



C.R.P.(MD)No.1640 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 26.07.2024

PRONOUNCED ON : 29.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)No.1640 of 2021

and

C.M.P.(MD)No.8894 of 2021

1.A.P.Seethai Achi (Died)

2.S.Azhagammai Achi

3.S.P.Kamalam Achi

4.P.R.Manickam

5.M.Mangalam

6.P.P.Kalyani

7.P.R.Rajendiran

8.K.Seethai

9.P.R.Muthaiah

10.S.M.Yogammai Achi

11.K.M.Ramanathan

12.K.Ramanathan

13.R.Meenakshi

... Petitioners / Plaintiffs 3 to 15



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14.Chidambaram

15.Santha

16.Adaikkammai @ Malathi

17.Visalakshi

... Petitioners

Vs.

1.KR.Karthickkumar

... 1st Respondent / Plaintiff

2.RM.Karuppaiah

3.P.Manonmani

... Respondents 2 & 3 /
Defendants 1 & 2

4.R.Krishnappan

... 4th Respondent /
16th Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.150/2021 pending on the file of the Principal District Court, Pudukkottai by allowing this Civil Revision Petition.

For Petitioners : Mr.M.Thirunavukkarasu

For R-1 : Mr.Mohammed Atiff,
Assisted by Mr.Raguvaran Gopalan,
For S.Alagu Sundar

For R-2 to R-4 : No appearance



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ORDER

This Civil Revision Petition is filed to strike off the plaint in O.S.No.150 of 2021 on the file of the Principal District Court at Pudukkottai.

2. The revision petitioners are the defendants 3 to 15. Petitioners 14 to 17 in this revision petition are brought on record as the legal heirs of the deceased first petitioner vide Court order dated 22.12.2022 made in C.M.P.(MD)Nos.12546 to 12548 of 2022 in C.R.P.(MD)No.1640 of 2021.

3. *Crux of the case of the revision petitioners:*

The petitioners have filed the present Civil Revision Petition to strike off the plaint in O.S.No.150 of 2021 on the file of the Principal District Court, Pudukkottai, filed by the first respondent. The prayer in the said suit in O.S.No.150 of 2021 is to declare that the suit properties belong to the plaintiff and the second defendant of the aforesaid suit and for consequential permanent injunction in addition to declaration of the judgment and decree passed in O.S.No.228 of 1995 dated 16.12.1998 as null and void. The petitioners herein previously had filed a suit against the respondents 2 and 3 herein and 5 others in O.S.No.



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228 of 1995 on the file of the Subordinate Judge's Court at Pudukkottai for the relief of declaration, permanent injunction and mandatory injunction with respect to the same suit scheduled properties as that of the properties in O.S.No.150 of 2021. The said suit was decreed in favour of the plaintiffs by judgment and decree dated 16.12.1998. Aggrieved over the said judgment and decree, the second and the third respondents herein filed an appeal and the same was allowed by judgment and decree dated 07.03.2014. Challenging the same, the petitioners herein filed second appeal in S.A.(MD)No. 391 of 2015 before this Court and the same was allowed on 21.01.2020. However, no further appeal was preferred as against the same as such the judgment and decree passed by the learned Subordinate Judge's Court at Pudukkottai in O.S.No.228 of 1995 had attained finality. Thereafter, the second and third respondents with an ulterior motive had instigated the first respondent herein who is the son of the second respondent herein to file the suit in O.S.No.150 of 2021 with respect to the same properties as against the petitioners and the fourth respondent herein seeking the release discussed supra. The respondents 2 and 3 herein have not filed any appeal before the Hon'ble Apex Court as against the judgment in S.A.(MD)No.391 of 2015 dated 21.01.2020. Hence, a suit is not maintainable in the way which the present suit has been laid wherein a judgment and decree of a previous suit is sought to be



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declared as null and void and hence, the present Civil Revision Petition came to be filed seeking to strike of the plaint in O.S.No.150 of 2021 on the file of the Principal District Court, Pudukkottai.

