

(2009) 07 KAR CK 0058
In the Karnataka High Court
Case No : CCC (Criminal) No. 12 of 2008

Sri R. Sadagopan

APPELLANT

Vs

Sri K. Rajaiah Naidu

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 15 (1) (b), 2 (c) (ii)

Citation : (2009) ILR (Kar) 3302 : (2009) 6 KarLJ 239 : (2010) 1 KCCR 759

Hon'ble Judges : Manjula Chellur, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : G.R. Mohan, for the Appellant; S.G. Bhagawan Advocate, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—This is a petition filed u/s 2(c)(iii) and 12 read with Section 15(1)(b) of the Contempt of Courts Act, 1971 ("the Act" for short), to initiate Criminal Contempt of Court proceedings against the accused and punish him u/s 12 of the Act. The learned Advocate General for Karnataka, has granted permission u/s 15(1)(b) of the Act, to the complainant, to initiate Criminal Contempt Proceedings against the accused.

2. Brief facts, which are necessary to consider this petition, could be stated as follows:

K. Kuppuswamy, S/o. Late. N. Kodandarama Naidu and his brother K. Rajalah, the accused herein, were the Directors of M/s. Chamundeswari Studio and Laboratory Private Limited, a company incorporated under the Companies Act. Said K. Kuppuswamy, has formed a Trust, under the name K.K. Foundation and Public Charitable Trust, which is registered. K. Kuppuswamy is stated to have executed a Will dated 27.09.2006, bequeathing therein, his estate to various beneficiaries, including the complainant, his wife and also the accused person herein. K.Kuppuswamy has passed away on 04.03.2007.

3. The accused has filed a suit for decree of permanent injunction, in the City

Civil Court, Bangalore, in O.S No. 25543/2007 against the Executors of the said Will, the complainant, his wife, daughter, son-in-law and also his parents. An ad-interim order of temporary injunction granted in the suit, was later vacated by the Trial Court. Subsequently, the accused has filed O.S Nos. 25660/07, 25716/07, 25487/07 & 26992/07 in the City Civil Court, Bangalore and Company Petition No. 35/2007 in Company Law Board at Chennai. He has also filed O.S. No. 25413/2008 in the City Civil Court, in the form of Administrative Suit for Administration of the estate of Late K.Kuppuswamy. There is no mention about the filing and/or of pendency of the earlier suit in the latter suits. According to the complainant, the filing of repeated suits, not only obstructs, but prevents due course of justice. This petition has been filed contending that, the action of the accused in filing multiple suits, amounts to an abuse of process of court.

4. Notice of this petition was ordered to the respondent, who entered appearance through Advocate. Statement of objection was filed by the accused. The parties were directed to prepare a comparative chart of different suits and file it. The same was filed.

5. Learned Counsel on both sides were heard and in view of the prima facie case of abuse of process of law and interference with administration of justice being found, the charge was framed and was read over to the accused on 12.12.2008, to which, the accused pleaded not guilty and claimed to be tried. Sri S.B.Pavin, learned State Public Prosecutor was directed to conduct the prosecution case keeping in view the provision contained in Rule 11 of Contempt of Court Rules.

6. A typographical error in mentioning the suit number as 25487/2007, instead of 25847/2007, in the charge was noticed and the same was corrected, pursuant to the order dated 19.03.2009.

7. The complainant deposed as CW-1, Exs.C-1 to Ex.C-5 were marked and Exs.A-1 to A-3 were also marked during his cross-examination. Evidence of accused was recorded and Ex.C-6 was marked in his cross-examination. The accused was examined u/s 313 Cr.P.C on 31.03.2009.

8. Considering the averments made in the petition and the statement of objection of the accused, the following charge was framed against the accused:

That after the death of Mr. K.Kuppuswamy, you have filed O.S. 25543/2007 In the City Civil Court, Bangalore and thereafter you have filed multiple suits in O.S 25660/2007, 25716/2007, 26048/2007, 25847/2007 and 26992/2007. That you have also filed an affidavit in O.S No. 25413/2008 without mentioning the filing of earlier suits arising out of the cause of action i.e., death of K. Kuppuswamy and by filing multiple suits which arise out of the same or individual or continuing cause of action, there is abuse of process of Court amounting to contempt as defined u/s 2(c) of the Contempt of Courts Act, 1971.

