



C.R.P.(MD)No.1950 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.12.2023

PRONOUNCED ON: 15.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1950 of 2022

and

C.M.P.(MD)No.8955 of 2022

Kan Shahib @ Khanshabeer : Petitioner/Petitioner

Vs.

1.Abdul Kareem

2.Sheik Parveen

3.The District Revenue Authority,
District Collectorate Building,
Madurai.

4.The Revenue Divisional Officer,
Thirumangalam.

5.The Divisional Deputy Director (Land Service),
Madurai.

6.The Tahsildar,
Taluk Office,
Thirumangalam.



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7.The Sub-Inspector (Land Survey),
Taluk Office,
Thirumangalam Taluk.

8.The Land Surveyor (Land Survey),
Taluk Office,
Thirumangalam.

9.The Sub-Registrar,
Thirumangalam.

: Respondents/Respondents

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and executable order passed in I.A.No.87 of 2021 in O.S.No.109 of 2019, on the file of the learned Subordinate Judge, Thirumangalam, dated 06.04.2022.

For Petitioner : Mr.M.Rajaraman

For Respondents : Mr.V.Ramakrishnan
for R.1

: Mr.S.A.Ajmal Khan
for R.2

: Mr.A.Baskaran
Additional Government Pleader
for R.3 to R.9



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.87 of 2021 in O.S.No.109 of 2019, dated 06.04.2022, on the file of the Subordinate Court, Thirumangalam, dismissing the petition filed under Order VII Rule 11 C.P.C.

2. The revision petitioner is the first defendant and the respondent as the plaintiff has filed the suit in O.S.No.109 of 2019, on the file of the Subordinate Court, Thirumangalam against the revision petitioner and the respondents 2 to 9, claiming declaration that the suit properties are absolutely belonging to the plaintiff and for permanent injunction restraining the defendants 1 and 2 from creating any encumbrances in respect of the suit property in the office of the ninth defendant, to declare that the settlement deed vide document No.99/2004 in respect of 1 Acre of land in S.No.148/2 shown in III schedule of the suit property executed by Mohamed Musthafa in favour of the first defendant is null and void and legally invalid and not binding on the plaintiff, to declare that the sale deed vide document No.6957/2011 executed by Sulaika Beevi in



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favour of the first defendant in pursuance of the settlement deed vide document No.99/2004, is null and void and is legally invalid and for mandatory injunction against the revenue officials – defendants 6 and 7.

3. Pending suit, the first defendant by alleging that the plaint does not disclose any cause of action, that the plaintiff has been relitigating the matter which was already decided and thereby has been abusing the process of Court, filed the above petition under Order VII Rule 11 C.P.C., for rejection of plaint. The respondent/plaintiff has filed counter statement raising objections. The learned Subordinate Judge, after enquiry, by holding that the first defendant has not shown any of the grounds contemplated under Order VII Rule 11 C.P.C., for rejection of the plaint and that the aspects now canvassed by the first defendant are matter for trial, dismissed the petition. Aggrieved by the order of dismissal, the first defendant has filed the present revision.

4. The main contention of the revision petitioner is that the present suit in O.S.No.109 of 2019, on the file of the Subordinate Court, Thirumangalam for the relief of declaration in respect of the property comprised in S.No.139/17, 148/1 and 148/2 is re-litigation of O.S.No.54



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of 2004, on the file of II Additional Subordinate Court, Madurai and amounts to abuse of process of Court. The learned Counsel for the revision petitioner would contend that II Additional Subordinate Judge, Madurai, after elaborate trial, dismissed the suit in O.S.No.54 of 2004 and the appeal filed by the plaintiff in A.S.No.14 of 2019 was also dismissed, that the plaintiff has preferred the Second Appeal in S.A.No. 712 of 2020 and the same is pending on the file of this Court and as such, the present suit would amount to re-litigation, that since the ownership of the property had already been decided in the earlier proceedings, the present suit is a vexatious time consuming effort and filed only with a view to harass the defendants and that the trial Court, without considering the above aspects and without taking note of the position that the grounds contemplated under Order VII Rule 11 C.P.C., are not exhaustive and are only enumerative and the plaint can be rejected even on other grounds other than those specified in Order 7 Rule 11 C.P.C., and that the trial Court has committed an error in dismissing the petition.

