

Nesammal and Another Vs. Edward and Another

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Court : Chennai

Decided On : Aug-31-1998

Reported in : 1998(3)CTC165

Judge : S.S. Subramani, J.

Acts : [Code of Civil Procedure \(CPC\) 1908](#) -- Sections 2(2) and 96 -- Order 7, Rules 1 and 11; Constitution of India, Article 227

Appeal No. : C.R.P. No. 332 of 1998 and C.M.P. No. 1644 of 1988

Appellant : Nesammal and Another

Respondent : Edward and Another

Advocate for Def. : Mr. K. Sreekumaran Nair, Adv.

Advocate for Pet/Ap. : Mr. P. Mani, Adv.

Disposition : Petition closed

Judgement :

ORDER

1. The Plaintiffs in Civil Filing No.8269 of 1997 on the file of principal District Munsif, Kuzhithurai are the Revision Petitioners. This revision is filled under Article 227 of Constitution of India.

2. The impugned order is rejecting the Plaint on the ground that for the same issue, there was adjudication and therefore the suit is prima facie barred. The same is challenged under Article 227 of the Constitution of India.

3. It is not disputed by the plaintiff/petitioners that between them and the respondents herein there is an earlier suit in O.S.2 of 1983. The suit was decreed, taken appeal without success and confirmed by me in second appeal No.874 of 1994. The present plaintiffs were impleaded as legal heirs of the deceased appellant in that case. After a detailed discussion of the entire matter. I held that the revision petitioners are not entitled to any relief and the decree granted in the suit is not liable to be interfered with. An argument was also taken before me that the plaintiffs in O.S.2 of 1983 were given a decree to which they are not legally entitled to and the same will cause great injustice to them. The said contention was rejected by me in para 13 of my Judgment which reads as under.

'Learned counsel for the appellants contended that a person who is not entitled to any right is allowed to get partition and this will cause great prejudice to his client. I cannot agree with the said submission. The first defendant did not care to cross examine the plaintiff's witness in spite of the fact that adjournments were given liberally for the said purpose. Since no document was produced before the trial court or even before the lower appellate court, they relied only on the Written statement from which they could only infer that the appellant (first defendant) had no case as alleged in the pleading. Due to failure on his part to produce the documents referred to in the pleadings Courts below could only take on adverse inference against the first defendant (appellant), rightly Learned counsel for the appellants here in agreed that if this Court holds that sufficient opportunity has been given, he cannot argue the case on merits.'

The second appeal filed by the very same appellants was dismissed on 24.2.1997 and the present suit was filed in September 1997. In the plaint on the file of the lower Court, there is no statement about the Judgment of this Court and what they wanted was to have a decree in O.S.2 of 1983 from executing the same. As I said, the very suit was filed long after the dismissal of second appeal whereby I confirmed the decision in O.S.2 if 1983. Decree of this Court is suppressed and

when a decree is confirmed by this Court, it follows that the decree in O.S.2 of 1983 merges with the decree of this Court.

4. That apart, on a reading of the plaint, it is clear that the petitioners wants to re-agitate the entire matter once again. It is for that reason the Lower Court held that the plaint is liable to be rejected. It is this conduct on the part of the litigant is commonly known as abuse of process of Law. It is stated.

'(1) The initiation of a proceedings a in a Court of Justice for the purpose of mounting a collateral attack on a final decision adverse to the intending plaintiff reached by a Court of competent jurisdiction in previous pro-ceedings in which the plaintiff had a full opportunity of contesting the matter is, as a matter of public policy, an abuse of the process of the Court;

(2) The fact that collateral attack is by means of a civil action raising an identical issue decided against the plaintiff in a competent court of criminal jurisdiction is immaterial since if the issue was proved against the plaintiff beyond all reasonable doubt in the Criminal Court it will be wholly inconsistent if it is not decided against him on the balance of probability in the civil action. The plaintiff's civil action therefore is liable to be struck out as an abuse of the process of the Court. (See: Hunter v. Chief Constable of west Midland 1981 (3) All E.R 727.

5. The further contention raised by the learned counsel for the petitioners is that the ground mentioned for rejection of the Plaint will not come under Order 7, Rule 11 of Code of Civil Procedure. Only if the grounds are satisfied under that Rule, the Court gets jurisdiction to reject the plaint is the argument of the counsel. I do not think that the said argument also could be accepted.

6. As early as in Lakshmanan Chetty v. Lakshmanam Chettiar and others, A.I.R. 1915 Mad. 483. Their Lordships held that the provisions of Order 7, Rule 11 of Code of Civil procedure are not exhaustive. That is a case where the next friend filed the suit on behalf of the minor. The Court found that the litigation is not for the benefit of the minor and rejected it. The decision was confirmed by this Court.

7. The said decision was followed in R. Shanmughavelu Pillai v. R.Karuppanan Ambalm, A.I.R. 1976 Mad. 289. In para 7 of the Judgment, His lordship held that,

'Mr.Venkataraman, the counsel appearing for the respondent cited Satyanarayanacharlu v. Ramalingam, : AIR1952 Mad86 (FB) wherein it has been held;

'Where an order directing payment of additional court-fee in a suit is not complied with and it is followed by an order rejecting the plaint, a revision against the later order would not be maintainable and the proper remedy is only by way of an appeal against the decree.'

