

(2000) 06 MAD CK 0029

In the Madras High Court

Case No : C.R.P.No.2692 of 1999 and C.M.P.Nos.15350 to 15352 of 1999

Seeni alias Sundarammal

APPELLANT

Vs

Ramasamy Poosari and 2 others

RESPONDENT

Date of Decision : 30-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2000) 3 CTC 74 : (2001) 1 LW 202

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : Mr. P. Peppin Fernando, for the Appellant; Mr. M. Dhandapani, Government Advocate, for the Respondent

Judgement

1. I am satisfied that this is eminently a fit case, where the jurisdiction under Article 227 has to be exercised to quash the order passed by the lower court.

2. The present CRP under Article 227 is to quash the order passed by the District Munsif, Virudhunagar, in O.S.No.254 of 1999 on 20.8.99. The facts of this case can be better appreciated reference is made to the various proceedings.

3. The first respondent herein Ramasamy Poosari, S/o.Ramasamy alias Ramaiya Poosari, Irukkankudi Village, Sattur Taluk, filed a suit in

O.S.No.49 of 1998, on the file of the District Munsif's Court, Sattur. In that suit, he impleaded 11 persons as defendants. The first defendant in

that suit viz., Seem alias Sundarammal is the petitioner herein. The said suit in O.S.No.49 of 1998 was filed by the plaintiff for a declaration that the

plaintiff is entitled to the office of trusteeship of Arulmighu Mariamman Koil,

Irrukangudi and for a consequential order to set aside the decree passed in O.S.No.188 of 1993. In the said suit, the 1st respondent herein filed an application as obtained interim injunction. The petitioner herein filed an application in I.A.No.218 of 1998 to vacate the order of interim injunction granted. The petition was allowed and the interim injunction granted in O.S.No.49 of 1998 in favour of the plaintiff there viz., the first respondents herein was vacated. The suit in O.S.No.188 of 1993 was filed by the petitioner herein for a declaration that she succeeded her father to the office of the trusteeship of the Mariamman Temple at Irukkangudi. The suit was decreed by the trial court and the lower appellate court confirmed the decree. Objecting to the same S.A.No.465 of 98 was filed. Pending second appeal, the defendants 4 to 9 and 11 in O.S.No.49 of 1998 and who are appellants in S.A.No.465 of 1998 filed an application to grant an order of injunction restraining the petitioner herein from functioning as trustee of the Mariamman Temple, pending disposal of the appeal and to stay of operation of the judgment and decree passed by the lower appellate court in A.S.No.27 of 1996. This court passed an order on 30.4.1998, dismissing both the applications and directing the appeal to be posted for early hearing. Whiles, the first respondent herein suppressing those facts viz., the refusal to grant injunction and stay by the High Court in S.A.No.465 of 1998 and the order vacating interim injunction in O.S.No.49 of 1998 filed the suit in O.S.No.254 of 1999 before the District Munsif, Virudhunagar. The earlier two suits viz., O.S.No.49 of 1998 and 183 of 1998 were laid only before the District Munsif Satur, which alone had jurisdiction. The temple is situate only within the jurisdiction of the sattur Munsif. Thus, suppressing the earlier proceedings, the first respondent herein filed a suit before the District Munsif, Virudhunagar in O.S.No.254 of 1999. In that suit, he did not choose to add the parties who were concerned in the earlier suits viz. O.S. Nos.49 of 1998 and 188 of 1998, but simply impleaded the Assistant Commissioner, Virudhunagar and Joint Commissioner, Sivaganga. The Assistant Commissioner Virudhunagar had nothing to do in the matter.

4. By suppressing all these, the first respondent herein obtained an order of interim injunction in I.A.No.705 of 1999 in O.S.No.254 of 1999 on the file of the District Munsif, Virudhunagar. The prayer asked for is for an

injunction against persons from taking over the, management as the heir of one Ramasamy Poosari. The persons, who will be actually affected are not made parties .

5. Learned District Munsif passed an order without even applying his mind. The said suit is filed against the Assistant Commissioner and the Joint

Commissioner, Hindu Religious and Charitable Endowments Board without any notice. The order of injunction is passed thus in a mechanical

manner The gist of the plaintiff's case is not taken into consideration. There is not even any attempt to see whether the Court will have jurisdiction.

The order does not give out any reason therefor. Thus, we find that the first respondent herein is guilty of suppressio veri and suggestion falsi. This

is a clear case of abuse of process of law.

6. In the decision reported in A. Chinnarajan Vs. N. S. Subbaiyah and others, and Rihhwia, H.H. v. N. Venkat Ramani, 1999 (II) CTC 713 it has

been held that while granting ex parte interim orders, reasons must be recorded by the Court. But, in this case on hand, there are absolutely no

reasons stated by the lower court for the grant of injunction. In a case where a writ petition was filed claiming same reliefs after five days of dismissal

of the earlier writ petition, it was held by this Court in S. Mohan Sambasivam Vs. The Commissioner of Prohibition and Excise, Chepak, Madras-

5 and 2 others, , that it is a clear abuse of process of Court. In yet another case, where a suit for permanent injunction was still pending, the filing of

another suit for the same relief was held to be an abuse of process of Court. In the decision reported in Bank of Maharashtra Vs. State Trading

Corporation of India Limited, and in Ranipet Municipality rep. by its Commissioner & Special Officer, Ranipet v. M. Shamsheerkhan, 1997 (II)

LW 761. In the decision reported prevent such actions being contained. The decision reported in Moderator, Church of South India C.S.I.

Centre, Chennai v. J.S. Kingsley, 1999 (II) MLJ 277 is for the position that filing of suit on the same cause of action for the same relief by different

person at the instance of the same person would amount to abuse of process of Court. The Apex Court has held in the decision reported in K.K.

Modi Vs. K.N. Modi and Others, that relitigation, whether or not barred by res judicata, if manifests from the pleadings amounts to abuse of

process of Court and that Court has discretion to strike out the pleadings on

being satisfied of there being no chance of success in the suit.

7. 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 be judged from the angle of interest of justice and public policy.

8. As held in the decision reported in Union of India v. R. Karthikai Rajan and others, 1999 (3) LW 471, when the facts are identical the basis of the claim is identical, then it is a clear case of abuse of process of court. The Apex Court has also held in Orissa State Financial Corporation and Another Vs. Hotel Jogendra, dilatory tactics adopted by protracting the litigation would amount to abuse of process of Court.

9. Here in this case on hand, there was already a litigation with reference to which the matter has reached the High Court by way of second appeal, wherein interim order has been passed, vacating the injunction. Subsequently, another suit has been filed and the first respondent could not get any interim order. Thereafter, he thinks of the idea of filing of suit in a court which has noting to do at all with the matter and without impleading the party really affected, files a suit and obtains an order of injunction. It clearly amounts to abuse of process of Court. Such tendency on the part of the litigant should be put down with strong hands. Hence, I am of the view that as there is a blatant abuse of process of court resulting in miscarriage of justice, it eminently satisfies the parameters for stepping in under Article 227 of the Constitution.

10. In the result, the Civil Revision Petition is allowed, quashing the order passed by the District Munsif, Virudhunagar in I.A. No.705 of 1999 in O.S. No.254 of 1999 on 20.8.1999. Since I am satisfied that the suit in O.S.No.254 of 1999 is an abuse of process of Court. I order that the same shall be struck off and expelled from the file. Consequently, the connected CMPs. will stand closed.