

**(2015) 07 MAD CK 0157**

**In the Madras High Court**

**Case No :** C.R.P. (PD) No. 2636 of 2015, M.P. No. 1 of 2015, C.R.P. (NPD) No. 3505 of 2014, M.P. No. 1 of 2014 and C.R.P. (PD) No. 4489 of 2013

The Commissioner cum Block Development Officer, Panchayat  
Union and Others

APPELLANT

Vs

H.M. Kari Gowder and Others

RESPONDENT

---

**Date of Decision :** 23-07-2015

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11  
Constitution of India, 1950 — Article 227

**Citation :** (2015) 07 MAD CK 0157

**Hon'ble Judges :** M. Duraiswamy, J

**Bench :** Single Bench

**Advocate :** T. Mohan for K. Rajendra Prasad, for the Appellant; M.S. Krishnan, Senior Counsel for T.R. Sathiyamohan, Advocates for the Respondent

**Final Decision :** Dismissed

---

**Judgement**

M. Duraiswamy, J—C.R.P. (PD). No. 4489 of 2013 has been filed by the defendants 1 to 25 in O.S. No. 207 of 2013 on the file of the Sub-Court, The Nilgiris, to strike off the plaint in O.S. No. 207 of 2013 under Order 7 Rule 11 of the Civil Procedure Code.

2. C.R.P. (NPD). No. 3505 of 2014 has been filed by the 3rd party petitioners, who are the legal representatives of the deceased defendants 6 to 26 challenging the fair and decretal order passed in I.A. No. 507 of 2014 in I.A. No. 307 of 2012 in O.S. No. 182 of 1977 on the file of the Subordinate Court, The Nilgiris at Uthagamandalam.

3. C.R.P. (NPD). No. 2636 of 2015 has been filed by the 3rd party petitioner challenging the order passed in I.A. No. 375 of 2013 in I.A. No. 307 of 2012 in O.S. No. 182 of 1977 on the file of the Subordinate Court, The Nilgiris at Uthagamandalam.

4. Since the issues involved in all these three matters are common, by consent of all the learned counsel appearing for the respective parties, all the three Civil Revision Petitions are disposed of by this common order.

5. The plaintiffs in O.S. No. 182 of 1977 filed the suit for partition and permanent injunction. By judgment and decree dated 16.09.1978, the trial Court passed a preliminary decree. Pursuant to the preliminary decree passed in O.S. No. 182 of 1977, the plaintiffs filed a final decree application in I.A. No. 307 of 2012 in O.S. No. 182 of 1977. The trial Court dismissed the final decree application by order dated 09.11.2012 finding that the preliminary decree passed in O.S. No. 182 of 1977 ought to have been amended by bringing on record all the legal representatives of the plaintiffs 1 & 2.

6. Challenging the dismissal of the final decree application in I.A. No. 307 of 2012, the plaintiffs preferred a Civil Revision Petition in C.R.P. (NPD). No. 4721 of 2012 and this Court by order dated 04.02.2013, set aside the order passed in I.A. No. 307 of 2012 and allowed the Civil Revision Petition. While setting aside the order passed in I.A. No. 307 of 2012, this Court has held that in the absence of any challenge, as regards the shares allotted to the above said parties, by defendants 6 to 26, the plaintiffs and others to whom shares have been allotted are entitled to seek for final decree for partition of their share and in which event there is no need to implead the defendants 6 to 26 in the final decree petition, when the suit has been dismissed against the defendants 6 to 26.

7. The trial Court, while granting preliminary decree, dismissed the suit as against the defendants 6 to 26. In the preliminary decree, the trial Court also allotted one-third share to the plaintiffs, the 1st defendant was allotted one-third share and the defendants 2 to 5 were allotted one-third share. The plaintiffs in O.S. No. 207 of 2013 filed the said suit stating that they came to know about the preliminary decree passed in O.S. No. 182 of 1977 dated 16.09.1978 only on 19.04.2012. Further, they have stated that the said preliminary decree was obtained by exercising fraud, as such, the preliminary decree dated 16.09.1978 is liable to be set aside.