9. Complainant while deposing as CW-1 has stated that, K. Kuppuswamy Naidu was the Managing Director of M/s. Chamundeswari Studio and Laboratory Private

Limited, in which he was a Director and that K.Kuppuswamy has made his last Will and testament dated 27.09.2006, which is registered, wherein he had made bequeaths in favour of several legatees. He has stated that, the accused has filed O.S No. 25543/07 in the City Civil Court against him and others and during the pendency of the suit, he has filed O.S Nos. 25660/07, 25716/07, 25847/07, 26048/07 and 26992/07 in respect of the very same property. He has deposed that, O.S No. 25413/08 in respect of the very property was filed without mentioning the filing of earlier suits and their pendency. Ex.C-1 to Ex.C-5 are the certified copies of the complaints of the said suits, wherein, the cause of action pleaded is the death of K. Kuppuswamy and the right claimed, is on the basis of registered testamentary will in respect of the very same immovable and movable properties, including the interest in the said private limited company. In the cross-examination he has admitted that, the accused is the only direct brother of Late Kuppuswamy Naidu, who was a bachelor till his death and the accused was one of the directors of the said company. He has also admitted, that O.S Nos. 25847/07 and 26048/07 were withdrawn by the accused by filing a memo on 29.11.2008 and O.S No. 26992/07 was dismissed as withdrawn on 28.02.2009 at the instance of the accused and the certified copies of the orders are at Exs.A-1 to Ex .A-3. He has denied the suggestion that, the cause of action pleaded in the suits are different and distinct.

10. Accused in his evidence Has deposed that his parents had two sons and four daughters; he is a Post Graduate in Aeronautical Engineering and has Doctorate in the same field and he was a professor in IIT Bombay and thereafter worked as a Scientist in Defence Research Development Organisation, Bangalore. He has further stated that, the suits are all for different causes of action against the different persons and that, he has not abused the process of court by filing several suits against the complainant on the same cause of action. In the cross-examination he has admitted that, he has filed Misc. No. 893/07 before the Principal City Civil Judge, Bangalore to transfer O.S No. 2891/07 and O.S No. 25543/07. Ex.C-6 is the certified copy of the said Miscellaneous Petition. He has also admitted that, withdrawal of O.S Nos. 26048/07, 25847/07 and 26992/07, was after framing of charge, in this petition. He has stated that inadvertently he has not disclosed the pendency of other suits i.e., O.S Nos. 25847/07, 25543/07 and 25716/07 while filing O.S No. 25413/07. He has denied the suggestion that, the aforesaid suits were filed on the same cause of action and that he has abused process of court of law. When he was examined u/s 313 Cr.P.C, he has stated that, inadvertently he has not made reference to O.S 255443/07 in O.S 25413/08 and he has denied that there is an abuse of process of court.

11. From the evidence of CW-1 and the accused, it becomes clear that the accused has filed O.S Nos. 25543/07, 25660/07, 25716/07, 25847/07, 26048/07, 26992/07 and 25413/08. Ex.C-1 to Ex.C-6 and Ex.A-1 to Ex.A-3 are the undisputed documents. It is not in dispute that, there is no mention of filing and pendency of earlier suit in any of the latter suits, including the last one i.e., O.S 25413/08. Filing of multiple suits by the accused against complainant and his

family, after the death of K. Kuppuswamy In respect of the estate left by K.Kuppuswamy, is not in dispute.

12. We have heard Sri S.B. Pavin, learned State Public Prosecutor and Sri S.G. Bhagawan, learned Advocate for the accused. Both the learned Counsel have also filed their written submissions, which we have perused.

