



C.R.P.(MD).No.2845 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.04.2024

DELIVERED ON: 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.2845 of 2018

and

CMP(MD).No.12336 of 2018

1.Senguttuvan

2.Sibi

3.Cheralathan

4.K.P.Sakthivel

5.N.Tamilmani

6.N.Ilango

7.N.Palkalaiselvan

...Petitioners/Defendants

Vs

Anna

...Respondent/Plaintiff

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.118 of 2016 pending on the file of the Principal District Court, Madurai.



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For Petitioners : Mr.P.Thiyagarajan
for M/s.S.Thiagarajan

For Respondent : Mr.T.Vadivelan

ORDER

The defendants in O.S.No.118 of 2016 on the file of the Principal District Court, Madurai have filed the above revision petition to strike off the plaint on the ground that it is a vexatious litigation.

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

2.One Samivel had filed O.S.No.168 of 2007 on the file of the Principal District Court, Madurai for the relief of partition and separate possession. In the said suit, the plaintiff in the present suit namely Anna was shown as 7th defendant.

3.A perusal of the plaint further indicates that the address of the 7th defendant was shown as Kadambarkovil, Kulithalai. Pending suit, the said plaintiff namely Samivel had passed away on 22.09.2013. The sons of the said Samivel had filed I.A.No.108 of 2013 to get themselves impleaded as legal heirs of the said Samivel.



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4.In the said Interlocutory Application, the Court notice and private notice were sent to the 7th defendant namely Anna. The notices were returned with a postal endorsement that “not claimed returned to sender first time on 23.12.2014.”

5.The 7th defendant namely Anna was set exparte and after hearing the arguments of the first defendant, a detailed order was passed allowing the application on 17.06.2015. The 7th defendant in the suit namely Anna had filed the present suit in O.S.No.118 of 2016 before the same Court namely Principal District Court, Madurai on 11.02.2015 for the following reliefs.

(a)order for the damages of Rs.1,01,000/- for injuring the prestige of the plaintiff.

(b)order for Rs.5000/- for unnecessary mental worry, agony to the plaintiff and disturbing him his natural work.

(c)order for suitable punishment as per law for the illegal acts against law to drag on the plaintiff to the Court and for damage the reputation of plaintiff.



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(d)order for such other reliefs to the plaintiff as this

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Honourable Court may deem fit and property in this case and thus render justice.

6.The relevant portion of the plaint in Paragraph Nos.10 to 14 which is set to be the basis for cause of action in the said suit is extracted as follows:

“10.This suit is filed by the plaintiff to prove his innocence, status and legal right of the plaintiff. When the case was filed against the plaintiff and his father during 1989 before Principal Sub Court, Trichy by 1,2,3 defendants father, the 3rd defendant was main root cause and he instigated and induced his father Samivel to add the plaintiff as a party in his partition suit against law. While serving the notice to the plaintiff the 3rd defendant paid patta after 9 months from the date of filing of Lrs.petition on 13.12.2013 in I.A.108 of 2013 to his house address 110, Trichy main road, Musiri, Trichy District, knowing fully well that the plaintiff is Assistant Professor working in Government Arts College, Musiri that he will go to the college at before 10 a.m and then only returned to house at about 5.30 p.m The notice was returned as party absent. Then the 3rd defendant Advocate N.Tamilmani, Madurai as per order of the Court sent a private notice to the plaintiff which was also not served to the plaintiff due to his absence and returned to the said Advocate. Then the said



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Advocate filed memo on 06.01.2015, “இந்த நீர் மனுவில் சமூகம் நீதிமன்ற உத்தரவுப்படி 7வது எதிர்மனுதாரர்/7ம் பிரதிவாதி private notice அனுப்பப்பட்டு, அதனை 7வது எதிர்மனுதாரர்/7ம் பிரதிவாதி வாங்க மறுத்துவிட்டார் என்பதற்காக **நோட்டீஸ் திரும்ப வந்துள்ள பதிவு தபால்**“**Not claimed returned to sender 1st intimation 23.12.2014**” என்று வந்துள்ளது இத்துடன் இணைத்து தாக்கல் செய்யப்படும் மெமோ.