8. The plaintiffs further stated that they came to know about the Gift Settlement Deed alleged to be executed by the defendants 26 to 29 along with their relatives in favour of the 31st defendant dated 13.12.1976 conveying an extent of 1.25 1/2 acres of suit property. Further, the plaintiffs have stated that the plaintiffs altogether are entitled to 80.46 cents in the suit schedule property. In these circumstances, the plaintiffs have filed the suit for partition and to declare the preliminary decree and judgment passed in O.S. No. 182 of 1977 as null and void and for declaration that the Gift Settlement Deed dated 13.12.1976 executed by the defendants 26 to 29 and others in favour of the 31st defendant as partially null and void upto the plaintiffs' share.

9. The revision petitioners in C.R.P. (NPD). No. 3505 of 2014 have filed an application in I.A. No. 507 of 2014 in the final decree application in I.A. No. 307

of 2012.

10. Similarly, the petitioner in C.R.P. (NPD). No. 2636 of 2015 filed an application in I.A. No. 375 of 2013 to get themselves impleaded as respondents in the final decree application.

11. The petitioners in C.R.P. (NPD). No. 3505 of 2014 are the legal heirs of the defendants 6 to 26 in O.S. No. 182 of 1977.

12. As already stated, the suit was dismissed as against the defendants 6 to 26. When the final decree application in I.A. No. 307 of 2012 was dismissed by the trial Court on 09.12.2012, the plaintiffs preferred a Civil Revision Petition in C.R.P. (NPD). No. 4721 of 2012 and this Court, while allowing the Civil Revision Petition, held that there is no need to implead the defendants 6 to 26 in the final decree application when the suit has been dismissed as against them. The order passed by this Court in C.R.P. (NPD). No. 4721 of 2012 has not been challenged by the parties. In that case, the order passed in the Civil Revision Petition has become final. In these circumstances, the petitioners cannot argue against the order passed in the said Civil Revision Petition. Therefore, by the order passed in C.R.P. (NPD). No. 4721 of 2012, the petitioners cannot be impleaded as parties in the final decree proceedings. In these circumstances, the trial Court has rightly dismissed the application in I.A. No. 507 of 2014 in I.A. No. 307 of 2012 in O.S. No. 182 of 1977.

13. It is also brought to the notice of this Court that the trial Court had already passed the final decree in I.A. No. 307 of 2012 on 15.07.2014.

14. The petitioners in C.R.P. (PD). No. 2636 of 2015 filed an application in I.A. No. 375 of 2013 in I.A. No. 307 of 2012 to get themselves impleaded in the final decree application. According to the petitioners, in the suit property, an extent of 1.25 1/2 acres of land was donated by the legal heirs of Puriya Nanja Gowder, the 2nd son of Gujjeri Ayya in the year 1976 and the same was also registered. Further, they have stated that ever since the date of execution of the Gift Deed, the property is in their use and occupation and enjoyment. Further, they have also stated that the property has been used as play ground for Kotagiri Panchayat Union Middle School. According to the petitioners, they have come to know about the Court proceedings only in July 2013 when the village people made complaint to their office that Court Commissioner came to inspect the said property. The petitioners have also stated that the plaintiffs in O.S. No. 182 of 1977 have filed the suit for partition even without impleading them as parties. The application filed by the petitioners was contested by the parties.

15. On a perusal of the preliminary decree passed in O.S. No. 182 of 1977, it is evident that the Panchayat Union Council, Kotagiri represented by its Commissioner is the 26th defendant in the suit. Therefore, the contention of the petitioners that the suit for partition was filed even without impleading them, cannot be accepted. In fact, in the preliminary decree, as already stated, the suit was dismissed as against the defendants 6 to 26. Though the preliminary decree

was passed in the year 1978, the final decree was passed only on 15.07.2014 (i.e.) after 35 years.

16. It is also pertinent to note that the preliminary decree passed in O.S. No. 182 of 1977 was not challenged by the parties and the same became final. Subsequent to the order passed in the C.R.P. (NPD). No. 4721 of 2012, final decree application in I.A. No. 307 of 2012 was again taken on file by the trial Court and an Advocate Commissioner was appointed for partitioning the suit property into three equal shares as per the preliminary decree. Subsequently, the Commissioner filed his report and a final decree was also passed. The petitioners are now claiming 1.25 1/2 acres out of the total extent of 2.51 acres. Since the preliminary decree was not challenged by the petitioners, now they cannot seek for impleading themselves in the final decree proceedings. The trial Court has to pass the final decree only in terms of the preliminary decree and the trial Court cannot deviate from the preliminary decree. If the petitioners are having any right in respect of 1.25 1/2 acres of land out of the total extent of 2.51 acres, it is open to them to get their rights declared in an appropriate proceedings. Since the trial Court had already passed a final decree, the present application filed by the revision petitioners to get themselves impleaded in the final decree application cannot stand. The trial Court has rightly dismissed the application.