5. The learned Counsel for the first respondent would submit that the settlement deed, dated 31.03.2003 projected by the first defendant is a vexatious and fraudulent document, that the decision in the suit in



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O.S.No.54 of 2004 was pertaining to the title of the plaintiff and not pertaining to the title of the first defendant, that since the Second Appeal is pending, the judgment and decree passed in O.S.No.54 of 2004 and A.S.No.15 of 2019 are still under the test of this Court, that the cause of action in suit in O.S.NO.54 of 2004 is entirely different from the cause of action raised in the suit in O.S.No.109 of 2019, that the allegations of re-litigation made by the first defendant are baseless and even if it be true, will not enable the first defendant to invoke the provision of Order VII Rule 11 C.P.C., and that the above application is nothing but an abuse of process of Court and hence the petition is liable to be dismissed.

6. It is settled law that while considering the application under Order VII Rule 11 C.P.C., the Court is duty bound to consider the averments raised in the plaint and the documents filed along with the plaint and not the defence raised and materials produced by the defendant. In the case on hand, in the present plaint in O.S.No.109 of 2019, the plaintiff himself has referred about the earlier suits in O.S.No. 54 of 2004 and 126 of 2005 and the reliefs claimed therein, the judgments passed in the said suits and the appeals filed by the plaintiff. It is also pertinent to note that the plaintiff along with the plaint has



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produced certified xerox copy of the decree passed in O.S.No.54 of 2004 and O.S.No.126 of 2005 and the copies of the appeal memorandum filed in A.S.Nos.14 and 15 of 2019.

7. It is evident from the records that the plaintiff, in the earlier suit filed in O.S.No.54 of 2004, has claimed the relief of declaration that the plaintiff is entitled to the suit properties and for consequential permanent injunction restraining the defendants, their men and agents from any way interfering with the plaintiff's peaceful possession and enjoyment of the suit properties. The plaintiff has shown the property situated in S.No. 139/13 with an extent of 26 cents, in S.No.139/17 with an extent of 61 cents, in S.No.148/1 with an extent of 64 cents and in S.No.148/2 with an extent of 3 Acres 8 cents of Maravankulam Village, Thirumangalam. The second defendant in O.S.No.54 of 2004, has filed another suit in O.S.No. 126 of 2005 against the plaintiff, Tahsildar - Thirumangalam Taluk and the Executive Engineer - Tamil Nadu Electricity Board, Thirumangalam claiming declaration that the suit properties are belonging to her and for consequential permanent injunction restraining the first defendant therein from any manner interfering with her peaceful possession and enjoyment of the property and for mandatory injunction directing the second



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defendant to effect name changes in patta No.326 and for mandatory injunction directing the third defendant to transfer the electricity connection No.557 to the plaintiff.

8. The case of the plaintiff in O.S.No.54 of 2004 is that the suit properties and other properties were originally belonging to N.S.Vellayatha Rowther, that one Abdul Aziz, N.S.V.Mohamed Mustafa – first defendant and their sister Suleha Beevi had alone survived Vellayatha Rowther at the time of his death and hence, being the surviving heirs are entitled to the suit properties, that the first defendant through his wife Ayesha Beevi got ten children including the plaintiff, that the plaintiff had been looking after the affairs of the family members with due love and affection, that the plaintiff had settled the family debts and the family disputes on several occasions, that since the plaintiff's paternal uncle – Abdul Aziz had no issues, Abdul Aziz and his wife were under the care and custody of the plaintiff, that since the members of Suleha Beevi have not shown any affection and deserted her, the plaintiff alone had been taking care of her also, that the said Suleha Beevi made a oral Hiba in favour of the plaintiff on 11.07.2002 itself with respect to her 1/5th share, which was accepted by the plaintiff, that the first



