
(2013) 11 MAD CK 0082

In the Madras High Court

Case No : C.R.P. (PD) . No. 443 of 2011 and M.P. No's. 1 and 2 of 2011

S.R. Nanda Kishore

APPELLANT

Vs

The Body of Villagers and Others

RESPONDENT

Date of Decision : 06-11-2013

Acts Referred:

Citation : (2013) 5 LW 810 : (2013) 8 MLJ 585

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : P.V. Muralidhar, for the Appellant; C. Jagadish for R1, Mr. V.R. Sivaraman for R2 and Mr. A.L. Somayaji, Advocate General for R6 and R7, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—This Civil Revision has been preferred under Article 227 of the Constitution of India, seeking an order to strike off the

suit in O.S. No. 14 of 2011, pending on the file of the Additional Sub-Court, Chengalpet. The petitioner is the third defendant in the suit. The suit

was filed by the first respondent in the name of the people of No. 29, Mambakkam village, Chengalpet Taluk, represented by (1) Mr. S.

Lakshmipathi Naidu (2) Mr. G. Selvam and (3) Mr. S. Jaganathan against Mambakkam Village panchayat represented by its President, the

petitioner herein and three others, seeking (1) for permanent injunction restraining the said defendants, their men, officials, contractors, agents and

servants etc., from in any way converting the suit "B" schedule property into a road; (2) for mandatory injunction directing the first defendant,

Mambakkam village panchayat to maintain "B" schedule property as part of ""Nallathaneer Kulam"" and for costs.

2. Admittedly, ""B"" schedule property is a Government poramboke land vested with the panchayat union, under the maintenance of Mambakkam

village panchayat. The petitioner herein has averred in the grounds of the Revision that the suit was filed without getting permission, as required

under Order 1 Rule 8 of the CPC and further, it is stated that the suit is not legally maintainable.

3. Mr. P.V. Muralidhar, learned counsel appearing for the petitioner submitted that the three persons, claiming to be representative of body of

Mambakkam village and filing the suit is against law and they have no locus standi to file the suit against the petitioner/defendant and the elected

village panchayat President and others, however, they got exparte interim order, which is perverse, since the suit filed itself is an abuse of process

of law. The petitioner/D3 has come forward with the revision petition, invoking Article 227 of the Constitution of India, seeking an order to struck

off the suit, on the ground of abuse of process of law.

4. Learned counsel appearing for the Revision petitioner drew the attention of this Court to the copy of the proceeding, dated 10.07.2010 passed

by the President and members of Mambakkam Panchayat Board. It has been communicated in the letter head of the President of Mambakkam

panchayat, whereby it is informed by the President of Mambakkam village panchayat that the Panchayat Board has passed Resolution No. 180,

dated 10.07.2010, raising no objection to form a road for the public in S. No. 47 of the village. The Tahsildar, Chengalpet, by his proceeding,

dated 11.08.2010 has stated that the land in S. No. 47 of Mambakkam village is on the banks of the Natham pond and that could be used as road

by the public. It is seen that the same was also communicated to the petitioner/D3.

5. The authorisation letter, dated 12.01.2011 of the President of Mambakkam village panchayat and a copy of the letter sent by Tahsildar to the

Block Development Officer, Thiruporur are also available in the typed set of papers. The panchayat President of Mambakkam has stated that the

land in S. Nos. 143/2, 143/3, 144/2 and 149 have been approved as house sites. In order to reach the said house sites, the land in S. No. 47 of

the said village could be used as road and the village panchayat has no objection for forming a "Thar road". As per the proceedings, dated

13.01.2011 in e/f/vz;/2659/09/M1. Block Development Officer, Thiruporur panchayat union has stated that the available mud road, on the banks

of the village pond, available in S. No. 47, village Natham be converted into Thar road. However, the proceeding reads that the breadth of the

road should not be less than 3.75 metres and the proceeding was also communicated to the revision petitioner.