11.It is pertinent to mention here that Advocate N.Tamilmani wantonly avoided to file the private notice sent to the plaintiff along with his memo filed on 06.01.2015 in I.A.No.108 of 2013 in O.S.No.168 of 2007 before Principal District Court, Madurai. It would also prove his bad intention and motive against the plaintiff. Further the postal authority never gave intimation to the plaintiff as mentioned in the memo. The plaintiff is reserved his right to take action against the postal authority Musiri in the appropriate Forum as per law.

12. This is done wantonly by the 3rd defendant and his Advocate to give a bad picture against the plaintiff in the Court. It is to be noted here again that the plaintiff is a respectable Assistant Professor who is regularly working in the college from 10.00 a.m to 5.00 p.m. This is very well known to 3rd defendant who is also a relative. The Court can very well presume the illegal attitude of 3rd defendant with some motive. **The alleged Lrs.petition was taken on file on 13.12.2013 by Judicial Officer B.Gokuldoss without knowing C.P.C provision, without applying judicial mind.**



Further, the illegal proceedings are going on till now against law, for the appearance of some Respondents for the past more than 1 year at the mercy of another learned Presiding Officer S.Chinnaraj before Principal District Court, Madurai.

13.This suit is filed only to get a proper relief against the defendants for their illegal action and attitude by way of heavy damages and also strict punishment for the defendants. The details of illegalities committed by 3rd defendant, his father and their Advocates and also the legal position in favour of the plaintiff are detailed hereunder. The plaintiff's father have already brought all the illegal action of the defendants to the knowledge of the High Court and the Supreme Court. Finally the plaintiff feels that **Judiciary are indirectly helping the defendants and his Advocates knowing that the suit filed without any material evidence and cause of action. Then now the Lrs.petition also filed without following Hindu Law, Hindu Succession Act Section 8, the C.P.C provisions, without any material evidence, contained with fraud, collusion, misrepresentation and forgery etc.,** The counter-affidavit filed by plaintiff and the written argument adopted by plaintiff which was filed on 26.06.2014 by his father, 1st respondent in I.A.No.108 of 2013 in O.S.No.168 of 2007 before Principal District Court would prove about. They are filed along with the annexure 5 and 6.

14.The cause of action for the suit arose on 13.12.2013 when the Lrs.petition was presented in I.A.No.108 of 2013 in



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O.S.No.168 of 2007 before the Principal District Court Madurai and the notice was sent to the plaintiff and it was returned, then this private notice was sent to the plaintiff it was returned, memo was filed on 06.01.2015 by N.Tamilmani Advocate Madurai in the Principal District Court, Madurai and all the action of returns taken place at Musiri within the jurisdiction of this Honourable Court, where the plaintiff is living at Musiri and also the defendants 1 to 3 addresses found in the Lrs.petition presented in I.A.108 of 2013 as door No.404, Pichandar Kovil Village, Trichy District and 4th defendant address as found in the vakalath attest by him as at Thillainagar, Trichy-18 is also within the jurisdiction of this Honourable Court.”

7.A perusal of the above said plaint would clearly indicate that the said suit has been laid making allegation not only as against the plaintiff in O.S.No.168 of 2007, but also as against their counsels. The main grievance of the plaintiff in the present suit is that having full knowledge about the fact that, he is working as an Assistant Professor in a College, the notice in I.A.No.108 of 2013 was sent to his residential address. Since he was not available between 10.00 a.m to 5.00 p.m, the notices were returned as 'not claimed'. This has caused him great mental agony and had brought bad reputation. On the above said facts, the said suit has been filed and a prayer for damages has been made. The present



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revision petition has been filed to strike off the above said plaint on the ground that it is not only vexatious, but also an abuse of process of Court.

