



C.R.P(MD)No.2123 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.10.2024

Pronounced on : 13.11.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.2123 of 2022

and

W.M.P(MD)No.9791 of 2022

1.Vidhyalakshmi

2.N.Rajasekaran

3.Pandiammal

4.Sasikumar

5.Yukdesh Private Limited,
Represented by its Director
N.Rajasekaran,
Door No.4C/4, Round Road,
Dheivasikamanipuram,
Palakrishnapuram,
Dindigul East,
Dindigul.

.... Petitioners /
Defendants 45 to 49

Vs.

1.Nachimuthu

2.P.Sakthivel



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... Respondents 1 to 3/
Plaintiffs

3.S.Periyanayaki

4.Soundirarajan

5.Subba Naidu

6.Muthusamy

7.Jegadeesan

8.Ragupathy

9.Loganathan

10.Muruganantham

11.Ramakrishnan

12.Krishnasamy

13.Palanisamy

14.Soundirarajan

15.Nagarajan

16.Mahendiran

17.Rajammal

18.Venkidusamy

19.Prabakaran

20.Ammaniyammal

21.Saroja

22.Rajkumar



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23.Amruthavarshini

24.Latha

25.Ramasamy

26.Pangajavalli

27.Pappusamy

28.Rajeshwari

29.Rajalakshmi

30.Prabhu

31.Nataraj

32.Kamarunisha

33.Shajakhan

34.Ashik Raja

35.Rabeek

36.Kaja Mohideen

37.Vanaja

38.Manihandan

39.Kurasanthi

40.Sathayanarayanan

41.Murugesan

42.Nachathal



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43.Manohar

44.Anuradha

45.Mariyammal

46.Periyasamy

47.Yuvaraj

... Respondents 4 to 47/
Defendants 1 to 44

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to strike off the plaint in O.S.No.339 of 2022 on the file of Additional District Court, Palani.

For Petitioners : Mr.M.Sricharan Rengarajan
Senior Counsel
for M/s.Veera Associates

For Respondents : Mr.Ajmal Khan
Senior Counsel
for Mr.SR.Suresh Kumar
for R.1 to R.3

Mr.C.Masilamani for R.31

No Appearance for R.4 to R.30, R.32 to R.46

ORDER

O.S.No.339 of 2022 on the file of Additional District Court, Palani was instituted by Nachimuthu, Sakthivel and Periyamayaki against the revision petitioners herein and others seeking the relief of declaration and permanent



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injunction. To strike off the said suit, this Civil Revision Petition has been filed.

2.The learned Senior Counsel for the revision petitioners reiterated all the contentions set out in the impugned memorandum of Civil Revision Petition and contended that the institution of the impugned suit is an abuse of legal process and that it has to be struck off.

3.Per contra, the learned Senior Counsel appearing for the plaintiffs submitted that the revision petitioners if at all ought to file a petition for rejection of plaint under Order 7 Rule 11 of CPC and that invocation of Article 227 of the Constitution of India is not justified. He relied on the decision reported in **(2019)9 SCC 538 (Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others Vs. Tuticorin Educational Society and Others)**. He also submitted that few many factual aspects are involved and that it may not be appropriate to consider them in exercise of jurisdiction under Article 227 of the Constitution of India.

4.I carefully considered the rival contentions and went through the materials on record.



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5.It is not in dispute that the registered settlement deed dated 22.10.1936 was executed by one Rangasami Naidu in favour of his brother Subba Naidu settling the subject suit properties with a direction that profit derived from the properties will be used for carrying out the charitable work of running “Thaneer Panthal”. Upon the demise of Subba Naidu, his male descendants were to continue the trust activities.

6.O.S.No.171 of 1987 was filed before the District Munsif Court, Palani by the legal heirs of Rangasami Naidu's sons against the sons of Subba Naidu. Declaration was sought that the suit properties belong to them along with the relief of permanent injunction. Copy of the judgment dated 28.03.2002 made in O.S.No.171 of 1987 has been enclosed in the typed set of papers. Though the suit was dismissed, certain findings were rendered in favour of the plaintiffs and against the sons of Subba Naidu. It was held that when the suit was instituted, the suit properties were in the plaintiffs' possession. It was also noted that the suit properties had been alienated in favour of the second defendant and defendants 14 to 25. Questioning the said judgment and decree, defendants 4 to 10 filed A.S.No.33 of 2003 before the Sub Court, Palani. Copy of the judgment dated 07.10.2010 passed by the first appellate Court in A.S.No. 33 of 2003 has been enclosed in the typed set of papers. The first appellate