4. *Defence of the first respondent / plaintiff:*

The suit properties comprised in old survey number 727-2B situated in Lembalakkudi village originally belong to one Sivarama Iyer and formed a part of a total area of 133 acres which were Inam lands. The said Sivarama Iyer sold 118 acres to one Meenakshi Aachi who in turn sold them to Egammai Aachi by registered sale deed in document No.261/1960 dated 14.03.1960. After the enactment of Inam Abolition Act, 1977, an assistant settlement officer was appointed and show cause notices were issued to the occupiers of the lands including survey No. 727-2B for an extent of 133 acres. The settlement Tasildar held that the entirety of 133 acres vest with the Government and none of the claimants / occupiers were entitled to patta. Challenging the same, Egammai Aachi along with some other occupiers / purchasers filed an appeal before the Inams Tribunal in I.T.C.M.A.No. 37 of 1974. In the said appeal PR.P.Periyakaruppan Chettiyar and RM.KM.Ramanathan Chettiyar were arrayed as respondents. The said I.T.C.M.A.No. 37 of 1974 was allowed on 25.07.1975 and appellants therein were directed



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to issue patta. Following which, ryotwari patta was issued to the parties concerned. The suit in O.S.No.228 of 1995 was filed suppressing the Inam Abolition Proceedings. Thus, the petitioners herein have misrepresented before the Court and committed fraud upon the Court in appeal in A.S.No.47 of 2007, the first and the second defendants herein have filed an application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 and produced the order and decree in I.T.C.M.A and on the basis of the same, the Appellate Court allowed the appeal suit in A.S.No.47 of 2007. The second appeal in S.A.(MD)No.391 of 2015 was allowed on the basis of a technical issue that the legal heirs of some of the parties were not brought on record in A.S.No.47 of 2007 and hence the judgment and decree against dead persons would be non-est. The grounds of re-litigation, abuse of process of Court and res judicata raised by the petitioners herein are not sustainable.

5. Submissions:

The learned counsel for the petitioners Mr.Thirunavukkarasu submitted that the suit properties in the present suit and the previous suit are one and the same. Further the parties in the previous suit and the present suit are also one and the same. The plaintiffs in the previous suit got a decree for declaration. The unsuccessful first



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defendant in the previous suit has set up his own son to file the present suit which is a clear case of abuse of process of Court. The present suit in O.S.No.150 of 2021 is barred by res judicata and the same is an abuse of process of law. Hence, this Court under its powers under Article 227 of the Constitution of India is entitled to strike off the plaint in O.S.No.150 of 2021. The property measuring 118 cents out of the total area of 133 acres in old survey number 727-2 B (A part of the present suit schedule properties) was sold to one Egammai Aachi and another part of the said land was sold to one Sheikh Dawood. Subsequently, Inam Abolition Act, 1977, came into force and certain lands of the said Egammai Aachi and Sheikh Dawood were taken over by the Government. Challenging the same, the aforesaid persons filed I.T.C.M.A.No. 37 and 38 of 1974 before the Subordinate Judge's Court at Pudukottai. In I.T.C.M.A.No. 38 of 1974, it has been pleaded by the respondents 2 and 3 therein that the grandfathers of the revision petitioners herein were entitled for grant of patta for the scheduled mentioned properties and the order made in I.T.C.M.A.No. 38 of 1974 is not against the respondents 2 and 3 therein. This court and the Hon'ble Apex Court in a catena of judgments have held that the parties who have not come with clean hands, the plaint to be ordered to be struck off and could be thrown out at the threshold itself. In the present case, the subsequent case is not mere re-litigation but a gross abuse of



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process of law on a frivolous cause of action. Hence, the learned counsel pressed that this court should invoke its power of superintendence under Article 227 of the Constitution of India and strike off the plaint and pressed for allowing the revision petition.

Per contra, the learned counsel for the first respondent / plaintiff Mr.Mohammed Athiff submitted that the plaintiff/ first respondent herein is claiming title over the property on the basis of a settlement deed executed by his father, the first defendant herein dated 10.07.2024. The first defendant herein has been issued with a patta for the first item of the suit scheduled property after the I.T.C.M.A proceedings. The second item of suit property was purchased by the second defendant from her vendor one Egammai Achi, that is, the appellant in the I.T.C.M.A proceedings. The case of the plaintiff in the suit in O.S.No.150 of 2021 is to declare the decree in O.S.No.228 of 1995 as null and void on the basis of fraud and misrepresentation and for declaration of title to suit properties. The plaintiff herein is not a party to the earlier proceedings and the decree in O.S.No.228 of 1995 affects the title of the plaintiff and hence, he is well within his right to seek for a declaration that the aforesaid decree in O.S.No.228 of 1995 is null and void *vis-a-vis* him. The plaintiff herein acquired the title of the



