
(2014) 07 MAD CK 0016

In the Madras High Court

Case No : C.R.P.(PD) (MD) No. 1974 of 2013 and M.P.(MD) Nos. 2 & 3 of 2013

Sai Siva @ Sivasubramanian

APPELLANT

Vs

C.M. Chellapandi

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : (2014) 3 MadWN(Civil) 742

Hon'ble Judges : T. Mathivanan, J.

Bench : Single Bench

Advocate : Mr. G. Prabhu Rajadurai, Advocate, for the Petitioners; Mr. S.R. Rajagopal for Mr. K. Kevinkaran, Advocates, for the Respondents No. 1; Mr. D. Muruganandham, A.G.P, for the Respondents No. 2

Final Decision : Disposed Off

Judgement

T. Mathivanan, J.—Seeking the relief of striking off the plaint in O.S. No.237 of 2013, on the file of the learned District Munsif, Uthamapalayam, this memorandum of civil revision petition is filed, after invoking the provisions of Article 227 of the Constitution of India, by the revision petitioner.

2. The revision petitioner herein is the stranger to the suit in O.S. No.237 of 2013, on the file of the learned District Munsif, Uthamapalayam, which has been filed by the first respondent/plaintiff herein, as against the second respondent/defendant, seeking the relief of bare injunction restraining him from disturbing the first respondent/plaintiff's Cable TV operation business.

3. This suit is pending trial. Along with the suit, the first respondent/plaintiff has also taken out an interlocutory application in I.A. No.678 of 2013, under Order XXXIX Rule 1 of the Civil Procedure Code, seeking the relief of ad interim injunction against the second respondent/defendant and he has also obtained the order of interim injunction.

4. On coming to know about the granting of interim injunction against the second respondent/defendant, the revision petitioner/stranger to the suit has filed an

interlocutory application in I.A. No.730 of 2013, under Order I Rule 10(2) of the Civil Procedure Code, to implead him as a proposed second defendant in the suit. It appears that the said interlocutory application is still pending.

5. In the meanwhile, the revision petitioner/proposed second defendant has approached this Court with this memorandum of civil revision petition, under Article 227 of the Constitution of India to strike off the plaint in O.S. No.237 of 2013, on the ground that the relief sought for in the suit in O.S. No.237 of 2013 is a sheer abuse of process of law without impleading him as a necessary party to the suit and according to him on account of the order of ad interim injunction granted as against the second respondent/defendant herein, he is the person going to be affected and incurred severe damage and loss.

6. It is revealed from the records that the second respondent/defendant Inspector of Police attached to Uthamapalayam Police Station has been served with private notice as early as on 12.03.2013. However, he has not chosen to appear either in person or through his counsel.

7. Heard Mr. G. Prabhu Rajadurai, learned counsel appearing for the revision petitioner/proposed second defendant as well as Mr. S.R. Rajagopal, learned counsel appearing for Mr. K. Kevinkaran, learned counsel appearing for the first respondent/plaintiff and also perused the materials available on record.

8. According to Mr. G. Prabhu Rajadurai, the relief sought for in the suit in O.S. No.237 of 2013, without impleading the revision petitioner, is a gross abuse of process of law and that he is the person, who is going to be affected by the order of ad interim injunction granted in favour of the first respondent/plaintiff by the Trial Court.

9. It may be significant to note here that the revision petitioner/proposed second defendant has also filed an interlocutory application in I.A. No.730 of 2013, on the file of the Trial Court, under Order I Rule 10(2) C.P.C., to implead him as the proposed second defendant and that interlocutory application is still pending. The prime question arises for the consideration of this Court is as to whether this memorandum of civil revision petition can be maintained by the revision petitioner/proposed second defendant, under Article 227 of the Constitution of India, which is filed to strike off the plaint in the suit and another question also arises as to whether the non-impleadment of the revision petitioner/proposed second defendant in the suit can be construed as a sheer abuse of process of law.