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Court modified the judgment and decree passed by the trial Court. It rendered a finding that Rengasami Naidu had no title to the suit property after executing the settlement deed dated 22.10.1936 in favour of Subba Naidu. It was further found that the release deed dated 27.01.1940 said to have been executed by the Rengasami Naidu and relied upon by the plaintiffs is not genuine. The first appellate Court also held that the trust activities is being continued and the suit properties absolutely vested in the Trust. The sale deeds executed by the plaintiffs in favour of defendants 2 and defendants 14 to 25 during the pendency of the suit were declared invalid. Questioning the judgment and decree passed by the first appellate Court, S.A(MD)No.610 of 2012 was filed by some of the respondents in the First Appeal. This Second Appeal was dismissed as withdrawn on 20.01.2022.

7.In the meanwhile, Trust O.P.No.20 of 2012 was filed under Section 34 of the Trust Act seeking permission to sell the Trust properties. The Principal District Court, Dindigul vide order dated 08.11.2019 granted permission to sell the petition mentioned properties. Based on the said order, the trustees of “Thaneer Panthal” Trust executed sale deed in Document No.511/2020 dated 04.03.2020 in favour of Yuvaraj, S/o.Radhakrishnan, settling the properties comprised in S.Nos.200/2, 200/3, 200/4A1, 200/4A2, 200/4B1, 200/4B2,



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200/4C1, 200/4C2, 200/4C3, 200/4C4, 200/4D, 200/6, 200/7 for valuable consideration of market value of Rs.70,00,000/-. The first petitioner herein has purchased the property vide registered sale deed in Document No.1808/2021 dated 25.08.2021 the properties comprised in S.No.200/4A1, 200/4A2 and 200/4C1. The said Yuvaraj alienated properties comprised in S.No.200/4C2 and 200/4C3 vide sale deed (Document No.1812/2021) dated 25.08.2021 in favour of Pandiammal / third petitioner. Thus, the third petitioner becomes the absolute owner of the property. He also subsequently alienated properties comprised in S.No.200/4C4 in favour of Mr.N.Rajasekaran / second petitioner vide a registered sale deed No.1811/2021 dated 25.08.2021. Mr.Yuvaraj also alienated properties comprised in S.No.200/4B1, 200/4B2 in favour of Mr.Sasikumar / fourth petitioner vide registered sale deed No.1814/2021 dated 25.08.2021. The fifth petitioner M/s.Yukdesh Private Limited purchased properties comprised in Survey No.200/4C2 and 200/4C3 from the third petitioner herein Pandiammal vide a registered sale deed No.839/2022 dated 29.03.2022. Vidhyalakshmi, first petitioner herein executed sale deed in favour of Pandiammal in Document No.840 of 2022 dated 29.03.2022. Subsequently, Pandiammal executed settlement deed vide Document No.1799/2022 dated 07.07.2022 in favour of her husband Sasikumar. Mutation of revenue records have been made based on the aforesaid transactions.



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8.The suit schedule in O.S.No.284 of 2022 on the file of District Court, Dindigul comprised in Survey No.200/4B West Ayakudi Village, Palani Taluk measures an extent of 0.07.40 HAC. Though the plaintiffs have not traced their title, they have enclosed sale deed dated 14.01.2004 executed in favour of the first plaintiff / Chithra as plaint Document No.1. It can be seen therefrom that this sale deed dated 14.01.2004 (Document No.57 2004) was executed by Ms.Rajeshwari, W/o.K.Jeevanathan. Rajeshwari in turn traced her title to sale deed dated 10.07.2002 (Document No.806 of 2002). Rajeshwari is figured as 24th defendant in O.S.No.171 of 1987 and 23rd respondent in A.S.No.33 of 2003.