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first item of the suit property after the judgment in A.S.No.47 of 2007 and before the second appeal in S.A.(MD)No.391 of 2015 which was filed on 01.06.2015. The second appeal was numbered on 31.07.2015, admitted on 05.08.2015. On the date the plaintiff acquired title, that is, 10.07.2014, his predecessor in title had clear title vide judgment and decree in A.S.No.47 of 2007 and hence, the title which had passed on the plaintiff is absolute on the strength of the settlement deed executed in his favor. The learned counsel contended that a second appeal is not a continuation of suit proceedings and hence the transfer made vide settlement deed dated 10.07.2014 is not hit by *lis pendens*. The plaintiff herein as a person who had acquired title has no recourse, but to file a suit to establish his title when it is threatened. From this perspective, the suit in O.S.No.150 of 2021, more particularly the relief of declaration that the decree in O.S.No.228 of 1995 is null and void *vis-a-vis* the plaintiff herein is not an instance of relitigation or abuse of process of law and most certainly it is not hit by *res judicata*. Relying upon the judgment of the Hon'ble Apex Court in ***K. K. Modi versus K. N. Modi reported in 1998(3) SCC 573***, the learned counsel submitted that the powers of this Court under Article 227 of the Constitution has to be invoked sparingly only when there is a clear apparent case of abuse of process or relitigation which could be made out in the plaint itself explicitly. Since the same could not be established in this case by



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the petitioners herein, he pressed for dismissal of the Civil Revision Petition.

6. Heard, the rival contentions of the counsels who have appeared for the respective parties and carefully perused the materials available on record.

7. **Analysis:**

It is a settled proposition of law that under Article 227 of the Constitution of India, the power of superintendence can be invoked by every High Court in every case where:

- (i) to prevent abuse of process of law
- (ii) to prevent miscarriage of justice,
- (iii) to prevent grave injustice,
- (iv) to establish both administrative as well as judicial power of High Court.

Though the term abuse of process of this Court has not been defined under the Code of Civil Procedure, 1908, the same has been demonstrated in **Ranipet Municipality' Rep. by its Comer. .. vs. M.Shamseerkhan, reported in 1998(1)CTC 66** and the relevant portion of the same is extracted as follows:



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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.*
- (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, CPC...) 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.*



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The learned counsel for the petitioner relied upon the case of (i) Kesavan versus Pushpavathy and others. in C.R.P.No.2251 of 2021 dated 01.09. 2023,

(ii) M.Devaprakash versus P.P.Devaraj reported in 2022 (3) CTC 154 and

(iii) Arumugha Gounder and others versus Tmt.Palaniyamal and two others reported in 2001(1) LW 167.

8. According to the learned counsel appearing for the petitioner, the suit filed by the plaintiff / first respondent is an abuse of process of Court and law and the same is vexatious and is a frivolous suit. However, a plaint cannot be struck off unless from the very reading of the plaint, the contents and the contentions made by the plaintiff without relying upon the defense taken up by the respondents and if the Court could come to a conclusion that there is no possibility for the plaintiff to succeed only in that case filing of such a suit could be held as an abuse of process of law and Court. Applying such criteria to the instant case in hand, it is admitted by the plaintiff that the legal heirs of PR.P.Periyakaruppan Chettiar and RM.KM. Ramanatha Chettiar have filed a suit for declaration of title and permanent injunction against the defendants 1 and 2 in O.S.No.228 of 1995 on the file of the Subordinate Judge's Court at Pudukottai. It is admitted that the defendants 1 and 2,



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namely, R.M. Karuppiyah and Manonmani were *set ex-parte* in O.S. No. 228 of 1995. The factum of having filed a first appeal by the said R.M. Karuppiyah and Manonmani before the learned Principal District Court at Pudukkottai in A.S.No.47 of 2007 which was allowed on 07.03.2014 and which was further taken up on second appeal before this Court in S.A.(MD)No.391 of 2015 in which this court by judgment dated 21.01.2020 had set aside the judgment and decree in A.S. No.47 of 2007 restoring the judgment and decree in O.S. No.228 of 1995 are all admitted in paragraphs 5 to 7 of the plaint. Claiming that the second appeal in S.A(MD)No.391 of 2015 dated 21.01.2020 came to be allowed on technical grounds and not on merits, it is further admitted by the plaintiff that the plaint schedule item No.1 has been settled in favor of the plaintiff by registered settlement deed in document No.1984 of 2014 dated 10.07.2014 by the first defendant and that the second item of the plain schedule property has been purchased by the second defendant, namely, one Manonmani.