10. In this connection, this Court would like to point out that the power of superintendence, under Article 227 of the Constitution of India, is very wide and discretionary in nature. It is well settled that the power of superintendence conferred on the High Court, under Article 227 of the Constitution of India, is administrative as well as judicial and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacle thereon.

11. The supervisory jurisdiction, as envisaged under Article 227 of the Constitution of India, is exercised for keeping the subordinate Courts within the bounds of their jurisdiction namely, when the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available has been exercised in a manner which is not permissible by law and a grave failure of justice has occasioned. This principle is laid down in *Surya Dev Rai v. Ram Chande Rai*, reported in AIR 2003 SC 3044 : 2003 (6) SCC 675.

12. It is more relevant to mention here that the process of Court must be used bona fide and properly and must not be misused or abused. It is the duty of the Court to prevent improper use of its machinery. The Court has to see that it is not used as a means of oppression and the process of litigation is free from vexatiousness. The categories of conduct rendering a claim frivolous, vexatious, or an abuse of process would depend upon the relevant circumstances. But, it has to be judged from the angle of interest of justice and public policy. This principle is laid down in *Seenilal @ Sundarammal v. Ramaswamy Poosari*, reported in (2000) 3 CTC 74 : (2000) 3 Mad LJ 273.

13. On coming to the instant case on hand, the first respondent/plaintiff has claimed in his suit that he has been running a Cable TV Operation business under the name and style of "Mugil Chat Vision", at Santhai Pudu Street, Chinnamanur Town, Uthamapalayam Taluk and he has been licensed for running the said business as a Local Cable Operator (LCO) from 15.06.2013 to 14.06.2014. So far, he has given 300 Cable TV connections in his locality as per the rules and regulations of TRAI.

14. Since the Government of Tamil Nadu has started a Cable TV Corporation under the name and style of Arasu Cable TV Corporation in the year 2007, the first respondent/plaintiff has registered his Cable TV Operation business with the Arasu Cable TV Corporation and obtained channels from Multi System Operator (MSO), which is functioning under Arasu Cable TV Corporation. On the basis of the above procedures, he has registered his Cable TV Operation with Arasu Cable TV Corporation and receiving channels from Akash Cables, who is an MSO and telecasting the programs to his customers. Under this circumstance, the second respondent/defendant being the Inspector of Police, in the month of June, 2013 had begun to interfere with the Cable TV Operation business and also caused so many unbearable disturbances and therefore he was constrained to file the above suit as against the second respondent/defendant seeking the relief afore-stated.

15. Mr. G. Prabhu Rajadurai has argued that the revision petitioner/proposed second defendant had filed a suit in O.S. No.58 of 2011, on the file of the learned District Munsif, Uthamapalayam, as against Akash Cables, from whom the first respondent/plaintiff is said to have been receiving channels and acting as an LCO. He has also added that the revision petitioner/proposed second defendant had filed an interlocutory application in I.A. No.132 of 2011, seeking the relief of ad interim injunction and the learned District Munsif had also granted an order of

interim injunction as against Akash Cables from disturbing his business and the said order would be binding upon the first respondent/plaintiff, being the person claimed to be an LCO from Akash Cables.

16. Mr. G. Prabhu Rajadurai has also adverted to that since the revision petitioner/proposed second defendant had already filed a suit in O.S. No.58 of 2011, as against Akash Cables, from whom the first respondent/plaintiff has been receiving channels and performing as LCO, the first respondent/plaintiff had wantonly and deliberately failed to implead him as a necessary party in the suit in O.S. No.237 of 2013, which has been filed by him as against the second respondent/defendant seeking the relief of bare injunction.

17. During the course of his arguments, Mr. G. Prabhu Rajadurai, has also brought to the notice of this Court that the first respondent/plaintiff along with others had also filed another suit in O.S. No.166 of 2011, seeking the relief of bare injunction, as against the revision petitioner/proposed second defendant, on the very same cause of action and the suit was dismissed for non-prosecution.

