

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.08.2025

PRONOUNCED ON : 29.08.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.36 of 2019

Ganesan

... Appellant

vs

Manimekalai

...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.29 of 2016, dated 03.10.2018 on the file of the Principal Subordinate Court, Pudukottai, reversing the judgment and decree passed in I.A.No.882 of 2015 in O.S.No.302 of 2013, dated 15.04.2016 on the file of the Principal District Munsif Court, Pudukottai.

For Appellant : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.S.Kumar
For Respondent : Mr.M.Vallinayagam
Senior Counsel
for Mr.J.Anand Kumar

JUDGMENT

The sole defendant is the appellant. The Second Appeal is filed challenging the judgment and decree, dated 03.10.2018 made in A.S.No.29 of 2016 on the file of the Principal Subordinate Court, Pudukottai, reversing the fair and decreetal order, dated 15.04.2016, made in I.A.No.882 of 2015 in O.S.No.302 of 2013 on the file of the District Munsif Court, Pudukottai.

2. For the sake of convenience, the parties are referred to, as per their litigative status before the trial Court.

3. It is the case of the plaintiff that one Muthusamy Servai and Karuppiah Servai, who are the absolute owners of the suit property, had executed two separate registered Wills, dated 26.04.1995, in favour of the plaintiff, bequeathing the suit property. Both of them died on 20.02.2001 and 23.07.2000 respectively. Only in January 2011, the two registered will was handed over to the plaintiff by one Periaiah. Since on 20.11.2013, the defendant with some fabricated documents, denied the rights of the plaintiff and interfered with her possession, she had come up with the suit for declaration and permanent injunction in respect of the suit property.

4. The defendant filed a petition in I.A.No.882 of 2015 under Order VII Rule 11 of CPC, to reject the plaint and also resisted the suit by filing a written statement. The petition has been filed on the ground of *res judicata* and re-litigation. The plaintiff had filed a counter affidavit resisting the said petition.

5. The trial Court considered the petition filed by the defendant under Order VII Rule 11 of CPC and on finding that the plaintiff cannot claim any right from Muthusamy Servai and Karuppiah Servai, since they have lost their title to the suit property to the defendant in a suit, which had reached finality, came to a conclusion that the suit is hit by *res judicata* and as such by fair order and decree, dated 15.04.2016, allowed the petition, thereby, rejected the plaint.

6. On appeal, the lower appellate Court re-appraised the contentions and by relying on the decisions of this Court and also on finding that the plaintiff is entitled to agitate the issues, being a legal representative, as a legatee under the Will in view of Order 22 Rule 10 CPC and on further,

coming to the conclusion that the issue of *res judicata* cannot be decided at the threshold, while considering the petition under Order VII Rule 11 of CPC, had allowed the appeal and set aside the fair order and decree of the trial Court. The appellate Court remanded the matter back to the trial Court to decide the issue on merits, as the issue of *res judicata* can be decided only after trial. Assailing the judgment and decree of the lower appellate Court in reversing the decree of the trial Court, the defendant has preferred the above appeal.

7. The Second Appeal has been admitted on 02.02.2021 on the following substantial questions of law:

“1. Whether the lower Appellate Court was right in concluding that bare on the ground of res judicata cannot form a ground for rejection of the plaint under Order VII Rule 11 of Code of Civil Procedure?”

2. Whether the lower Appellate Court was right in not advertng to the fact that the suit itself would be an abuse of process of Court, as title of the parties have been subject mater of two previous litigations?”

8. Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for the appellant argued that the suit filed by the plaintiff is clearly a re-

litigation and the plaint is to be rejected on the ground of re-litigation. When Muthusamy Servai and Karuppiyah Servai, had lost title to the suit property to the defendant in O.S.No.319 of 1995, which had reached finality, the plaintiff cannot get any right from the said persons based on the Will. At best, the plaintiff could only prove the Will, which will not of any help to claim any right over the suit property.