9.The first plaintiff in the impugned suit herein is Nachimuthu. His vendors are Rajeswari, Rajkumar, Marimuthu and Papusami Kumutham. Nachimuthu subsequently conveyed portions of the suit property in favour of the plaintiffs 2 and 3. The following table traces the title of the plaintiffs:



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Sl.No	Doc No.	Date	Vendor	Rank in the Suit in OS No.171/1987	Purchaser / Rank in OS No. 339/2022
1.	523/2001	31.10.2001	J.Rajeswari	24 th Defendant	Nachimuthu/ 1 st respondent
2.	256/2004	08.02.2004	Rajkumar and Marimuthu	14 th and 15 th Defendant	Nachimuthu/ 1 st respondent
3.	967/2006	22.06.2006	Papusamy Kumutham	23 rd Defendant	Nachimuthu/ 1 st respondent
Kumutham purchased the property from legal heirs of Mohammed Ali, where the Mohammed Ali is the 22 nd Defendant in OS No.171/1987.					
4.	1312/2006	21.06.2006	Nachimuthu/1 st respondent	-----	Sakthivel / 2 nd respondent
5.	966/2006	22.06.2006	Nachimuthu/1 st respondent and five others	-----	Periyanayaki / 3 rd respondent

10.It is beyond dispute that the vendor of the first plaintiff, namely, Rajeswari, who was a party to the earlier suit proceedings (O.S.No.171 of 1987 and A.S.No.33 of 2003) had suffered a decree. Sale deed executed in her favour was held to be invalid. S.A(MD)No.610 of 2012 questioning the judgment and decree passed in A.S.No.33 of 2003 was also dismissed as withdrawn. The suit schedule in the plaint in O.S.No.339 of 2022 comprises



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four schedules. Properties comprised in Schedule A, B and C in the impugned suit form part of the decree in O.S.No.171 of 1987 which has attained finality. As rightly contended by the learned Senior Counsel for the revision petitioners, Schedule D which includes properties comprised in Survey No.146/1 does not concern the revision petitioners herein at all.

11.In these circumstances, the plaintiffs herein cannot be permitted to re-agitate the very same issue. The respondents herein eventually trace their title to the legal heirs of Ramasami Naidu. It had already been declared that Ramasami Naidu lost his title over the suit property after execution of registered settlement deed dated 22.10.1936. The suit schedule property covered in O.S.No.339 of 2022 on the file of Additional District Court, Palani was included in the suit schedule of O.S.No.171 of 1987, A.S.No.33 of 2003. The respondents herein are claiming under a person who was a losing party in the earlier suit proceedings. Permitting the impugned suit proceedings to continue would amount to re-litigation.

12.In ***K.K.Modi Vs K.N.Modi and Others's*** case (1998 (3) SCC 573), re-litigation was held to be an abuse of the process of the Court. Paragraph 44 reads as follows:

“44. 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 re-litigate the



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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.”

In **2013 (1) LW 491 (N.Babu Vs S.Shanmugam & Others)**, it has been held as follows in paragraph 24:

“24. Further, though an alternative remedy is available to the revision petitioner, for striking off the suit under Order 21 Rule 97 of the Code of Civil Procedure, when it is a clear case of re-litigation and abuse of process of Court and when the facts are not controverted and admitted by the plaintiff/first respondent, the Court can exercise the extra ordinary jurisdiction of the Court under Article 227 of the Constitution of India and strike



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off the plaint and as a matter of fact, this Court and Honourable Supreme Court held that the right conferred under Article 227 must be exercised very sparingly and it is also settled law that when the suit is a clear abuse of process, the suit can be struck off by resorting to the provisions of Article 227 of the Constitution of India.”

This position is also strengthened by the decisions reported in **2013 (6) CTC 809 (N.A.Chinnasamy and another Vs. S.Vellingirinathan)** and **1997 (2) LW 761 (Ranipet Municipality Commissioner etc, Vs M.Shamsheerkhan)**.

13.I therefore hold that the filing of the suit amounts to relitigation and an illusory cause of action has been made out by including Schedule D property located in Survey No.146/1. This amounts to abuse of process of the Court; the impugned suit is struck off on the file of the Additional District Court, Palani.

14.This Civil Revision Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.11.2024

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



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To

1. The Sub Registrar – I,
Office of the Sub Registrar,
Palani Circle,
Dindigul District.

2. The Tahsildar,
Office of the Tahsildar,
Palani,
Dindigul District.

3. The District Collector,
Office of the Collectorate,
Dindigul District.

Copy to

1. The Additional District Court,
Palani.

2. The District Munsif Court,
Palani.

3. The Sub Court,
Palani.



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G.R.SWAMINATHAN, J.

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