18. He has also pointed out that the cause of action for the suit in O.S. No.166 of 2011 as well as for the present suit in O.S. No.237 of 2013 are one and the same and therefore the present suit has been barred under Order II Rule 2 of the Civil Procedure Code. Further, he has canvassed that the provisions of Order VII Rule 11 C.P.C., as well as the provisions of Article 227 of the Constitution of India need not be confused with reference to the terms "rejection of plaint" and "striking off plaint".

19. He has also indicated that the first respondent/plaintiff had filed a writ petition in W.P. No.10064 of 2013 along with five others, on the file of the Principal Seat of this Court and in that writ petition the revision petitioner/proposed second defendant was impleaded as the seventh respondent and besides this he has also added that the revision petitioner/proposed defendant had filed three writ petitions viz., W.P.(MD) Nos.1805, 2902 and 2178 of 2012, on the file of this Court, as against several persons including the first respondent/plaintiff. However, the pendency of writ petitions in W.P. No.10064 of 2013 and W.P.(MD) Nos.1805, 2902 and 2178 of 2012 have not been referred to in the present suit in O.S. No.237 of 2013 and therefore Mr. G. Prabhu Rajadurai has submitted that the present suit is absolutely a sheer abuse of process of Court as it did not have any reference with regard to the pendency of the above said writ petitions.

20. Apart from this, the learned Single Judge of this Court, on 10.04.2013, has passed an order in the above said W.P.(MD) Nos.1805, 2902 and 2178 of 2012 and particularly in W.P.(MD) No.2178 of 2012 that the second respondent/defendant, who is the Inspector of Police, attached to Chinnamanoor Police Station, was directed to inspect the premises bearing Door No.328/A, Seepalakottai Road, Chinnamanoor, Theni District and to report as to whether there was any MSO functioning in the said premises and in pursuant to the

direction of the Court, the second respondent/defendant was also present in the Court through the learned Additional Government Pleader and reported that no such MSO was functioning at Door No.328/A, Seepalakottai Road, Chinnamanoor, Theni District.

21. It is also apparent that in W.P.(MD) No.1805 of 2012, the revision petitioner/proposed second defendant had filed a miscellaneous petition in M.P. No.1 of 2012 and thereby sought the relief of an order of injunction restraining the respondents 4 to 14 therein, which includes the first respondent/plaintiff, who was said to have been running the illegal control Room at 1st floor at D.No.328/A, Seepalakottai Road, Chinnamanoor from pirating the pay channels.

22. Mr. G. Prabhu Rajadurai, while advancing his arguments, has also drawn the attention of this Court to Paragraph No.6 of the plaint in the suit in O.S. No.237 of 2013, with reference to the conduct of the second respondent/defendant and besides this he has also drawn the attention of this Court to the last three lines of Paragraph No.5 of the plaint, wherein, the first respondent/plaintiff has stated that he has been broadcasting the programmes to his customers after receiving channels directly from the satellite.

23. In this connection, Mr. G. Prabhu Rajadurai has submitted that the conduct of the first respondent/plaintiff would go to show that he had committed an offence of piracy and that the suit in O.S. No.237 of 2013 could not be maintained as against the second respondent/defendant being the Inspector of Police attached to Chinnamanoor Police Station who is representing the State.

24. In this connection, he has made reference to Section 41 of the Specific Relief Act, 1963. Clauses (a) & (d) to Section 41 contemplates that:

"41.Injunction when refused.-An injunction cannot be granted-

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a criminal matter."

Therefore, he has added that since the first respondent/plaintiff had been running the Cable TV Operation business unauthorisedly and unlawfully and since he had committed the offence of piracy, in order to prevent the second respondent/defendant from prosecuting or registering any case against him or from prosecuting him, the present suit has been filed by way of threat, which could not be allowed to exist and apart from this he has also indicated that as envisaged under Rule 5A to Order XXVII of the Civil Procedure Code, the Government to be joined as a party in a suit against a public officer.