9. It is the further contention of the learned Senior Counsel that when the plaintiff herself had filed a petition to implead her in the Second Appeal, based on the Will and the same was dismissed as not pressed and the plaintiff having given up her claim, cannot seek to re-litigate the lost right against the defendant. The suit filed is clearly an abuse of process of Court and the Court cannot permit re-litigation wasting the Court's time and the plaint is to be rejected, when it is found as frivolous.

10. The learned Senior Counsel broadly took this Court to the averments contained in the plaint in order to highlight that the suit is only a re-litigation and abuse of process of Court and there is no cause of action for filing of the suit. It is his vehement contention that the title of the

defendant has been declared by the Courts below and had reached finality upto the Hon'ble Supreme Court in the first round of litigation and the title of the defendant again reached finality before this Court in the second round of litigation and the plaintiff, who had approached this Court in the Second Appeal and having not pressed her petition, has now come up with the present suit, which is a third round of litigation and this Court cannot allow the defendant to be frustrated and harassed by the plaintiff by abusing the process of the Court.

11. It is the further contention of the learned Senior Counsel that when the trial Court had rightly rejected the plaint, the lower appellate Court had reversed the decree only on the ground that the issue of *res judicata* has to be decided after trial without taking note of the fact that re-litigation is an abuse of process of the Court and the clauses contained under Order VII Rule 11 CPC to reject the plaint are not exhaustive.

12. In support of his contentions, the learned Senior Counsel relied on the following decisions of this Courts:

(1)V.S.P.Sivan and others vs Balashanmugam and others reported

in (2021) 1 MLJ 688;

(2)C.S.Balakrishnan and others vs T.Amudan Antony (Deceased) and others, reported in 2023 (5) CTC 386; and

(3)K.R.Andu Gowder and others vs Saroja and others, reported in (2024) 2 MLJ 502.

13. *Per contra*, Mr.M.Vallinayagam, learned Senior Counsel for the respondent argued that Section 9 of CPC is wide enough to entertain all suits and the plaint could be rejected under Order VII Rule 11 CPC, only in a rarest case. The *res judicata* may be a good ground for dismissal of the suit but not for rejection of the plaint. The issue of *res judicata* cannot be inferred from the plaint, but it can be gathered only from the evidences and re-litigation is an incident of *res judicata* and therefore, without evidence, the plaint cannot be rejected on this ground. He further contended that the defendant had argued the first appeal only on the ground of *res judicata*, which the appellate Court rightly found that it has to be decided only after trial. It is his further contention that any mistake in procedure will not offend the rights of the parties and the Court shall not curtail the rights, but allow the litigation to be decided on merits. He also further contended that

the cause of action in the present case is completely different, as it is based on the Will, therefore, there is no abuse of process of the Court.

14. It is also contended that in the first round of litigation, neither the plaintiff nor the Muthusamy Servai or Karuppiah Servai, were parties and any decision taken therein will not bind on them and further, in the Second Appeal, since the Will was produced, the issue of legal heir ought to have been determined at the same stage, but the same was not adhered to and in this regard, reliance was made on the decision of the Hon'ble Supreme Court in *Jaladi Suguna (Deceased) through LRs vs Satya Sai Central Trust and others* reported in (2008) 8 SCC 521.

15. The learned Senior also contended that the defendant had filed C.R.P.(MD)No.2734 of 2015 seeking to strike off the plaint and the same was withdrawn on 29.01.2016 and therefore, the petition under Order VII Rule 11 CPC is not maintainable. The petition under Order VII Rule 11 CPC can be filed for any of the clauses contained in Clauses a to d and for any other reasons, only proceedings under Article 227 of Constitution of India is maintainable.