13. Sri S.B. Pavin, would contend that, the filing of multiple suits in respect of the estate left by K.Kuppuswamy and the cause of action to the suits being the death of said person, being not in dispute, by placing reliance on the decision in Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs. State of U.P. and Others, , submitted that, repeated filing of the suits amounts to criminal contempt as defined u/s 2(c) of the Act, in as much as, a person should not take recourse to the legal proceedings over and over again, which amounts to abuse of the process of law. He also invited our attention to the decision in the case of Dhananjay Sharma Vs. State of Haryana and Others, , to contend that, the filing of repeated suits cannot be permitted, as it would not only obstructs, but prevents course of justice, which falls within the definition of criminal contempt u/s 2(c) of the Act. Reliance was also placed on the decision in the case of Prabhakar Rao N. Mawle Vs. State of Andhra Pradesh, , to contend that there should be a check on persons who "habitually" and "without reasonable cause" file vexatious actions, civil or criminal and that the court should examine the bonafides of any claims, before the opposite party is harassed.

14. Per contra, Sri S.G. Bhagawan, learned Counsel for the accused, would contend that, from a perusal of EX.C-1 to Ex.C-5, it is clear that, though the plaintiff is common, the defendants are several and different and the reliefs claimed are also distinct and different. It was pointed out that, in Ex.C-2 and Ex.C-3, the complainant is not a party-defendant and since the reliefs claimed against different persons are distinct and different, prima facie would disclose that, the evidence to be let in would also be distinct and different and hence it cannot be construed that the cause of action is the same, as to state that, they are multiple suits arising out of same or individual or continuing cause of action, in the sense that, the accused could file a single suit against all of them, seeking the reliefs sought in them, though independent of each other. Learned Counsel contended that, the contempt of court being an offence of a criminal character, should be proved beyond reasonable doubt and when there are two equally consistent possibilities open to the court, it is not right to hold that, the offence is proved beyond reasonable doubt. Learned Counsel placed reliance on the decision, in the case of All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi and Others, wherein, it has been held amongst others, the contempt proceedings are quasi criminal in nature and the standard of proof required is that of a criminal case. Learned Counsel contended that the phrase "cause of action" should be construed in a broader sense and if the evidence to support the two claims is different, then the causes of action are also different and to the said effect, placed reliance on the decision in the case of Om Prakash Srivastava

Vs. Union of India (UOI) and Another, . Learned Counsel by relying upon the decision in The Bangalore Development Authority Vs. Gururaj and B.V. Ram Murthy, Advocate, , contended that, there is no abuse of process of court by the accused, by filing of said suits, in view of the fact that, there are disputes between the accused and the complainant, in respect of movable and immovable properties held and left by deceased K.Kuppuswamy. Learned Counsel submitted that, in order to safeguard his own interest and to ensure that those properties, movable and immovable are not frittered away by the complainant and to safeguard them by from being frittered away, the accused was constrained to file suits against different persons seeking different and distinct reliefs and hence the proceedings initiated are liable to be dropped. Learned Counsel also invited our attention to Section 13 of the Act and contended that, even if it is construed that, the accused has committed contempt, it is not of such a nature as to warrant any punishment, as it has not substantially interfered or tended to interfere with the due course of justice, in as much as, no real prejudice is caused, which can be construed as substantially to interfere with the due course of justice and at best, it is only a technical contempt and the degree of harm caused to the administration of justice, if at all, is very slight, which may be appreciated with reference to the impact of the provisions in Order 6 Rule 16 of C.P.C in general and Sub-clause (c) in particular, which enables the court, at any stage of the proceedings, to strike out any matter in the pleading on any of the grounds specified therein, which is otherwise an abuse of the process of the court. Ultimately, it was submitted that, the accused has not committed any criminal contempt, falling within Section 2(c)(iii) of the Act and even otherwise, the provisions of Section 13 are attracted and hence the proceedings may be dropped.

15. Keeping in view the factual background, record of the case and the rival contentions, the following questions arise for our consideration:

1. Whether, by filing multiple suits, without mentioning the filing and/or pendency of the earlier suit/s, arising out of same or individual or continuing cause of action, there is an abuse of process of the court, amounting to criminal contempt as defined u/s 2(c) of the Contempt of Courts Act, 1971?