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defendant and Abdul Aziz made oral Hiba on 15.08.2003 in the presence of villagers of Maravankulam in respect of their 2/5th share each and the same was also accepted by the plaintiff, that the plaintiff has become the owner of the entire property and had been in possession and enjoyment of the same, that the plaintiff requested the first defendant to transfer patta in favour of the plaintiff, but the first defendant demanded the huge amount for which the plaintiff has refused for the same, that the first defendant being disgruntled by the refusal of the plaintiff has been attempting to encumber the suit properties and the same would amount to denial of the title of the plaintiff by the first defendant, that after 15.08.2003, except the plaintiff, no other person is entitled to the suit properties and that since the first defendant had threatened the plaintiff on 02.01.2004 that they will destroy the paddy crops with the help of his henchmen, if the demanded amount was not given to them and that therefore, the plaintiff was constrained to file the above suit seeking declaration and permanent injunction.

9. The case of the plaintiff in O.S.No.126 of 2005 is that in the suit filed in O.S.No.1112 of 1987, the sons of Vellaiatha Rawthar, viz., Mohammed Mustafa and Abdul Ajees were declared as having 2/5 shares



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each and their sister Sulaiha Beevi is entitled to get 1/5th share, that the plaintiff - Sheik Parveen has purchased the property from Mohammed Mustafa vide sale deed dated 16.12.2023 believing that he was the absolute owner, that subsequently they came to know that Abdul Ajees and Sulaiha Bevi were also having shares in the said property and obtained consent documents from them and that the said Sheik Parveen has become the owner of the entire properties.

10. It is not in dispute that both suits in O.S.No.54 of 2004 and O.S.No.126 of 2005 were tried jointly and a common judgment came to be passed on 17.07.2018. It is pertinent to note that the learned trial Judge, by giving specific findings that the plaintiff – Abdul Kareem has miserably failed to prove the oral Hiba alleged by him, that the sale deed executed by the plaintiff's father in favour of Sheik Parveen is a genuine and valid document and that the plaintiff Abdul Kareem, by filing a fraudulent case had been dragging on the matter, dismissed the suit in O.S.No.54 of 2004 and decreed the suit in O.S.NO.126 of 2005 for declaration and permanent injunction and by imposing exemplary costs against the petitioner/plaintiff. Aggrieved by the judgment and decree, the plaintiff has preferred appeals before the District Court, Madurai and



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the learned appellate Judge, vide judgment and decree dated 03.01.2020 has dismissed the appeals and thereby confirming the judgment and decree of the trial Court. It is also not in dispute that the plaintiff has preferred a Second Appeal and the same is pending in S.A.712 of 2020, on the file of this Court.

11. As rightly contended by the learned Counsel for the revision petitioner, the plaintiff has canvassed some pleas in the present suit in O.S.No.109 of 2019. In the present suit also, he has claimed ownership through Hiba given by Suleha Beevi and by his father and paternal uncle – Abdul Ajees. In addition to the main relief of declaration to the title of the suit property and for consequential permanent injunction, the plaintiff has also claimed reliefs declaring that the settlement deed and the sale deed are null and void and for mandatory injunction against the revenue and electricity department people.

12. No doubt, as rightly contended by the learned Counsel for the first respondent, since the Second Appeal is pending, the question of applying doctrine of res judicata as contemplated under Section 11 C.P.C., does not arise. As already pointed out, the main grounds



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canvassed by the revision petitioner for rejecting the plaint is re-litigation and abuse of process of law. No doubt, as rightly contended by the learned Counsel for the first respondent, the above said two grounds are not the grounds as contemplated under Order VII Rule 11 C.P.C., for rejection of plaint. Technically speaking, the above two grounds cannot be considered as the grounds for rejection of plaint under Order VII Rule 11 C.P.C., But as rightly contended by the learned Counsel for the revision petitioner, the Hon'ble Supreme Court in catena of decisions has reiterated the legal position that if a legal proceeding is initiated by abusing the process of Court and any Court, after coming to know about the same, is duty bound to stop the proceedings.