16. It is also the contention of the learned Senior Counsel that when a relief regarding possession is sought and the plaintiff is in possession of the suit property, the plaint cannot be rejected in part, as the issue of possession is to be decided. In this regard, reliance was made on the decision of the Hon'ble Supreme Court in the case of ***Madhav Prasad Aggarwal and another vs Axis Bank Limited and another***, reported in ***(2019) 5 MLJ 544 (SC)***, and contended that the lower appellate Court had rightly allowed the appeal and had remanded the suit for trial and now, evidence of PW-1 is ongoing and therefore, submitted that a time period could be fixed for the disposal of the suit and sought for dismissal of the appeal.

17. I have carefully considered the rival submissions and perused the materials available on record.

18. It is well settled that while considering a petition to reject the plaint under Order VII Rule 11 CPC, only averments in the plaint could be looked into and neither the written statement nor any evidence let in could be considered. The Hon'ble Supreme Court in the case of ***Keshav Sool vs***

Kirti Pradeep Sood and others, reported in ***2023 SCC OnLine SC 2459***, also observed that while considering the petition to reject the plaint, the Court can look into only the averments made in the plaint and at the highest, the documents produced along with the plaint. The defence of the defendant and the documents relied upon by him cannot be looked into at this stage. As such, we would proceed to analyze the averments made in the plaint.

19. The following are the plaint averments:

“(i). The suit property measuring an extent of 5.95 acres in S.No.275 of Rasapatti Village, Kandharvakottai Taluk, Pudukottai District, belonged to one Muthukadamba Ramasamy Servai and after his demise, his three sons, namely, Muthusamy Servai, Karuppiah Servai and Ramasamy Servai inherited the suit property. Ramasamy Servai had gone to Malaysia around 70 years ago and settled there. He died around 30 years ago. Before going to Malaysia, he had orally released his 1/3rd share in the suit property in favour of his two brothers, Muthusamy Servai, Karuppiah Servai. Therefore, Muthusamy Servai, Karuppiah Servai being joint owners, were in possession and enjoyment of the suit property and patta No.806 stood jointly in their

names.

(ii). While so, since the legal heirs of Ramasamy Servai had fraudulently executed a document in favour of one Chellappa Velalar and this defendant also had erroneously claimed right over the suit property, Muthusamy Servai and Karuppiah Servai filed a suit in O.S.No.319 of 1995 on the file of the District Munsif Court, Pudukottai against this defendant, Chellappa Velalar and one Subramanian. The said suit came to be dismissed. The appeal filed in A.S.No.165 of 1999 on the file of the Principal District Court, Pudukottai, also was dismissed. When the appeal filed in S.A. (MD)No.188 of 2001 was pending before this Court, Muthusamy Servai died on 20.02.2001 and Karuppaiah Servai died on 23.07.2000.

(iii). Muthusamy Servai and Karuppiah Servai had separately executed two registered Wills, dated 26.04.1995 in favour of the plaintiff in respect of the suit property. They handed the Will to their sister's son, Periaiah, son of Chinnu of Rasappatti Village. Periaiah

handed over the two registered Wills to the plaintiff in January 2011. Since Muthusamy Servai and Karuppiah Servai died, the Will came into effect and the plaintiff is in possession and enjoyment of the suit property. Only later, when the plaintiff enquired with her husband, she came to know about the above details. As such, she had filed a petition in M.P.(MD). No.2 of 2011 before this Court in S.A.(MD)No. 188 of 2001 seeking to implead herself in the above appeal based on the Will. Since the Will was not proved in any court and the claim cannot be made before this Court based on the Will and since she was advised, she had withdrew the petition filed for impleadment. The Second Appeal was not considered on merits but the same was dismissed as abated. Therefore, the earlier proceedings shall not be a bar under *res judicata* for the present suit. Only since the plaintiff can prove the Will executed by Muthusamy Servai and Karuppiah Servai in the trial court, the plaintiff has filed the present suit.