2. Whether, the action of the accused, calls for imposition of a sentence for a Contempt of Court under the Act?

Re-point No. 1

16. Indisputably, the accused has filed the suits as at Exs.C-1 to Ex.C-5 and all the suits have been filed through one and the same learned Counsel or the plaintiff being represented by one and the same learned Counsel.

(a) Ex.C.1 - O.S 25543/07, is a suit by the accused against 9 defendants, which includes the complainant and his wife, as defendants 5 & 4 respectively. Therein, the relationship of the plaintiff with the deceased K.Kuppuswamy, has been stated. A perusal of the averments made therein shows that, plaintiff is the only

brother of Late K. Kuppuswamy Naidu, who died on 04.03.2007 at his residence, leaving behind properties worth Rs. 50 to 80 crores & above and that there are two Wills, one in favour of the plaintiff and other in favour of the defendants 4 to 9 and that, the Will in favour of defendants 4 to 9 is a manipulated forged Will, which is disputed and partly is a subject matter of the suit. The defendants 1 to 3 are the executors named in the Will dated 27.09.2006, which the plaintiff has termed as fictitious and, under challenge. The cause of action for the suit is shown to have arisen on 04.03.2007 i.e., the death of K. Kuppuswamy Naidu and on subsequent dates. The suit is for decree of permanent and mandatory injunctions.

(b) Ex.C.2 - O.S 25660/07, is by the accused against 15 defendants, which includes the complainant and his wife, as defendants 7 & 6 respectively. The material averments made therein are similar to those made in Ex.C-1. The suit is for grant of decree of permanent and mandatory injunctions. It has been specifically stated therein that, no suit has been filed in any court on same cause of action.

(c) Ex.C.3 - O.S 25716/07, is by the accused against 7 defendants which, includes the complainant's wife Smt. Rajalakshmi Sadagopan @ Mumtaz Begum as defendant No. 4. A perusal of Ex.C.3 shows that, the averments are almost similar to those made in Ex.C-1 and it has been stated therein that, no suit has been filed in any other court on same cause of action. The suit is for grant of decree of permanent and mandatory injunctions, to restrain the executors under the Will dated 27.09.2006 from exercising any kind of right or acts, deed or things whatsoever, by operating the bank accounts and restraining the defendants 5 to 7 from permitting defendant No. 4 and her family members, from operating or granting any adhoc release, without obtaining a proper probate or letters of administration from competent court.

(d) Ex.C.4 - O.S 26992/07, is by the accused against 7 defendants, which includes the complainant and his wife, as defendant Nos. 3 & 2 respectively. The material averments therein are similar to those made in Ex.C-1 and it has been stated that, the cause of action arose on 04.03.2007 when K.Kuppuswamy Naidu died and the fraudulent Will dated 27.09.2006 exposed the transfer of shares during his lifetime and it has been further reiterated that no suits have been filed on the same cause of action.

(e) Ex.C.5 - O.S 25413/07, is by the accused against 16 defendants, which includes the complainant and his wife, as defendant Nos. 4 & 5 respectively. A perusal of the plaint shows that, in all material particulars, the averments are identical to the one made in Ex.C.1 and the said subsequent suits. The cause of action is shown to have arisen on 04.03.2007 on the death of K. Kuppuswamy and thereafter, when notice and exchange of notice took place between the parties and also the defendants intermeddling with the properties. The suit is for a decree for grant of administration of the entire estate of Late K.Kuppuswamy and permanent & mandatory injunctions against defendants, in matters relating

to the management etc., of the estate left by K.Kuppuswamy Naidu.

