



C.R.P(MD).No.1927 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.03.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No.1927 of 2023
and
C.M.P(MD)Nos.9619 and 9620 of 2023**

1.Kanagapujam

2.Krishnamoorthy ... Petitioners / Petitioners / Defendants 1 and 2

Vs

Vijaya ... Respondent / Respondent / Plaintiff

Prayer : Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decreetal order dated 23.12.2022 passed by the Additional District Court, Pudukottai in I.A.No.267 of 2022 in O.S.No. 45 of 2022.

For Petitioners : Mr.T.Lenin Kumar

For Respondent : Mr.R.Sundar



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ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 23.12.2022 passed by the Additional District Court, Pudukottai in I.A.No.267 of 2022 in O.S.No.45 of 2022.

2. The suit in O.S.No.45 of 2022 is filed by the respondent herein seeking the relief of declaration and consequential injunction and for costs. Pending the trial process, a petition was taken out by the defendants 1 and 2 in I.A.No.267 of 2022, seeking an order to reject the plaint under Order 7 Rule 11 of C.P.C., with the following averments: The property comprised in Survey No.324/2A, as per the present subdivision, Survey No.324/7D1A is measuring about 50 cents. That was purchased by the petitioners namely the father of the defendants 1 and 2 and who was in enjoyment of the property by leasing out the same to various persons. Against the tenants, he filed a suit in O.S.No.214/19 for eviction. That was decreed. Against which C.M.A.No.12 of 2020 was preferred. That was also dismissed. He filed E.P.No.44 of 2016 and delivery was also ordered on 11.12.2019, now it is pending before the Subordinate Court, Keeranur in E.P.No.251 of 2022.



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3. The above said tenant namely Balachandar and Mangayarthilagam instigated one Kulanthaivel to create forged documents. On that basis, they obtained patta. Kulanthaivel executed a settlement deed in favour of his wife namely Vijaya on 04.08.2021. That came to the knowledge only at the time of filing the E.P. Against the patta proceedings, they also filed an appeal. Kulanthaivelu filed claim petition in the E.P., proceedings. That was dismissed, against which C.M.A is also preferred. In the E.P., proceedings, Balachandar and Mangayarthilagam has filed a memo stating that they handed over the property to Kulanthaivelu. To stall the E.P. proceedings, the suit is filed.

4. That was resisted by the plaintiff on various grounds by filing counter. The trial Court, after hearing both sides, was of the view that a plea of *resjudicata* is a matter for trial as per the judgment of the Hon'ble Supreme Court reported in ***AIR 2015 SC 3357*** in the case of ***Vaish Aggarwal Panchayat Vs Inder Kumar***, against which this revision is preferred by the defendants, on the ground that the title over the property is decided even in the E.P., proceedings itself. It is also confirmed in



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C.M.A.No.13 of 2022. The question of relitigation was not considered by the trial Court.

5. Heard both sides.

6. Now we will straightaway go to the order passed in E.A.No.10 of 2022 in E.P.No.251 of 2022. That application was filed by Kulanthaivelu, the husband of the respondent herein under Order 21 Rule 26 of C.P.C., stating that the property originally belongs to his father namely Palaniyandi. He constructed a building and was in possession. Dhanam is his sister. Since Palaniyandi suffered from illness, he was living out of town. The respondents 1 to 3 were managing the properties. Later, after the death of his father, they changed the electricity connection and leased out the property for rent. When Ameena came to the suit property, he came to know that O.S.No.214 of 2019 was filed by the respondents 1 to 3 against the respondents 4 and 5 and decree was obtained. Against which E.P., is also filed. Since the property belongs to him, the decree obtained in O.S.No.214 of 2019 is not binding upon him. That was resisted by Kanagampujam and Krishnamoorthy.



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7. At the conclusion of the enquiry, the claim application filed by the said Kulanthaivelu was dismissed by the trial Court. Against which C.M.A.No.13 of 2022 was filed before the learned Principal District Judge, Pudukkottai. That also came to be dismissed by the learned Principal District Judge, Pudukkottai by order dated 08.02.2023. Now that Kulanthaivelu alleged to have executed settlement deed in favour of his wife namely Vijaya who is the respondent herein. On that basis, she filed the present suit in O.S.No.45 of 2022.

8. So in essence, the learned counsel for the petitioner would submit that the claim made by the Kulanthaivelu was already negated. Now the respondent is claiming through Kulanthaivelu. So she cannot maintain the suit, in respect of the right claimed by her husband. According to the petitioner, it is nothing but a clear case of relitigation. The title which was decided against the husband of the revision petitioner will bind her.