(iv). The defendant had created documents, as though having purchased the suit property from unconnected person and had colluded with the revenue authorities and had obtained patta by

subdividing the suit property. No right will enure to the defendant based on the documents obtained from unconnected persons and therefore, those documents are void. While the plaintiff was in possession and enjoyment of the suit property, on 20.11.2013, the defendant with his agents denying the rights of the plaintiff, attempted to interfere in her possession, which was thwarted by the plaintiff. The cause of action for filing of the suit arose on 20.11.2013, when the defendant interfered in the possession of the plaintiff. The plaintiff had sought the relief of declaration and permanent injunction in respect of the suit property”. Along with the plaint, 8 documents have been filed by the plaintiff.

20. The meaningful reading and careful consideration of the averments contained in the plaint as a whole, reveals that it is claimed that the suit property belonged to the three sons of Muthukadamba Ramasamy Servai, namely, Muthusamy Servai, Karuppiyah Servai and Ramasamy Servai. It is further claimed that Ramasamy Servai released his 1/3rd share and as such, Muthusamy Servai and Karuppiyah Servai, are the absolute owners of the suit property. The two persons had filed a suit in O.S.No.319

of 1995 against the defendant along with one Subramanian and also Chellappa Velalar, who is the purchaser from the legal heirs of Ramasamy Servai. The said suit came to be dismissed. The appeal filed in A.S.No.165 of 1999 also came to be dismissed. S.A.(MD)No.188 of 2001 also came to be dismissed. Both Muthusamy Servai and Karuppiah Servai, died on 20.02.2001 and 23.07.2000 respectively.

21. Now, when Muthusamy Servai and Karuppiah Servai had lost their claim of title and possession over the suit property to the defendant, which had reached finality, the plaintiff claims right through two registered will executed separately by Muthusamy Servai and Karuppiah Servai, on 26.04.1995 in respect of the suit property. It is also averred in the plaint, that the plaintiff herself had filed a petition in M.P(MD). No.2 of 2011 in S.A.(MD)No.188 of 2001 before this Court seeking to implead but she had withdrawn the same. When the plaintiff got the knowledge of the will, even during the pendency of the Second Appeal and she had herself come before this Court and filed a petition to get impleaded in the Second Appeal and she had voluntarily withdrew the petition giving up her claim, the plaintiff alleges a cause of action that since on 20.11.2013, the defendant interfered

in the possession, it gave raise to a cause for the plaintiff to file the present suit.

22. Even from the averments in the plaint, Muthusamy Servai and Karuppiah Servai had lost their title in the suit property to the defendant and as such mere execution of will in favour of the plaintiff will not give her any right to make a claim in the suit property. At the best, the plaintiff can only prove the execution of the Will, but cannot maintain the present suit relief. As such the alleged cause of action and the relief sought for on the face of it, is a re-litigation, since the issue of title for the suit property admittedly had already been decided in favour of the defendant.

23. Further, along with the plaint 8 documents have been filed and out of which 3 documents are the judgments passed in O.S.No.319 of 1995, dated 13.08.1999, A.S.No.165 of 1999 dated 06.07.2000 and S.A.(MD)No. 188 of 2001, dated 02.04.2013.

24. From document No.4 filed with the plaint, which is the judgment in the suit in O.S.No.319 of 1995, it is seen that the suit filed by Muthusamy

Servai and Karuppiah Servai, against this defendant, Ganesan and two others, came to be dismissed. In the said judgment, the trial Court had referred to Ex-B9 and Ex-B10 marked in the suit, which are the judgment and decree in O.S.No.227 of 1986 filed as against the present defendant, by the third defendant Chellappa Velalar. The said suit came to be dismissed. The appeal filed by Chellappa Velalar in A.S.No.45 of 1993 was dismissed by the appellate Court Court on 28.09.1993 in Ex-B12. The Second Appeal in S.A.No.676 of 1994 was also dismissed on 26.07.1994 in Ex-B15. Further, the S.L.P.No.6639 of 1995 filed before the Hon'ble Supreme Court also came to be dismissed on 27.03.1995 in Ex-B16. Further, the Court had observed that from the vakalat filed in Ex-B11, it is noticed that the Counsel, who appeared for Chellappa Velalar, is the Counsel on record for Muthusamy Servai and Karuppiah Servai. After recording such finding, the trial Court dismissed the suit holding that the defendant herein, is in enjoyment of the suit property under title. As such, the title and possession of the defendant stood proved and decreed.