9. It is claimed that the cause of action for the suit arose on 20.04.2021 when the thirteenth defendant had attempted to fence the plaint schedule properties and the same was prevented by the plaintiff. Though it is claimed by the plaintiff that the second defendant did not cooperate with the plaintiff to file the suit, the first relief which is



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sought for by the plaintiff is to declare the plaint schedule items 1 and 2 belong to the plaintiff and the second defendant respectively. Further seeking a consequential relief of permanent injunction restraining the defendants 3 to 16 from interfering with the plaintiff's possession and enjoyment of the first item of the plaint schedule property and the second defendant's possession and enjoyment of the second item of the plaint schedule property. Another relief to declare the judgment and decree in O.S.No.228 of 1995 on the file of the Subordinate Judge's Court, Pudukottai dated 16.12.1998, is also sought for. No doubt, the only remedy which is available for the second defendant and the others who have lost the suit in O.S.No.228 of 1995 by the judgment and decree in S.A.(MD)No.391 of 2005 dated 21.01.2020 is to prefer a Special Leave to Appeal before the Hon'ble Apex Court. Having not done so, it is needless to state that the second defendant had colluded with the plaintiff indirectly to set up the plaintiff along with his father, that is, the first defendant to file a suit afresh by filling up the old wine in a new bottle by creating a frivolous cause of action. In the case of ***Tamil Nadu Handloom Weavers Cooperative Society versus S.R. Ejaz reported in 2009(5) LW 79***, a similar matter has been dealt with and the relevant portion is extracted:



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“48. ... However, in cases wherein the suit itself was an abuse of process of law and filed with the sole intention of defeating the order passed by the Supreme Court and the trial Court having apprised of such facts, failed to act at once, this Court is entitled to exercise the supervisory jurisdiction under Article 227 of the Constitution of India to axe the suit in the initial stage itself.”

10. When the collusion in filing O.S.No.150 of 2021 between the first defendant and the second defendant, the first defendant who had set up his son as plaintiff to file the present suit to the advantage of the first defendant and the second defendant can be explicitly understood from the pleadings itself, I have no hesitation to hold that this is a clear case of abuse of process of court. That apart, by filing this suit through his son, the first defendant has resorted to and encouraged the plaintiff in indulging in multiplicity of proceedings by circumventing law by indirect means. Having not taken judgment in the second appeal in S.A. (MD)No.391 of 2015 dated 21.01.2020 to appeal, now by introducing scandalous objections in the pleadings, the plaintiff has manifestly filed this vexatious suit to defeat the plaintiffs in O.S.No.228 of 1995 from enjoying the fruits of the judgment and decree in their favor.

11. That apart, the plaintiff has disclosed in the pleadings that he is aware of the entire proceedings from the very instance of the filing of



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O.S.No.228 of 1995. Hence, had he been diligent in his rights, on the very instance of execution of the settlement deed with respect to plaint, item 1 of the plaint schedule property as early as in the year 2014, he ought to have filed a suit immediately on execution of the settlement deed in his favor. Having not done so, the plaintiff seeking to declare the judgment and decree in O.S.No.228 of 1995 dated 16.12.1998, on the file of the Subordinate Judge's Court, Pudukottai, is clearly barred by limitation. Precisely, the instant case is vexatious and the same is bad for an illusory cause of action and is barred by limitation. By a clever drafting, the plaintiff has tried to circumvent the provisions of Limitation Act and has tried to maintain the suit which is nothing but abuse of process of Court and law.

12. It is needless to state that under the circumstances elaborated supra, the power of superintendence under Article 227 of Constitution of India can certainly be invoked by this Court or else grave injustice would be caused to the decree holders in O.S.No.228 of 1995. Taking into consideration that the suit in O.S.No.150 of 2021 is an abuse of process of law filed with the sole intention of defeating the judgment and decree in O.S.No.228 of 1995 dated 16.12.1998, which is further confirmed in S.A.(MD)No.391 of 2015 by judgment and decree dated 21.01.2020, the Trial Court having gone through the pleadings



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ought to have acted at once by rejecting the plaint and having not done so, this Court is entitled to exercise the supervisory jurisdiction under Article 227 of the Constitution of India to axe the suit in O.S.No.150 of 2021 in the initial stage itself.

13. Accordingly, the plaint in O.S.No.150 of 2021 is hereby struck off and this Civil Revision Petition is allowed without cost and the connected miscellaneous petition is closed.

29.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

To

- 1.The Principal District Court,
Pudukkottai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

Sml

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