6. Mr. P.V. Muralidhar, learned counsel appearing for the petitioner/D3 submitted that Thar road is properly being formed at the cost of the

petitioner/D3 for the benefit of the entire villagers, including the plaintiff, the three villagers. As the village panchayat and the Panchayat union have

no funds to form the road, permission was granted to the Revision petitioner to form the road at the cost of the petitioner. According to the learned

counsel for petitioner, due to some personal animosity and also seeking monitory consideration, the plaintiff filed the suit, without any locus standi,

though the competent authority is only the elected village panchayat, Block Development Officer of the panchayat union, the Tahsildar and other

Government authorities.

7. Per contra, Mr. C. Jagadish, learned counsel appearing for the first respondent/plaintiff submitted that the petitioner/D3 has taken steps only for

the benefit of certain group of persons, who purchased house sites in the layout, formed by the Revision petitioner, hence, that would be

detrimental to the interest of the general public. However, he has not disputed the fact that the suit property is a Government land vested with the

panchayat union, maintained by Mambakkam panchayat and at present, the same is being used by the public as a mud Road.

8. Having considered the submissions made by the first respondent/plaintiff, since the land in S. No. 47 of Mambakkam village is a Government

poramboke, this Court held it reasonable to direct the petitioner/D3 to implead the Government of Tamil Nadu as a necessary party and as per the

directions of this Court, Government of Tamil Nadu, represented by Secretary to Government, Rural Development and Local Administration,

Chennai-9 and the District Collector, Kancheepuram have been impleaded as 6th and 7th respondents respectively in this Revision.

9. Mr. A.L. Somayaji, learned Advocate-General appeared on behalf of the Government of Tamil Nadu and District Collector, Kancheepuram,

the respondents 6 and 7 herein. As submitted by the learned Advocate-General already mud road is available in S. No. 47, Mambakkam village,

that is being used by villagers and the General public and if pukka Thar road is formed at the cost of the Revision petitioner, that may be beneficial

to all the people. However, the learned Advocate-General contended that even after converting the mud Road into Thar road, the petitioner/D3

should not claim any right over the road and it should be the Government property and the road shall be formed properly, as per specification.

10. As per Order 1 Rule 8 of the Code of Civil Procedure, one or more persons may sue or defend on behalf of others having the same interest in

the suit, for which permission shall be obtained from the Court. Order 1 Rule 8(2) CPC reads as follows:

The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of

the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is

not reasonably practicable, by public advertisement, as the Court in each case may direct.

11. As per sub-rule (3) of Order 1 Rule 8, any person on whose behalf or for whose benefit, a suit is instituted or defended, under sub-rule (1),

may apply to the Court to be made a party to such suit.

12. In the instant case, according to the learned counsel appearing for the revision petitioner, the said mandatory provision was not complied with

for instituting the suit in the representative capacity on behalf of the villagers of Mambakkam. It is seen from the material papers that the first

respondent/plaintiff has not complied with the mandatory provision, as required under order 1 Rule 8 of the Code of Civil Procedure.

13. As admitted by both the parties, the suit property is a Government poramboke land, vested with the Panchayat union maintained by

Mambakkam village panchayat. The village panchayat has passed a resolution, permitting to use the mud road as a public road and also for

forming thar road. As per the resolution, dated 10.07.2010, the Panchayat Board has raised no objection in forming a Thar Road. The Tahsildar,

Chengalpet, by his proceeding, dated K:/K:/4957/2010/M1. dated 11.08.2010 has also made it clear that the mud road available in S. No. 47 of

the aforesaid village could be used as pathway and the proceeding was communicated to the revision petitioner.

14. As per the proceedings, dated 13.01.2011 made in e/f/vz;/2659/09/M1. Block Development Officer, Thiruporur panchayat union has

permitted the revision petitioner to form thar road at the width not less than 3.75 metres and the letter was also marked to the revision petitioner.

15. Learned Advocate-General has expressed the view of the Government that Thar road could be formed at the expense of the revision

petitioner, having a width of not less than 3.75 metres and the same shall be used by the public as a public road and that the petitioner/D3 could

claim no independent right over the road in future.

16. In K.K. Modi Vs. K.N. Modi and Others, , the Hon''ble Apex Court has held as follows:

43. The Supreme Court Practice 1995 published by Sweet & Maxwell in paragraph 18/19/33 (page 344) explains the phrase ""abuse of the

process of the court"" thus: This term connotes that the process of the court must be used bona fide and properly ad must not be abused. The court

will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and

oppression in the process of litigation...The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but

depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.