25. From document No.5 filed with the plaint, which is the judgment, dated 06.07.2000, in A.S.No.165 of 1999, it is seen that the first appellate

Court had rendered a finding that Muthusamy Servai and Karupppiah Servai are not having any right and also are not in enjoyment of the suit property and on the contrary, the defendant herein has got title and possession of the suit property.

26. From document No.6 filed with the plaint, which is the judgment, dated 02.04.2013 passed in S.A.(MD)No.188 of 2001, several aspects including the conduct of the parties come to light. For better appreciation, the short extract of the said judgment is re-produced hereunder:

“The learned counsel for the petitioner in M.P.No.2 of 2011 fairly stated that he has filed this application only on the basis of a Will but the Will has not been so far put to test in any Court of law, therefore, the present application at this juncture is not sustainable.

2.As far as the main Second Appeal is concerned, both the appellants are died, one of the appellants died one week prior to the filing of the Second Appeal. Therefore, the power of attorney lost his right on the death of the appellants way back in the year 2000. Therefore, the appeal as such cannot be maintainable and regarding the Will, which is now claimed by one of the power of attorney, has not been brought to the notice of the Court till the year 2012, therefore that application has not been entertained, nothing survives in this appeal.

3.The earlier litigation as against the vendor of the parties has decided the party's rights. In M.P.No.2 of 2011, the party has made an endorsement that she has not-pressed the application that is also recorded.

4.In M.P.No.1 of 2011, the affidavit has bene filed by the

attorney holder and the same was signed after 10 years of death of the appellants and this was questioned by the other side and he has filed an affidavit now into Court stated that by mistake, he has given blank papers which was filled by the Advocate and he has retired from Government service, he is seriously ill, he is unable to walk he came to Court with very great difficult and pleads he is ignorant. He had no intention to heat anyone. It was only a mistake and has filed the affidavit seeking to condone the mistake if any in filing this petition. The affidavit filed by the party will be part and parcel of this record. Hence, the present affidavit is recorded and the petition is closed. Hence, the Second Appeal is also abated, original application died more than 10 years ago, the power of attorney has no right to proceed the appeal. Hence, this second appeal is dismissed. Consequently, connected miscellaneous petitions are dismissed.”

27. The perusal of the above judgment reveals that the plaintiff herein filed M.P.(MD)No.2 of 2011, seeking her to implead in the appeal but had not pressed the petition, which has been recorded and dismissed. Further, it is to be noted that the Second Appeal was contested by Muthusamy Servai and Karuppiah Servai represented by their power agent, Nallakannu Mantrayar, who is none other than the husband of the plaintiff. This Court noticed that Muthusamy Servai died on 20.02.2001 and Karuppaiah Servai died on 23.07.2000, that is even one week prior to the filing of the Second Appeal. When the power of attorney got lapsed in the year 2000 and 2001 itself, still the plaintiff's husband had filed an affidavit in M.P.(MD)No.1 of

2011 that is after ten years from the date of death of principals, for which the plaintiff's husband pleaded ignorance and had filed an affidavit admitting his mistake and this Court had recorded the conduct of the party and had dismissed the appeal as abated. Neither the plaintiff nor the plaintiff's husband choose to agitate further by filing any appeal.

28. The plaintiff admittedly having come forward with an application in M.P.(MD)No.2 of 2011 seeking to implead herself as a party, based on the will, ought to have contested that application. As per Order 22 Rule 5 CPC, the Court shall determine the claim made in respect of the legal representative. If the plaintiff had pursued with the petition, then this court would have directed the trial court to try the question and on return of the findings the second appeal could have been decided. But, the plaintiff consciously did not proceed with the claim filed by her and for the reasons best known, had not pressed the petition, which has been recorded and dismissed. Therefore, the suit initiated by Muthusamy Servai and Karuppiah Servai claiming title and possession over the suit property, as against the defendant had reached finality in the Second Appeal and when the plaintiff, who ought to have pursued the issue, if at all she had any right,

had voluntarily given up such right by withdrawing the petition, it is now not open to the plaintiff to re-litigate to contested issue.