(f) Ex.C.6 - Misc. No. 893/07, is a petition filed u/s 24 of C.P.C by the accused against two respondents, which includes complainant's wife Smt. Rajalakshmi Sadagopan @ Mumtaz Begum, as the second respondent. In the said petition, it has been stated that, the petitioner K. Rajaiah has filed 5 suits and respondent No. 1 therein - M/s. Chamundeswari Studio & Lab. Pvt. Ltd., represented by Smt. Rajalakshmi Sadagopan @ Mumtaz Begum, having filed O.S 2891/07. It has been categorically stated therein as follows:

The petitioner submits that the subject matter in all the above suits relate to 48, Millers Tank Bund Road, Bangalore - 560 052 and there are rival claims to the WILL and TITLE.

The prayer is for consolidation of all the suits, namely O.S No. 2891/07 pending in CCH-13, O.S No. 25543/07 pending in CCH-21 and to transfer to CCH-22 where the remaining suits are pending.

(g) Ex.A-1, is the order sheet of O.S No. 25847/07. It shows that, based on the memo filed by the counsel for the plaintiff to dispose of the suit as not pressed, the suit was dismissed on 29.11.2008.

(h) Ex.A-2, is the order sheet of O.S No. 26048/07. It shows that, based on the memo filed by the counsel for the plaintiff to dispose of the suit as not pressed, the suit was dismissed on 29.11.2008.

(i) Ex.A-3, is the order sheet of O.S 26992/07. It shows that, based on the memo filed by the plaintiff for dismissal of the suit as not pressed, the suit was dismissed as withdrawn on 28.02.2009.

17. Relitigation, is an abuse of process of the court. The meaning of the phrase, "abuse of process of the court" has been explained at paragraphs 18/19/33 (Page 344) in "The Supreme Court Practice 1995, published by Sweet & Maxwell" to the following effect:

This term connotes that the process of the court must be used bonafide and properly and 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.

(emphasis supplied by us)

18. In Halsbury's Laws of England (4th Edition, Vol.9, Para 38), it has been held as follows:

Certain acts of a lesser nature may also constitute an abuse of process as, for

instance, Initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave. Where the court, by exercising its statutory powers, its powers under rules of court, or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a contempt of court. On the other hand, where an irregularity or misuse of process amounts to an offence against justice, extending Its Influence beyond the parties to the action, It may be punished as a contempt.

(emphasis supplied by us)

19. Rule 16 of Order 16 C.P.C is regarding striking out of pleadings and the same reads as follows:

16. Striking out pleadings: The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading:

- (a) which may be unnecessary, scandalous, frivolous or vexatious, or
- (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or
- (c) which is otherwise an abuse of the process of the court.

The main object behind the said Rule is to ensure that every party to a suit should present his pleading in an intelligible form without causing embarrassment to the opposite party. It could be stated that, the Rule also enables the court concerned, when it notices that, the pleading when unnecessary, scandalous, frivolous or vexatious or tend to prejudice, embarrass or delay the fair trial of the suit or is otherwise an abuse of the process of the court, to strike out the pleading, so that the administration of justice by the court is not hampered.

20. Re-litigation on the same issue may or may not be barred as res-judicata, but, if the same issue is sought to be re-litigated, it also amounts to an abuse of the process of the court. Re-litigation on the same issue is an abuse of the process of the court since it is contrary to justice and public policy for a party to re-litigate on the same issue again and again. 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. If multiple proceedings, claiming the same or incidental reliefs, allegedly arising out of the same or continued cause of action are filed, the same is nothing but an abuse of process of the court. The court has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. It is a matter of court's discretion, whether such proceedings should be stopped or not; which power should be exercised with great circumspection.

21. In the case of *Greenhalgh v. Mallard* (1947) 2 All. ER 255, the Court had to consider whether, 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. It was held therein that, 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.

22. In the case of *McIlkenny v. Chief Constable of West Midlands Police Force* (1980) 2 All. ER 227, the court of appeal in 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 plaintiff's earlier criminal trial. It has been said that, 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, because, it is an abuse for a party to re-litigate a question or issue which has already been decided against him, even though the other party cannot satisfy the strict rule of *res judicata* or the requirement of issue estoppel.