Another case cited by Mr.Venkataraman is Harihar Bakhsh Singh v. Jagannath Singh, AIR 1924 Oudh 413. A Bench of the oudh court has held:-on behalf of the appellant it is contended that the only grounds on which a court is authorised to reject a plaint are those given in Order 7, Rule 11 of the Civil P.C. and that the Subordinate Judge had no jurisdiction to reject this plaint on the grounds taken by him. With this contention we are not disposed to agree. The instances given in the rule referred to cannot be regarded as exhaustive or as limiting the powers of a court under section 151 of the same code. We concur in the view taken by the Madras High Court in Laksmanam Chetty v. Lakshmanam Chettiar, 1914 (1) LW 875 : 25 Ind Cas 738 : AIR 1915 Mad. 483 that a Court has jurisdiction in a proper case to dismiss a suit filed by the next friend of a minor on the ground that it is not in the interests of the minor that the suit should be allowed to go on. The cases quoted in that ruling from 'Simpson on the Law of Infants' (pp.471 to 473) show that this is also the law in England.' The next case cited by Mr.Venkataraman is Radhakishen v. Wali Md. AIR 1956 Hyd. 133, wherein also a Bench of the Hyderabad High Court has held that:-

'The instances given in order Rule 11 cannot be regarded as exhaustive of all the cases in which a court can reject a plaint or as limiting the inherent powers of the Court in respect thereof.'

For the proposition that against the rejection of the plaint, only appeal lies, has been made clear in the decision reported in Lakshmanam v. Lakshmanam, AIR

1915 Mad. 483 and in *Badri Nath v. State of Pepsu*, AIR 1957 Pepsu 14. Even reading Section 2(2) C.P.C. it does not say the rejection of the plaint under Order 7, Rule 11, C.P.C. on the other hand, it generally states that decree will include rejection of plaint. Thus it is clear both from the Section and also the decisions cited above that only appeal will lie against the rejection of the plaint and it is limited to such cases wherein the plaint was rejected for the reasons stated under order 7, Rule 11, .C.P.C.'

8. Apart from the above decisions, The trial Court is also bound to see that the valuable time is not taken away by proceeding the trial in the vexatious litigation, which is clearly abuse of process of Law. In fact, in the decision reported in *T.Arivandandam v. T.V.Satyapal and another*, : [1978]1SCR742 the Honourable Supreme Court held that it is also duty bound not to take such cases. In para 7 of the Judgment, Their Lordships held that,

'We regret the infliction of the ordeal upon the learned Judge of the High Court by a callous party more than regret the circumstances that the party concerned has been able to prevail upon one lawyer or the other to present to the Court a case which was disingenuous or worse. It may be a valuable contribution to the cause of justice if counsel screen wholly fraudulent and frivolous litigation refusing to be beguiled by dubious clients. And remembering that an advocate is an officer of justice he owes it to society not to collaborate in shady actions. The Bar Council of India. We hope will activate mis obligation. We are constrained to make these observations and hope that the co- operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worth while disputes and avoiding the distraction of sham litigation such as the one we are disposing of Another moral of this unrighteous chain litigation is the gullible grant of ex-parte orders tempts gamblers in litigation into easy courts. A judge who succumbs to ex parte pressure in unmerited cases helps devalue the judicial process. We must appreciate Shri Ramasesh for his young candour and correct advocacy.

9. In *Azhar Hussian v. Rajiv Gandhi*, 1986(Supp) SCC 315, in Para 12, Their Lordships held that,

'Learned Counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substances, the argument is that the court must proceed with the trial record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, It is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and exercise the mind of the respondent. The word of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law.'

10. The same principle was followed in the very recent decision of Supreme Court reported in I.T.C. Limited v. Debts Recovery Appellate Tribunal, : AIR 1998 SC634 . In that case, Their Lordships followed the decision in Ashar Hussain v. Rajiv Gandhi, : [1986]2SCR782).

11. In view of all these decisions the argument of the counsel for the petitioners that unless the conditions are satisfied under Order 7 Rule 11 of Code of Civil procedure, the plaint cannot be rejected is without any basis. The provisions of Order 7 Rule 11 are not exhaustive and the Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the court. In appropriate cases, directions can be given by this court as well as the Court in which the suit is filed not to entertain the suit, if on reading the allegations in the plaint it reveals that the same is abuse of process of law. In this case all the grounds are made out and the very same plaintiff who got defeated in the litigation has agitated the very same issue by filing the present plaint. I appreciate the stand taken by the lower court in rejecting the plaint at the threshold.

12. The revision is also not maintainable since the order rejecting the plaint is a decree under the Code of Civil Procedure. Even if the plaint is rejected on some other grounds not covered by order 7 Rule 11 Code of Civil Procedure, the remedy is only an appeal under Section 96 of Code of Civil Procedure. The same is so declared in the decision reported in R.Shanmughavelu Pillai v. R. Karuppannan Ambalam, AIR 1976 Mad. 289. In either way the revision is misconceived and the same is dismissed. No costs. Consequently, the C.M.P.1644 of 1988 is closed. Advocate fee Rs.1,50.

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