29. As far as the vehement contentions of the learned Senior Counsel for the respondent, there is no quarrel to the proposition that *res judicata* is not a ground to reject the plaint under Order VII Rule 11 CPC. It is true that the issue of *res judicata* can be decided only after letting in evidence, as the earlier pleadings and issues raised and the decision rendered are ought to be looked into for arriving at a conclusion, as to whether the decision in earlier suit would be a bar for the subsequent suit.

30. However, it has been held by the Hon'ble Supreme Court that re-litigation is an abuse of process of Court and the parties cannot be allowed to re-litigate by wasting the time of the Courts and any such attempt should be nipped in the bud. In this regard, it is useful to refer to the decision of the Hon'ble Supreme Court in the case of ***T.Arivanandam vs T.V.Satyapal and another***, reported in ***(1997) 4 SCC 467***. The relevant portion is extracted hereunder:

“5. We have not the slightest hesitation in condemning the

petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good.”

6. The trial court in this case will remind itself of Section 35-A CPC and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned.”

31. Again, in the case of ***K.K.Modi vs K.N.Modi and others***, reported in ***(1998) 3 SCC 573***, the Hon'ble Supreme Court held that re-litigation is an abuse of process of Court. It is contrary to justice and public policy for a party to re-litigate the issue, which has already been tried and decided earlier against him. Frivolous and vexatious proceedings also amount to

abuse of process of Court. The Court has power to stop such proceeding summarily and the plaint could be struck off, when it is frivolous and vexatious. The relevant portion of the said decision is extracted hereunder:

“44. One of the examples cited 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 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.

45. In the case of Greenhalgh v. Mallard [(1947) 2 All ER 255] 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 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.”

32. Further, in the case of ***K.Akbar Ali vs K.Umar Khan and others***,

reported in **(2021) 14 SCC 51**, the Hon'ble Supreme Court held that where on the face of averments in the plaint, the claim in a suit is based on any document, which was an agreement through power of attorney, the Court is not debarred from looking into the power of attorney. It is open the Court to read the terms of the power along with the plaint in the same manner as documents appended in the plaint, which forms part of the plaint. It is further held that clever drafting creating illusory cause of action are not permitted and the provisions of Order VII Rule 11 CPC are not exhaustive and the Court has inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court. Relevant portion of the said decision is extracted hereunder:

“5.It is well settled that while considering an application under Order 7 Rule 11CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application under Order 7 Rule 11CPC, the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.

6.In this case, the petitioner-plaintiff has, as stated above, asserted that the power of attorney was given to Mr Zahir Ali to maintain and administer the suit property. There is no assertion in the plaint that the power of attorney authorised Mr Zahir Ali to execute any pre-emption agreement.

7. In any case, an application under Order 7 Rule 11CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal,

(1998) 2 SCC 70 : AIR 1998 SC 634] , clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order 7 Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

8. In this case, a meaningful reading of the plaint as a whole makes it abundantly clear that the relief claimed in the suit is barred in view of the restricted scope of the power of attorney given by the first defendant to Mr Zahir Ali.

9. Where on the face of the averments in the plaint, the claim in a suit is based on an agreement executed through a power of attorney-holder, the Court is not debarred from looking into the power of attorney. It is open to the Court to read the terms of the power of attorney along with the plaint in the same manner as documents appended to the plaint, which form part of the plaint. ”

33. In view of the above referred decisions, frivolous or vexatious litigations cannot be allowed to continue, which consume the time of the Court and clever drafting creating illusory cause of action cannot be permitted. Re-litigation is an abuse of process of Court and frivolous litigation has to be nipped in the bud.