23. It is clear from the perusal of Exs.C.1 to Ex.C.5, the plaintiff therein, who is the accused before us, has resorted to multiple suits, with almost identical averments and the relief prayed being connected with the estate left by K.Kuppuswamy, who died on 04.03.2007. In all the suits, there is an attack on the Will dated 27.09.2006, said to have been executed by K.Kuppuswamy, which the plaintiff/accused contends, is neither true nor genuine and has questioned its due execution. The plaintiff/accused himself has made it clear in Ex.C.6 that, the subject matter in all the suits relate to 48, Millers Tank Bund Road, Bangalore - 560 052 and there are rival claims relating to the Will and Title and that the subject matter of the suit property is one and the same and consolidation is just and necessary. As already noticed, that in all the suits, the plaintiff is represented by one and same learned Counsel. The courts have been made to consider different proceedings, which have arisen on one and the same cause of action, namely the Will, said to have been executed by K.Kuppuswamy and his death on 04.03.2007. The accused having chosen to put his case in one way by filing Ex.C-1, 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. The other causes of action stated, appears to be only superficial, to file multiple suits. The difference in the causes of action sought to be made out to file the suits as at Exs.C.2 to C.4, is only superficial, which lies more in clever drafting than in their content. If at all, there was any genuine omission either in the plaint or in the reliefs, the plaintiff/accused ought to have taken recourse to the provisions contained in Order 1 Rule 10, Order 6 Rule 17 of C.P.C. Be that as it may. We do not intend to express any opinion with regard to the merits or otherwise of the proceedings in the aforesaid suits. We make it clear that, it is for

the courts concerned to deal with the matters pending before them in accordance with law. We are only concerned with the issue relating to abuse of process of the court, since, in the subsequent suits, issues identical to one raised in Ex.C-1 have been raised in the latter suits. By resorting to multiple suits, the accused has indulged in abuse of process of the court, because, it is an abuse for a party to re-litigate a question or the issue, which is already an issue either in a case pending or decided.

24. While examining the scope of criminal contempt within the meaning of Section 2(c) of the Act, it has been pointed out in the case of *Vijaya Bank Employees Housing Co-operative Society Ltd. Vs. Muneerappa*, , as follows:

Abuse of the process of the Court calculated to hamper the due courses of a judicial proceeding or the orderly administration of justice is a Contempt of Court.

It has been further pointed out that, in considering whether, the action of the accused amounted to Contempt of Court, the Court must take into account the whole course of the continuing contumacious conduct of the accused from the very beginning.

25. Considering the material averments made in Ex.C.1 to Ex.C.5 and the act of the accused withdrawing the three suits, as per the orders passed at Exs.A-1 to Ex.A-3, after the framing of charge in this case, when the matter is examined, there is no room for doubt that, the accused has filed multiple suits in respect of the very same subject matter i.e., estate left by K.Kuppuswamy, who has passed away on 04.03.2007. The accused being the plaintiff, has contended in all the suits that, the Will dated 27.09.2006 is bogus and there is no due execution, which fact is being repudiated by the beneficiaries, by contending the said Will to be a genuine and validly executed. The reliefs claimed in all the suits, relate to the estate of K.Kuppuswamy, which forms the subject matter of the alleged Will. Hence, the contention that, the matters in the suits at Exs.C-1 to Ex.C-5, are distinct and different, is not acceptable. Why so many suits have been filed in respect of the estate of K.Kuppuswamy is difficult to comprehend. The filing of suit after suit, in the circumstances, could not, but be characterized as, daring raid on the Court and an abuse of process of the court, as held in the case of *Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another*, . Multiple suits as at Exs.C-1 to Ex.C-5 appears to have been filed with oblique motives. We do not find any bonafides on the part of the accused, in filing so many suits relating to the estate left by K.Kuppuswamy, when the claim of the defendants to it, being the legatees under the Will, said to have been executed by K.Kuppuswamy on 27.09.2006.