25. He has also argued that since the second respondent/defendant Inspector of Police, being a Public Officer, against whom a suit is instituted for damages or

other relief in respect of any act alleged to have been done by him in his official capacity, the Government must be joined as a party to the suit and he has also pointed out that in case of a suit by or against the State Government, notice under Section 80 C.P.C., is absolutely inevitable and if at all if there is any urgency to obtain an immediate relief, as against the Government, the suit shall be instituted with the leave of the Court permitting the plaintiff to dispense with the notice under Section 80 C.P.C., as envisaged under Section 80(2) C.P.C, but, none of the procedures have been followed by the first respondent/plaintiff and therefore he has urged to strike off the plaint..

26. With reference to the non-issuance of notice, under Section 80(1) C.P.C., it is for the Trial Court to look into the matter and besides this, the competent person, to raise the question with regard to the non-issuance of notice, is the second respondent/defendant, who is the public officer, against whom the suit is filed and apart from this, it is the matter between the first respondent/plaintiff and the second respondent/defendant and the revision petitioner, being a third party to the suit, is not having any competency to raise such question. In this connection, several judicial pronouncements are available.

27. Mr. G. Prabhu Rajadurai, in support of his contentions, has placed reliance upon the following decisions:

(i). M. Sundaram alias Vettukati Sundaram v. R. Thangasamy Nadar, reported in 1998 (2) MLJ 3;

(ii). Maria Soosai v. Esakkiammal, reported in 1999 (1) MLJ 119;

(iii). Moderator, Church of South India, C.S.I. Centre, Chennai v. J.S.K.Kingsley, reported in 1999 (2) MLJ 277;

(iv). T.N. Handloom Weavers Co-op Society v. S.R.Ejaz, reported in (2009) 8 MLJ 991;

(v). Tamil Nadu Housing Board v. Master Crafts, reported in 2011 (3) CTC 650; and

(vi). Swaminathan v. Srinivasagam, reported in (2003) 3 MLJ 566.

28. In the decision first cited supra i.e., M.Sundaram alias Vettukati Sundaram's case, the learned Single Judge of this Court, with reference to Order VI Rule 16 C.P.C., has observed that it may be noted that Order VI Rule 16 of the Civil Procedure Code was amended under the Act 104 of 1976 where the power is given to Court at any stage of the suit to strike of the plaint, "which is otherwise an abuse of process of law". Apart from this, under inherent powers, under Section 151 of the Civil Procedure Code, the court is given the power to strike of the plaint if it comes to the conclusion that there is an abuse of process of law. On a reading of the plaint, the court feels that the respondent has come to this Court only to re-agitate the matter which has already been concluded and which is admitted in the plaint. The Court finds that this is a fit case wherein the power

under Section 151, Order VI Rule 16 and Order VII Rule 11 of the Civil Procedure Code read with Article 227 of the Constitution of India will have to be invoked.

29. In the decision second cited supra i.e., Maria Soosai's case, an earlier litigation between the same parties was confirmed by the Supreme Court and therefore the plaint filed was allowed to be a fraudulent one. In this connection, a question was arisen for the consideration of the learned single Judge of this Court was as to whether filing of the present suit an abuse of process of Court. It was observed that in the earlier case, the title of the petitioners was found to be absolute once they had prescribed title by way of adverse possession. So, whether there was any forgery of documents was not relevant to be considered at all. When the petitioners were allowed to recover possession on basis of title, present suit filed by the respondent, nothing but an abuse of process of court.

30. In the decision third cited supra viz., Moderator, Church of South India, C.S.I. Centre, Chennai, a suit was filed by the Bishop (second respondent) challenging the resolution of Synod Committee, asking Bishop to go on leave for six months. That suit was withdrawn by the second respondent, on his failure to get interim order of injunction. The suit in the above cited decision was filed on the same cause of action for the same relief by the first respondent at the instance of the second respondent. Under this circumstance, a question arose as to whether the suit was abuse of process of Court. In this regard, it has been held by the learned Single Judge of this Court that the real plaintiff in the suit is the second respondent. The first respondent instigated by the second respondent and filed the present suit. The action is not bona fide but an abuse of the process of Court and that the Court has inherent jurisdiction under Section 151 C.P.C., and Article 227 of the Constitution of India to prevent abuse of process of Court and therefore the plaint was struck off the file.