34. As such the meaningful reading of the plaint as a whole and the three documents filed along with the plaint, makes it clear that the instant case is re-litigation and is an abuse of process of Court. As referred above,

the title and possession of the defendant in respect of the suit property has been declared, which reached finality till the Hon'ble Supreme Court in the first round of litigation. In the second round of litigation, the suit filed by Muthusamy Servai and Karupppiah Servai by the same Counsel on record in the first round of litigation, came to be dismissed, whereby again the title and possession of the defendant came to be decided which reached finality in second appeal. Further there is a clear finding rejecting the title and possession of Muthusamy Servai and Karupppiah Servai, deciding the title of the defendant and his possession over the suit property.

35. It is also to be noted that the plaintiff's husband went to the extent of filing a Second Appeal after death of Karupppiah Servai and also filed affidavit before this Court after 10 years from the date of death of both Muthusamy Servai and Karupppiah Servai, when the power of attorney got terminated ten years before. The conduct of the plaintiff's husband was deprecated by this Court and the plaintiff's husband pleaded ignorance and admitted the mistake by filing an affidavit.

36. While so, as referred earlier, the plaintiff came out with a Will of

the year 1995 and sought to implead in the appeal by filing an impleading petition in M.P.(MD)No.2 of 2011. On realizing the precarious situation, the plaintiff had not pressed the miscellaneous petition and had given up her claim. Thus, the entire claim made by Muthusamy Servai and Karuppiah Servai reached finality in the Second Appeal in the second round of litigation, where, the plaintiff also participated by filing a petition and the title and possession of the defendant decided, reached finality.

37. When the plaintiff was never in possession, by illusory cause of action and clever drafting averring that the defendant interfered in possession in the year 2013, the plaintiff had come up with the present suit, which is the third round of litigation. When Muthusamy Servai and Karuppiah Servai had lost their right and title in the suit property against the defendant, the claim made by the plaintiff based on the Will is an abuse of process of the Court, which is only a re-litigation. The plaintiff having voluntarily withdrawn her petition in the Second Appeal and allowed the judgment and decree of the Courts to reach finality, cannot be allowed to ignore the same and come up with a fresh claim for the same suit property.

38. As such, the arguments of the learned Senior Counsel for the respondent that the plaintiff can maintain the relief of possession and the plaint cannot be partially rejected is without any basis. Further, in so far as the arguments that the defendant had earlier filed a Civil Revision Petition and withdrew the same, the perusal of the orders furnished reveals that only since the defendant had filed a petition under Order VII Rule 11 CPC, they have sought permission to withdraw the CRP to agitate the petition to reject the plaint and as such, the same will not be an impediment for the defendant in maintaining the petition to reject the plaint. The decisions relied on by the respondent are not relevant to the facts and circumstances of the present case.

39. The lower appellate Court had allowed the appeal and reversed the decree of the trial Court only on coming to the conclusion that the issue of *res judicata* can be decided only after trial. The first appellate Court had failed to consider the issue of re-litigation, in view of the settled legal position. As such, the finding of the lower appellate Court is perverse, as the issue regarding re-litigation has not been considered.

40. In view of the above findings, the substantial questions of law are answered in favour of the appellant and against the respondent.

41. Accordingly, the Second Appeal stands allowed with costs. The judgment and decree of the first appellate Court, in A.S.No.29 of 2016, dated 03.10.2018 is set aside and the plaint in O.S.No.302 of 2013 on the file of the District Munsif Court, Pudukottai, stands rejected.

29.08.2025

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

cmr

To

- 1.The Principal Subordinate Judge, Pudukottai.
- 2.The Principal District Munsif, Pudukottai.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

S.A.(MD)No.36 of 2019

G.ARUL MURUGAN, J.

cmr

Judgment made in
S.A.(MD)No.36 of 2019

29.08.2025