26. In the case of *Vijaya Bank Employees Housing Co-operative Society Ltd.* (supra), it has been held that, even abuse of process of the court, would amount to Contempt of Court, within the meaning of Section 2(c) of the Act. The action of the accused in filing multiple suits with regard to the same subject matter i.e., estate of K.Kuppuswamy and the disputed Will, would obstruct the due course of

a judicial proceedings and the administration of justice, which would amount to criminal Contempt of Court, defined u/s 2(c) of the Act.

27. In the case of, Om Prakash Srivastava (*supra*), the facts were that, the appellant, who had come to India by way of extradition from Singapore, had filed a writ petition before the Delhi High Court, taking the stand that, he was being tried in several cases contrary to the extradition treaty. According to him, he was facing trial in eight cases, which is in complete violation of the provisions of Section 21 of the Extradition Act, 1962 and he had also pleaded that, he was being kept in solitary confinement without proper medical aid in Central Jail, in the State of Uttar Pradesh. He had also filed a Writ Petition in the Hon''ble Supreme Court, which was withdrawn by him in order to enable him to move the appropriate High Court for redressal of his grievances, if any and thereafter, the appellant therein filed the writ petition in the Delhi High Court, which was disposed of, against which, the appeal was filed in the Hon''ble Supreme Court. The only question considered was, whether, the Delhi High Court had jurisdiction to deal with the matter with reference to Clause (2) of Article 226 of the Constitution of India? Hence, it was not a case concerning the filing of multiple suits/proceedings, on the basis of same set of facts and the same or continued cause of action. Hence, the said decision on which reliance was placed by Sri S.G. Bhagawan, has no application to the points that have arisen for consideration herein.

Re-Point No. 2

28. Though it is sought to be contended by Sri S.G. Bhagawan, by referring to Section 13 of the Act that, no sentence be imposed on the accused, even if it is construed that, a contempt has been committed, since, it has not caused any serious harm to the parties to the litigation and the contempt is only a technical contempt, we do not find merit in the same. The accused, is a retired scientist and a senior citizen, himself owed a duty to have brought to the notice of the court when he filed the subsequent suit/s, the filing of earlier suit/s and their pendency. This is a serious lapse indeed, which cannot be countenanced and by withholding/suppressing the fact of filing of earlier suit/s and their pendency, there is an abuse of process of the court. On account of filing of multiple suits, the precious time of the trial courts has been consumed and thereby the public interest has suffered. Valuable time of the court is required to be spent for adjudication of bonafide justice and not by allowing parties to resort to multiple proceedings, with respect to one and the same issue on the same or continued cause of action. There is sufficient harm caused to the public interest and the administration of justice, which calls for imposition of the sentence. Considering the provision in Section 13 of the Act, substantial interference with the due course of Justice, is the requirement of the Act for imposition of punishment. There is no dispute as to the filing of multiple suits as at Exs.C.1 to C.5 by the accused. The filing of suits after the first suit, ought to have been specifically stated in the plaint. Instead, the accused has made categorical statements to the

effect that, no other suit has been filed in any court on the same cause of action, which is a false statement and hence cannot be ignored. The plea of inadvertence, sought to be put forth by the accused, is clearly unacceptable, in the face of the said categorical averments made in the plaints. In support of the averments in the plaints, verifying affidavits have also been filed, which in the circumstances, is not correct. The practice of having false statement incorporated in the affidavit filed before the court, should never be ignored and should always be deprecated. By the actions of the accused noticed supra, there is substantial interference with the course of justice and the accused is guilty of abuse of process of the court in filing multiple suits, arising out of the same or continued cause of action. In view of the finding recorded supra, we hold that the accused is guilty of Contempt of Court.