31. In the decision fourth cited supra viz., T.N. Handloom Weavers Co-op Society's case, it has been held that as contemplated under Section 11 of the Civil Procedure Code, subsequent suit is clearly abuse of process of law.

32. In the decision fourth cited supra viz., Tamil Nadu Housing Board's case, it has been observed by this Court that the Courts should not be used to entertain vexatious suits.

33. In the decision fifth cited supra viz., Swaminathan s case, a suit was filed for declaration that the decree in the earlier suit with respect to the same promissory note is null and void. The earlier suit filed for recovery of money on the same promissory note proceeding culminating before the High Court in Second Appal. In this regard, the learned Single Judge of this Court has observed that there has been a chequered career of litigation and the only intention of the petitioner is to deprive the respondent from enjoying the fruits of the earlier decree. The suit itself barred by res judicata.

34. On the other hand, Mr. S.R. Rajagopal, learned counsel appearing for Mr. K. Kevinkaran, learned counsel on record for the first respondent/plaintiff has

argued that the revision petitioner/proposed second defendant has no locus standi to maintain the revision petition. He has also pointed out that the impleading petition viz., I.A. No.730 of 2013 is still pending and he has also argued that the revision petitioner/proposed second defendant has no locus standi to maintain the revision petition as the suit is pending till date.

35. He has also drawn the attention of this Court to the docket order dated 25.10.2013, from where it is revealed that the interlocutory application in I.A. No.730 of 2013 is still pending for want of counter statement. He has also drawn the attention of this Court, during the course of his argument, to the counter statement filed by the second respondent/second defendant Inspector of Police in I.A. No.678 of 2013, under Order XXXIX Rule 1 of the Civil Procedure Code. In his counter statement, in Paragraph No.7, Clauses (a), (b) and (e) are very relevant.

36. In Clause (a), the second respondent/Inspector of Police has indicated the pendency of the suit in O.S. No.58 of 2011 filed by the revision petitioner/proposed second defendant as against one Akash Cables from whom the first respondent/plaintiff is said to have acted as LCO. In clause (b), the pendency of the suit in O.S. No.166 of 2011, which seems to have been filed by the first respondent/plaintiff, has been referred to and in that suit the revision petitioner/proposed second defendant has also been impleaded. That suit was dismissed for default. In clause (e), contempt petition in Contempt O.P. Nos.495, 520 of 2013 and 755 of 2012 have been referred to.

37. In this connection, the learned counsel appearing for the first respondent/plaintiff has submitted that the contention of the revision petitioner/proposed second defendant that the earlier litigation between the parties have not been referred to in the plaint is absolutely wrong and the pendency of all the proceedings have been completely referred to and therefore he has submitted that the plaint in O.S. No.237 of 2013 is not an abuse of process of Court and therefore the revision petition, under Article 227 of the Constitution of India, ought to be dismissed.

38. This Court has given it's due consideration to the submissions made on behalf of both sides. It is to be pointed out that the interlocutory application in I.A. No.730 of 2013, which is filed by the revision petitioner/proposed second defendant is still pending, on the file of the learned District Munsif, Uthamapalayam, seeking the relief of impleading himself as one of the defendants in the suit.

39. Keeping in view of the above facts, this Court finds that no grounds are available to strike off the plaint in O.S. No.237 of 2013 as the revision petitioner/proposed second defendant himself has filed the above interlocutory application in I.A. No.730 of 2013, under Order I Rule 10(2) of the Civil Procedure Code, to implead himself in the suit and therefore if the revision petitioner/proposed second defendant is prejudiced in any manner by the filing of O.S. No.237 of

2013, he can very well agitate before the Trial Court, after getting himself impleaded as one of the defendants.

40. Under this circumstance, the supervisory power of this Court cannot be sought to be misused under the guise of stretching this Court's hands over the subordinate judiciary.

41. In the result, this memorandum of civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.