of India.”

13.It is to be noted that the rectification deed was executed by the second defendant in O.S.No.153 of 1999 in favour of one Alagumalai Thevar. The said



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suit was came to be decreed and aggrieved by same, the respondent/plaintiff along with Alagumalai Thevar in whose favour, the rectification deed was executed, have filed an appeal in A.S.No.139 of 2009. The first appellate Court while dismissing the appeal filed by the respondent/plaintiff had confirmed the judgment and decree passed in O.S.No.153 of 1999 on the file of the District Munsif-cum-Judicial Magistrate No.1, Usilampatti. However, the respondent/plaintiff did not challenge the judgment and decree in A.S.No.139 of 2009, which has attained finality. Subsequently, the respondent/plaintiff, Vijaya, had filed a suit in O.S.No.19 of 2015 for a declaration of title to an extent of 10 cents with boundaries. In the present suit, respondent/plaintiff, Vijaya, had not stated anything about O.S.No.153 of 1999 and A.S.No.135 of 2009.

14.Admittedly, the parties in O.S.No.153 of 1999 and in O.S.No.19 of 2015, are one and the same. In O.S.No.153 of 1999, the respondent/plaintiff was arrayed as second defendant and the prayer made in O.S.No.153 of 1999 is to declare the rectification deed Doc.No.1564/1991 on 31.05.1999, as null and void and the same was reached finality in A.S.No.139 of 2009, whereas, the present suit in O.S.No.19 of 2015 instituted by the respondent/plaintiff is for declaration



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to an extent of 10 cents with boundaries. Hence, the prayer sought for in the present suit is of different cause of action, as they claimed declaration only to their property with boundary.

15.Though the declaration sought for in O.S.No.153 of 1999 is with regard to the rectification deed, where, the respondent herein, who was the plaintiff in O.S.No.153 of 1999, had registered a document vide Doc.No.1564/1991 on 31.05.1999, which is the subject matter of the boundaries. The suit in O.S.No. 153 of 1999, is only to declare the rectification deed as null and void and the present suit is for declaration with regard to 10 cents along with boundaries. It is a different cause of action, as the respondent/plaintiff has not disputed the extent of land in favour of the Revision Petitioner.

16.Though the Revision Petitioner contended that the rectification deed was set aside, however, in the present suit, the declaration is sought for 10 cents with boundaries. The said fact, with regard to boundary has to be proved before the trial Court, which is the subject matter before the trial Court and which needs detailed adjudication by adducing oral and documentary evidence. The said fact



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could also be found by appointment of Advocate Commissioner on an application made by the parties to *lis*.

17.Once an application in I.A.No.85 of 2015 was filed for rejection of the plaint and which was dismissed by the trial Court, it is for the Revision Petitioner to challenge the same by filing a Revision Petition and without filing a revision challenging the dismissal order in I.A.No.85 of 2015, invoking the revisional jurisdiction of this Court under Article 227 of the Constitution of India is again an abuse of process of law and the principles of *res judicata* applies to the Revision Petitioner also. The Revision Petitioner cannot blow hot and cold before the trial Court as well as before this Court by beating around the bush by contending that the subject matter is one and the same. It is not in dispute that the rectification deed which was also for the boundary and the present suit is also for the boundary. Unless and until there is a clarity with regard to the boundary and the extent in the boundary with regard to the overlapping, as contended by the Revision Petitioner and the respondent/plaintiff, it is for the trial Court to adjudicate the same.



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18. When an allegation is made by the Revision Petitioner as against the respondent/plaintiff on the ground of suppression of facts and fraud, nevertheless, it is a fact which has to be gone into by the trial Court in O.S.No.19 of 2015. The Revision Petitioner has already suffered an order of dismissal in I.A.No.85 of 2015, which was filed for rejection of plaint and filing a petition under Article 227 of Constitution of India to strike off the plaint is one and the same and the procedure adopted by the Revision Petitioner cannot be accepted and it is deprecated by this Court.

19. With the above findings, the Civil Revision Petition is dismissed. As the suit is of the year 2015, the trial Court is directed to conclude the trial within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18.12.2024

Internet : Yes/No
NCC : Yes/No
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To

The District Munsif cum Judicial Magistrate No.1, Usilampatti.



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N.SENTHILKUMAR, J.

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