17. Mr. M.S. Krishnan, learned senior counsel appearing for the petitioners in C.R.P. (PD). No. 4489 of 2013 submitted that the plaint in O.S. No. 207 of 2013 is liable to be struck off for the reason that the plaintiffs are re-litigating the matter in the present suit. Further, the learned senior counsel submitted that when the trial Court had already passed the preliminary decree in O.S. No. 182 of 1977, the present suit filed by the plaintiffs seeking for the very same relief is not maintainable.

18. Further, the learned senior counsel, in support of his contention relied upon the following judgments:

(i) K.K. Modi Vs. K.N. Modi and Others, (1998) 1 AD 697 : AIR 1998 SC 1297 : (1998) 1 ARBLR 296 : (1998) 92 CompCas 30 : (1998) 1 JT 407 : (1998) 1 SCALE 403 : (1998) 3 SCC 573 : (1998) 1 SCR 601 : (1998) 1 UJ 623 : (1998) AIRSCW 1166 : (1998) 1 Supreme 484 wherein the Hon"ble Supreme Court held as follows:

"One of the examples cited as an abuse of the process of the Court is relitigation. It is an abuse of the process of the Court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the Court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the Court. Frivolous or vexatious proceedings may

also amount to an abuse of the process of the Court especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the Court from being wasted. Undoubtedly, it is a matter of the Court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special case. The Court should also be satisfied that there is no chance of the suit succeeding."

(ii) N.A. Chinnasamy and C. Sethupathy Vs. S. Vellingirinathan, (2013) 6 CTC 809 : (2013) 5 LW 350 : (2013) 8 MLJ 92 wherein this Court held that if the plaintiff, having sufficient knowledge about the occurrence, after a lapse of time, without any bona fide intention, approaches the Court, after the period of limitation, the same shall be presumed as an abuse of process of Court. Further, this Court held that if the suit filed is an abuse of process of law and Court, this Court can pass appropriate orders, invoking Article 227 of the Constitution of India to strike off the plaint, in order to prevent abuse of process of Court and to meet the ends of justice.

19. Countering the submissions made by the learned senior counsel for the petitioners, Mr. R. Subramanian, learned counsel appearing for the respondents submitted that the plaint cannot be struck off since the alternative remedy is available to the petitioners to invoke Order 7 Rule 11 of the Civil Procedure Code. Further, the learned counsel submitted that the plaintiffs are not re-litigating the issues, which were already decided in the proceedings.

20. In support of his contention, the learned counsel relied upon the following judgments:

(i) K. Ponnamal and Others Vs. V. Thayanban, Rajeswari Vasudevan and Dr. Jayashree Mani wherein this Court held that when alternative remedy is available under Order 7 Rule 11 of the Civil Procedure Code to strike off the plaint, invoking of Article 227 of the Constitution of India is not permissible.

(ii) Mayar (H.K.) Ltd. and Others Vs. Owners and Parties, Vessel M.V. Fortune Express and Others, AIR 2006 SC 1828 : (2006) 3 BC 156 : (2006) 2 JT 48 : (2006) 2 SCALE 30 : (2006) 3 SCC 100 : (2006) 1 SCR 860 : (2006) AIRSCW 863 : (2006) 1 Supreme 677 wherein the Hon"ble Supreme Court held as follows:

"To get the order of stay of a suit on the ground of abuse of process, the applicant must show that the plaintiff would not succeed but that he could not possibly succeed on the basis of the pleadings and in the circumstances of the case. In other words, the defendant would be required to show very strong case in his favour. The power would be exercised by the Court if the defendant could show to the Court that the action impugned is frivolous, vexatious or is taken simply to harass the defendant or where there is no cause of action in law or in equity. The power of the Court restraining proceedings is to be exercised sparingly or only in exceptional cases. The stay of proceedings is a serious

interruption in the right that a party has to proceed with the trial to get it to its legitimate end according to substantive merit of his case. The Court to exercise the power to stay the proceedings has to keep in mind that the positive case has been made out by the defendant whereby the Court can reach to the conclusion that proceedings, however, indicate an abuse of the process of Court. The High Court has granted stay of proceedings as it found the plaintiffs guilty of suppression of jurisdictional clause of BOL and on the finding that the plaintiffs have no case on merits, and thus it would be abuse of process of the Court if the plaintiffs are permitted to go ahead with the trial in the Calcutta Court. We are not satisfied that the defendants have made out the case on any of the counts."