As per the decision of the Hon''ble Apex Court, when there is a clear abuse of process of Court, in order to stop such a vexatious proceeding, this

Court has got power, invoking superintending power of this Court, under Article 227 of the Constitution of India, to strike off the plaint. Following

the same, this Court in N. Babu Vs. S. Shanmugam and Others, , held that though an alternative remedy was available, the Court is vested with the

power of striking off the plaint, when there is a clear abuse of process of Court established for invoking Article 227 of the Constitution of India.

17. It was argued by the learned counsel for the first respondent/plaintiff that the petitioner could have approached the trial Court, by filing petition

under Order 7 Rule 11 of the CPC to reject the plaint, however, directly the Revision has been preferred, invoking Article 227 of the Constitution

of India. However, it cannot be disputed that speedy justice is a Fundamental Right, as contemplated under Article 21 of the Constitution. When

there is abuse of process established, alternative remedy is not a bar. In this case, the suit property is a Government poramboke land, vested in the

Panchayat union, maintained by the village panchayat Board, the said authorities have no objection in forming Thar Road by the Revision

petitioner, without seeking any special right over the road, however, the first respondent/plaintiff, three individuals have filed the suit, without any

locus standi to maintain the suit.

18. In *A. Venkatasubbiah Naidu v. S. Chellappan and ors.*, reported in 2008 SCC 695, the Hon''ble Supreme Court held that when the party had

other alternative remedies, they have to take recourse to those remedies, instead of invoking constitutional remedies. However, it has been ruled by

the Hon''ble Apex Court in various decisions, that alternative remedies would not be a bar in preventing abuse of process of Court.

19. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, , the Hon''ble Apex Court has categorically held that the power of High Court under

Article 227 thus:

22....It is well settled that the power of superintendence so conferred on the High Court 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 obstacles therein. The power under Article 227 is wider

than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of

procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost

similar.

20. The Hon''ble Apex Court made it clear that in exercise of supervisory jurisdiction, the High Court is empowered not only to quash or set aside

any impugned proceeding, judgment or order but also to make such directions, on the facts and circumstances of each case and accordingly, this

Court may also issue directions, by way of guiding the subordinate Court or Tribunal, to meet the ends of justice.

21. In *T. Arivandandam Vs. T.V. Satyapal and Another*, , the Hon''ble Apex Court, while speaking through Mr. Justice. V.R. Krishna Iyer, has

observed as follows:

The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch

frivolous and vexatious cases.

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.

22. In *K.K. Modi Vs. K.N. Modi and Others*, , the Hon''ble Apex Court has held in paragraph number 44 as follows:

44....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 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.

23. In a notable decision, in *McIlkenny v. Chief Constable of West Midlands Police Force*, reported in (1980) 2 All ER 227, the Court of appeal

of England struck out the pleading on the ground that the action was an abuse of the process of the court, since it raised an issue identical to that

which had been finally determined at the plaintiffs' earlier criminal trial. The

Court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court, since a party relitigate a question or issue, which has already been decided against him and the aforesaid decision of the Court of Appeal of England was also referred to by the Hon''ble Supreme Court in the aforesaid decision.

24. It is a well settled law that the power under Article 227 of the Constitution of India, involves a duty on the part of the High Court to keep all Court within its jurisdictional bounds to prevent abuse of process of Court. This Court has got inherent jurisdiction under Article 227 of the Constitution to prevent abuse of process of Court and passing order to struck off plaint from the file of the Court, if it is a clear abuse of process of law and Court, as per the plaint averments and the relief sought for by the party seeking the relief.

25. As per Order 7 Rule 11 of the Code of Civil Procedure, if there is no cause of action in the plaint to seek the relief or when there is a statutory bar in maintaining the suit, the Court can order for rejection of the plaint. However, it is well settled that the Court has to decide the plaint under Order 7 Rule 11 CPC, based on the total averments made in the plaint and that cannot be decided, as per the defence raised in the written statement filed by the defendant.

26. It has been made clear by the Hon''ble Apex Court that for invoking Article 227 of the Constitution, to strike off the plaint, there must be abuse of process of Court, as per the plaint averments and the admission made by the plaintiff, seeking the relief in the suit, otherwise this Court cannot pass such orders.