29. In the case of Bangalore Development Authority (Supra), the facts which had led to the filing of contempt petition were that, one M.S. Prithviraj, the father of the accused, filed a suit in City Civil Court, Bangalore, for decree of declaration and injunction. The defendant/BDA, filed I.A No. IX under Order 7 Rule 11(a) CPC for rejection of the plaint. The trial court by an order dated 18.09.2003 allowed the said application and rejected the plaint for want of cause of action. By that time, the said plaintiff died. The rejection of the plaint was questioned in appeal before this Court, which was dismissed with certain observations. By that time, the accused had filed another suit seeking the same relief. The BDA filed the contempt petition against the filing of second suit, by contending that, the repeated proceedings initiated by the accused against it in respect of the property in question, interferes and obstructs the administration of justice and the judicial proceedings. In the contempt proceedings, the learned advocate who had filed two suits on behalf of the plaintiff, was also impleaded as the second accused, but, was subsequently given-up and his name was deleted from the array of parties. Arguments of the learned Counsel on both sides having been heard to find out, whether, it was a fit case to frame the charge, conduct trial and proceed thereafter in the matter, it was held that, the statutory right available by the accused in respect of the property in question is sought to be brought under criminal contempt and negligible matter is sought to be made out a Mount Everest issue by the BDA, which was not affected in any manner whatsoever in respect of the property in question and in the said circumstances, filing of subsequent suit does not amount to contempt, much less, criminal contempt, as none of the ingredients or requirements of criminal contempt were involved in the case. The said decision has been rendered in the background of the facts and circumstances noticed therein, which are not in para-materia with the factual position herein. Hence, the said decision is not of any assistance to the accused herein, in view of the findings recorded by us on point No. 1, supra.

30. Reliance placed by Sri S.G. Bhagawan, on the decision, in the case of Kuldeep Rastogi and Another Vs. Vishva Nath Khanna, , does not come to the rescue of the accused. In the said case, a learned single judge sitting on the original side, had found Kuldeep Rastogi and the firm, of which he was one of the partners,

guilty of contempt of court and Kuldip Rastogi had been ordered to be detained in a civil prison for three months and the firm was fined Rs. 2,000/-. Both of them had filed the appeal. Vishwanath Khanna, who had initiated the proceedings for contempt, had also filed an appeal by maintaining that, the other partners of the firm are equally guilty of contempt of court and that all of them, including Kuldip Rastogi, be detained in the civil prison for the maximum period permissible in law. Both the appeals were heard together and the said decision was rendered. While dismissing the appeals, it was held therein as follows:

52. Apart from the probable fact that no monetary loss has resulted to Vishwanath or any other person from the contempt committed by the Rastogis the rest of these points are not germane to the application of Section 13. Under that section the only question for consideration is whether the contempt has interfered "substantially" with the "due course of justice" or "tends" to do so. The reasons why the contempt was committed, and any mitigating factors, are all irrelevant.

53. The key word in the section is "substantially"; and, in deciding whether the interference "with the due course of justice" is substantial or not, what one is required to look at is the "nature" of the contempt. While weighing the pros and cons, it had further to be remembered that the interference need not be actual. A mere tendency in that direction is sufficient. However, this kind of surface analysis of the section does not take one very far. It only serves to fix the points of reference when dealing with a concrete case.

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.... Taking everything into account, in my opinion, the contempt committed by the Rastogis was certainly not "theoretical", "technical", "trifling" or "beneath notice". On the contrary, I think it was most "serious", and tended very "substantially" to interfere with the due course of justice. Therefore, I can see no scope for applying Section 13 here.

The ratio of the said decision, in our view does not support the contention canvassed by the learned Counsel for the accused.

31. The conduct of the accused shows that, even he has not tendered a formal apology. Therefore, it is a fit case, wherein, the accused should be imposed with a sentence.

32. For the foregoing reasons, keeping in view the age of the accused and the fact that, he was a former scientist in DRDO, we sentence him to undergo imprisonment for the remaining part of the day i.e., till the rising of the court and pay a fine of Rs. 2,000/-, in default, to undergo simple imprisonment for a period of one week. Complaint stands allowed accordingly.

33. However, we make it clear that, the findings recorded herein, are limited for the purpose of finding out, whether, there is an abuse of process of the court amounting to Contempt of Court and the said findings, shall not be construed as

expression of opinion on the merits of the claim made by the accused in the suits. The trial courts shall decide the suits in accordance with law, uninfluenced by the sentence imposed herein on the accused.