(B) Contention of the parties:

8.The learned counsel for the revision petitioners had contended that though the order in I.A.No.108 of 2013 was passed on 17.06.2015, so far the present plaintiff has not chosen to challenge the same on any one of the grounds that were raised in the present plaint. He had further contended whatever endorsements were reflected in postal returned cover, they were noted down in the memo and the memo came to be filed by concerned Advocate in their professional capacity. He had further contended that notices could be addressed only to the residential address as mentioned in the plaint and not to any other address. It is for the plaintiff to intimate the Court about any change of address. There is no legal grievance whatsoever on the part of the plaintiff for initiating this proceedings either as against the original plaintiff in the suit or their counsels in O.S.No.168 of 2007. It has been filed only to armtwist the plaintiff and their counsels in the said suit. Hence, he prayed to strike off the plaint.



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9.The contesting respondent has been served and he was represented through his counsel. The learned counsel for the respondent had sought time before the Predecessor Judge on 11.03.2024 and before this Court on 03.04.2024 and 08.04.2024, but reported 'no instructions' on 15.04.2024. Suddenly the counsel has withdrawn his vakalath stating that reporting no instruction. This Court has no other way than to hear the learned counsel for the revision petitioner and pass orders on merits.

(C)Discussion:

10.The sum and substance of the grievance expressed by the plaintiff in O.S.No.118 of 2016 is that the notice in I.A.No.108 of 2013 in O.S.No.168 of 2007 should not have been addressed to his residential address. He being an Assistant Professor in a College, the plaintiff very well knows that he would not be available at home between 10.00 a.m to 5.00 p.m. Wantonly the plaintiff in O.S.No.168 of 2007 and their counsel have chosen to send notice to his residential address. This has resulted in returning of the notice with an endorsement as 'not claimed' which has caused great prejudice to his reputation and he has been put to mental agony. Other than this, no other allegation could be culled out from the plaint for filing the present suit.



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11.As rightly pointed out by the learned counsel appearing for the revision petitioner, in I.A.No.108 of 2013 in O.S.No.168 of 2007, he was set exparte and the said L.R application was allowed on 17.06.2015. So far the plaintiff in the present suit has not chosen to challenge the same on the ground that he has been wrongly set exparte or he has not been heard. In the plaint in O.S.No.168 of 2007, only his residential address of the plaintiff in the present suit (7th defendant in O.S.No.168 of 2007) is mentioned. If the plaintiff in the present suit wished to get notice to his office address instead of his residential address, he should have filed a proper application or a memo before the Court to amend his address. Without doing so, he cannot find fault with the plaintiff in O.S.No.168 of 2007 or their counsel for sending notice to his residential address.

12.That apart, sending notice through Court as well as privately to a residential address of a party to the suit cannot be considered to be a motivated one or to cause disrepute to the noticee. In fact, if the plaintiff or their counsel had addressed their notice to his official address, it would have brought more disrepute to him without addressing them to the residential address. Therefore, it is clear that the allegation is clearly vexatious and frivolous in nature. The continuation of the said suit will



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cause great prejudice to the defendants in the present suit. The counsel for the plaintiff in O.S.No.168 of 2007 had filed the memo before the said Court only recording what was reflected in the postal endorsement. Therefore, the allegation as against them are highly frivolous in nature and motivated with an intention to armtwist them from prosecuting O.S.No.168 of 2007.

13.In view of the above said deliberations, this Court has no hesitation to arrive at a conclusion that there is no cause of action for filing the present suit and the averments will reveal that it is highly vexatious and frivolous litigation which should be nipped in the bud. The other allegations made in the present suit have to be adjudicated upon in O.S.No. 168 of 2007.

14.In view of the above said deliberations, the plaint in O.S.No. 118 of 2016 on the file of the Principal District Court, Madurai is struck off from the file. This Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.04.2024

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

11/13



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To

1. The Principal District Judge,
Madurai.
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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