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9. Eventhough the respondent sought time, ultimately in view of the above said position, I find that the suit filed by the respondent herein is nothing but an abuse of the process of Court. Kulanthaivelu ought to have taken up the matter further. But he failed. As mentioned above, the respondent is claiming title over the property through Kulanthaivelu. So the suit filed by her is nothing but a clear abuse of the process of the Court. But however, the trial Court has not considered this point and has decided the matter on the ground that the point of *res-judicata* cannot be agitated or decided in the present petition.

10. To support his arguments, learned counsel for the petitioner would rely upon the judgment reported in **2003 (4) CTC 347** in the case of ***K.K.Swaminathan Vs Srinivasagam***. The relevant portion which is cited by the Court runs like this.

"30. In cases of this nature, it is not as if the Court is powerless or its hands are tied merely because the matter comes to the notice of the court in the revisional Jurisdiction under Sec.115 CPC. The investiture of power u/s.115 CPC is of superintendence and



visitorial....Not fettered to deal with such situations. Where there is clear abuse of process of court, the Court has to view such conduct seriously and the same is to be halted to save precious time of the public and the court being wasted. In the recent decision of the Supreme Court reported in K.K.Modi ..vs.. K.N.Modi (1998) 3 SCC 573 elaborately considering the abuse of process of the Court, the Supreme Court has held that the Court has power to stop such frivolous and vexatious proceedings. The Supreme Court has only cautioned that such power is to be exercised with circumspection. It is necessary to refer to the observations of the Supreme Court, which are very much relevant for our purpose.

"42.Under Order 6 Rule 16, the Court may, at any state of the proceeding, Order to be struck out, inter alia, any matter in any pleading which is otherwise an abuse of the process of the Court. Mulla in his treatise on the Code of Civil Procedure, (15th Edn., Vol.II.P.1179, note 7) has stated that power under clause 8 of Order 6, Rule 15, of the Code is confined to cases where the abuse of the process of the Court is manifest from the pleadings; and that this power is unlike the power under Section 151 whereunder Courts have inherent



power to strike out pleadings or to stay or dismiss proceedings which are an abuse of their process. In the present case the High Court has held the suit to be an abuse of the process of the Court on the basis of what is stated in the plaint.

43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraphs 18/19/33 (p.344) explains the phrase "abuse of the process of the Court" thus:

This term connotes that the process of the Court must be used bona fide and properly and must not be abused. The Court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation....The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material".

44. One of the examples as an abuse of the process of the Court is relitigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and



decided earlier against him. The reagitation may or may not be barred as Res Judicata. But if the same issue is sought to be reagitated, 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 that has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised only in special cases. The Court should also be satisfied that there is no change of the suit succeeding.

45. In the case of Greenhalgh ..vs.. Mallard the Court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court held that if the plaintiff



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has chosen to put his case in one way, he cannot thereafter bring the same transaction before the Court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of Res Judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexatious and an abuse of the process of the Court.

46. In Mellkenny ..vs.. Chief Constable of West Midlands Police Force the Court of appeal in England struck out the pleading on the ground that the action was in abuse of the process of the Court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The Court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the Court because it is an abuse for a party to relitigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of Res Judicata or the requirement of issue estoppel".



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In my view, the above observation of the Supreme Court squarely applies to the case in hand. I find that in the interest of the System, it is just and necessary that the suit O.S.2473/1996 is to be ordered to be struck off."

11. As mentioned above, the pleadings of both the parties and as well as the fact shows that it is nothing but another attempt by the wife of the defeated husband to relitigate the issue. The aim is to stall the E.P. proceedings. To over come this sort of vexatious litigation only the Hon'ble Supreme Court has observed that if there is any attempt on the part of any litigant to relitigate the matter, it must be nipped in the bud. Here it is a clear case of relitigation. At the cost of repetition, the respondent wants to sustain her title on the failed husband's right. Since the trial Court has not considered these aspects, interference of this Court in exercising the power under Article 227 of constitution of India and under Section 115 of C.P.C is warranted, since the trial Court has not exercised the jurisdiction, which is vested upon it, in a proper manner.



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12. Accordingly, this Civil Revision Petition is allowed and the order dated 23.12.2022 passed by the Additional District Court, Pudukottai in I.A.No.267 of 2022 in O.S.No.45 of 2022, is set aside. The plaint shall stand rejected. No costs. Consequently, connected miscellaneous petitions are closed.

26.03.2024

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

- 1.The Additional District Judge, Pudukottai.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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