(iii) K.K. Swaminathan Vs. Srinivasagam, (2003) 4 CTC 347 wherein this Court has held as follows:

"One of the most abuse of process of the Court is re-litigation. It is an abuse of process of the Court and contrary to justice to re-litigate the same issue, which has already been tried and decided earlier against him. If the same issue is sought to be re-agitated by frivolous and vexatious suits, it is not as if the Court is powerless to stop the proceedings when it is brought to its notice. O.S. 2473/1996 is sheer abuse of process of the Court re-agitating the same issue, in my view, should not be allowed to continue."

21. On a careful consideration of the materials available on record and the submissions made by the respective learned counsel, it could be seen that the prayer sought for in the Civil Revision Petition is to strike off the plaint in O.S. No. 207 of 2013 under Order 7 Rule 11 of the Civil Procedure Code. The petition under Order 7 Rule 11 of the Civil Procedure Code can be filed only before the trial Court. But, the Civil Revision Petition has been filed under Article 227 of the Constitution of India to strike off the plaint under Order 7 Rule 11 of the Civil Procedure Code. This Court cannot strike off the plaint under Order 7 Rule 11 of the Civil Procedure Code. The main contention of the petitioners/defendants is that the plaintiffs are re-litigating the matter by filing the present suit in O.S. No. 207 of 2013 when the preliminary decree was already passed in O.S. No. 182 of 1977 way back in the year 1978 itself.

22. The case of the plaintiffs in O.S. No. 207 of 2013 is that the preliminary decree was obtained by the then plaintiffs in O.S. No. 182 of 1977 by exercising fraud. They have also stated that there was no oral evidence adduced by the plaintiffs. No document was submitted by the plaintiffs and there was no cause of action in O.S. No. 182 of 1977. Further, they have also stated that they came to know about the passing of the final decree only when they received summons in the final decree application in I.A. No. 307 of 2012 and also came to know about the Gift Settlement Deed executed by the defendants 26 to 29 along with their relatives in favour of the 31st defendant dated 13.12.1976 just before the filing of the suit. The petitioner in C.R.P. (NPD). No. 2636 of 2015 are claiming 1.25 1/2 acres of land in the suit properties by virtue of the Settlement Deed dated 13.12.1976.

23. On a perusal of the plaint, it cannot be said that the plaintiffs are re-litigating the matter. When a specific provision is available under the Civil Procedure Code in Order 7 Rule 11 to the defendants, instead of filing the application before the trial Court, the defendants have approached this Court under Article 227 of the Constitution of India to strike off the plaint. In order to consider the application under Order 7 Rule 11 of the Civil Procedure Code, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments in the plaint. In other words, in deciding such an application the Court should read the averments in the plaint. The pleas taken by the defendants in the written statement are wholly irrelevant to decide the application under Order 7 Rule 11 of the Civil Procedure Code.

24. The power of judicial superintendence under Article 227 must be exercised sparingly only to keep the Courts and Tribunals within their bounds of authority and not to correct mere errors. The supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution of India is confined only to see whether any inferior Court or Tribunal has proceeded within its parameter and not to correct an error apparent on the face of the record.

25. The petitioners/plaintiffs, who are the defendants in the pending suit could have also moved the Court below by filing an application to reject the plaint under Order 7 Rule 11 of the Civil Procedure Code. The petitioners herein, instead of availing the remedies provided under the Civil Procedure Code, have erroneously invoked the jurisdiction of this Court under Article 227 of the Constitution of India.

26. In these circumstances, no relief can be granted in these Civil Revision Petitions. The judgments relied upon by the learned counsel for the respondents squarely applies to the facts and circumstances of the present case. Though there is no dispute with regard to the ratios laid down in the judgments relied upon by the learned senior counsel for the petitioners, since the facts and circumstances differs from the case on hand, the judgments are not applicable.

27. In these circumstances, the Civil Revision Petitions are liable to be dismissed. Accordingly, all the three Civil Revision Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.