13. The Hon'ble Supreme Court in the case of ***K.K.Modi Vs. K.N.Modi and other*** reported in ***(1998)3 SCC 573***, has specifically held that the re-litigation is an abuse of process of the Court and the relevant passage is extracted hereunder:

“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



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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. Undoubtedly, it is a matter of courts' 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. “

14. In the case of ***T.Arivanantham Vs. T.V.Sathya Pal and another*** reported in ***AIR 1977 SC 2421***, the Hon'ble Apex Court has held that it is the duty of the trial Court to read the plaint, not formally, but on a meaningful way and on such reading, it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should



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exercise its power under Order VII Rule 11 C.P.C., taking care to see that the grounds mentioned therein are fulfilled and if clever drafting has created an illusion of cause of action, nip it in the bud.

15. The Hon'ble Apex Court in ***Smt.Patasibal and others Vs. Ratanlal***, reported in ***JT 1990(3) SC 68***, has held as follows:

“ The trial should not proceed when there is no controversial issue but the trial Court failed to perform its duty and proceeded to issue summons without carefully reading the plaint. Since the plaint suffers from that fatal defect, the mere issuance of summons by the trial court did not require that the trial should proceed even when no triable issue is shown to arise; permitting the continuance of such a suit is tantamount to licensing frivolous and vexatious litigation, which cannot be done. The Supreme Court has also held that it is not necessary to adopt the technical course of directing the trial Court to make the consequential order of rejecting the plaint".(Emphasis added)”

16. In ***M/s Pepsi Foods Limited and another Vs. Special Judicial Magistrate and others***, reported in ***(1997)9 SC 279***, the Hon'ble Supreme Court has held as follows:



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“ Under [Article 227](#) the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure, The power conferred on the High Court under [Articles 226](#) and [227](#) of the constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under [Article 227](#) or Section 482 of the Code it may not always be necessary to invoke the provisions of [Article 226](#). Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

In [Waryam Singh and another vs. Amarnath and another](#) [AIR 1954 SC 215 = 1954 SCR 565] this Court considered the scope of [Article 227](#). It was held that the High Court has not only administrative superintendence over the subordinate courts and tribunals but it has also the power of judicial superintendence.”



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17. As already pointed out, the plaintiff's claim of title over the suit property has already been decided by the trial Court and confirmed by the appellate Court and the same is now pending on the file of this Court. Pending first appeal, the plaintiff has again filed the present suit claiming the very same main relief of declaring his title to the suit property and more importantly on the basis of the alleged oral Hiba claimed by him. As rightly contended by the learned Counsel for the respondents, the plaintiff by adding some averments with regard to the revenue proceedings has laid the suit as if the same is on the basis of the different cause of action. Even though, the provision under Order VII Rule 11 C.P.C., cannot be applied in strict sense, this Court can very well invoke Article 227 of the Constitution of India, if the facts and circumstances warrant so.

18. On considering the entire facts and circumstances, this Court has no hesitation to hold that the plaintiff is guilty of re-litigation and by filing the present suit, has been abusing the process of law. Consequently, this Court concludes that the plaint is liable to be struck off from the file of the Subordinate Court, Thirumangalam, not only in respect of the revision petitioner, but in respect of all the defendants.



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Moreover, this Court is also of the view that since the first respondent/plaintiff is guilty of abusing the process of Court, he must be mulcted with costs.

19. In the result, the Civil Revision Petition is allowed with costs of Rs.10,000/-(Rupees Ten Thousand only) payable by the first respondent/plaintiff to the Legal Services Authority, attached to this Bench, within a period of 15 days from the date of receipt of a copy of this order and the plaint in O.S.NO.109 of 2019 is ordered to be struck off from the file of the said Court. Consequently, the connected Miscellaneous Petition is closed.

20. Post the matter after four weeks for reporting compliances.

15.03.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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1. The Subordinate Court, Thirumangalam, Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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