27. In the instant case, admittedly, the suit property is a Government poramboke land, being used as mud road by public. It is seen that the petitioner herein/third defendant had approached the concerned village panchayat, Block Development Officer and the Tahsildar, seeking permission for forming a Thar Road, by spending his own money for the convenience of the General public.

28. Having considered the representation made by the petitioner, Mambakkam village panchayat, represented by its President, passed a resolution raising ""No objection"" for the said proposal and was also approved by the

concerned Block Development Officer and the Tahsildar, as per the copy of their proceedings available in the form of typed set of papers. As contended by the learned counsel appearing for the petitioner, it has been made clear that the suit property is only a poramboke land, being used as mud road by the public, however, the first respondent/plaintiff, has stated that it is a Nalathaneerkulam, in other words a pond. However, it is used by the public as mud road, as stated by the second respondent.

29. When the suit was filed against the elected village panchayat of Mambakkam village, three individuals of the said village cannot represent the entire village people and further, it is mandatory on the part of the plaintiff to follow the mandatory procedure, as contemplated under Order 1 Rule 8 of the Code of Civil Procedure. However, without obtaining leave from the Court below, the suit was filed by three individuals of the village, as if they represent the people of the village against the village panchayat, represented by its elected President.

30. Having considered the fact that the suit property belongs to the Government, the plaintiff could have impleaded the State, represented by its District Collector as a party. In the aforesaid circumstances, it has been made clear that there is no locus standi for the three individuals, stating themselves persons representing the village.

31. Mr. P.V. Muralidhar, learned counsel appearing for the petitioner argued that due to some personal animosity and also with a view to extract the money, the frivolous suit was filed by three individuals in the name of the villagers, even without getting the leave from the Court, as per the Code of Civil Procedure, hence, filing the suit could be construed only as an abuse of process of law and Court.

32. Having considered the public importance and the fact that the suit property is a poramboke land belongs to the Government, this Court directed the revision petitioner herein to implead the Government of Tamil Nadu, as a party to the proceeding. Accordingly, the Government of Tamil Nadu represented by its Secretary to Government, Rural Development & Local Administration, Chennai and the District Collector, Kancheepuram have been impleaded as respondents 6 and 7. Learned Advocate-General, Mr. A.L. Somayaji, appeared before this Court for the respondents 6 and 7, submitted the view of the Government, in a responsible

manner.

33. According to the learned Advocate-General, the Government have no objection in forming the road, as per the specification, by spending the money by the petitioner, without seeking any independent right over the road. In the aforesaid circumstances, it has been made clear that the road is being formed, as per the specification of the Government by the petitioner, out of his own money, without seeking any independent right over the road and therefore, it is clear that forming the road is for the beneficial to the public at large.

34. Having considered the facts and circumstances, in the light of various decisions rendered by the Hon''ble Apex Court, referred to above, this Court is of the view that the revision preferred under Article 227 of the Constitution has to be allowed, to meet the ends of justice and to order to strike off the plaint in the suit in O.S. No. 14 of 2011.

35. In the light of the submissions made by the learned Advocate-General of Tamil Nadu and also the fact that the first respondent/plaintiff has no locus standi and also the non-compliance of Order 1 Rule 8 CPC, this Court is of the view that the suit filed by the first respondent/plaintiff is not legally sustainable. In the light of various decisions rendered by the Hon''ble Apex Court and this Court, this Court is of the view that the revision preferred, invoking Article 227 of the Constitution of India has to be allowed, as the suit has been filed by the first respondent/plaintiff, without any locus standi and without following the mandatory procedure, known to law and accordingly, the same is liable to be struck off. In the result, this Civil Revision Petition is allowed and the suit filed by the first respondent/plaintiff is ordered to be struck off. Considering the view of the Government expressed by the learned Advocate-General, the revision petitioner is permitted to form the Thar road in S. No. 47 in Mambakkam village, Kancheepuram District, as per specification of the Government for a width not less than 3.75 metres at the cost of the revision petitioner. It is also made clear that it is a public road belongs to the Government and the revision petitioner could claim no independent right over the same, even in future. Consequently, connected miscellaneous petitions are closed. However, no order as to costs.