

Ramish Asari vs Tmt.Kurshad Begaum And Anr. on 27 January, 1999

Equivalent citations: (1999)2MLJ179, 1999 A I H C 3360, (1999) 2 MAD LJ 179

ORDER

S.S. Subramani, J.

1. Seventh defendant in O.S.No. 94 of 1997 on the file of District Munsif Court, Madurai town is the revision petitioner herein. This revision is filed under Article 227 of Constitution of India.

2. Material facts which necessitated filing of this revision could be summarised thus: Respondents herein filed O.S.No. 1459 of 1996 on the file of District Munsif Court, Madurai against petitioner, Suit was one for permanent prohibitory injunction restraining defendants, their men and agents from interfering with the peaceful possession and enjoyment of suit property therein. Property covered by suit is included in resurvey Nos. 12/1, 112/2 and 12/3. It is not disputed that injunction application filed by plaintiff was dismissed and the matter was taken in C.M.A. and the same was also not successful, it is also not in dispute that a revision was taken against that order which was also dismissed at the admission stage with a direction to dispose of the suit within stipulated time.

3. Whiles, very same plaintiffs filed O.S.No. 94 of 1997 on the file of same court. Even though there are eight defendants in the suit, the relief sought for is only as against the present petitioner. Relief sought for in that suit read thus,

(a) For a permanent injunction restraining the 7th defendant his men and agents from trespassing into or encroaching the suit A-Schedule properties in any manner whatsoever:

(b) For a permanent injunction restraining the 7th defendant, his men and agents from altering the physical features of the B-Schedule properties by raising further constructions or in any manner whatsoever:

(c) For a permanent injunction restraining the 7th defendant, his men and agents from altering the physical features of the C-Schedule properties by converting the same into house site plots or in any manner whatsoever;

(d) For a permanent injunction decree restraining the 8th defendant from registering any document that may be executed by the 7th defendant or any person through him in favour of third parties in respect of the suit properties mentioned in the description of properties herein;

(e) Directing the contesting defendants to pay the costs of the present suit;

(f) To pass such other and further reliefs as this Honourable Court may be pleased to deem fit and proper in the circumstances of the Case and thus render justice.

4. 'A' Schedule property in the plaint is mostly the property in the earlier suit though one more additional survey number is included as resurvey No. 19/3, It was in respect of that property injunction application was dismissed in the earlier litigation.

5. With regard to 'B' and 'G' schedule items, averments in the plaint may be stated thus: In para IX of the plaint it is said, 'At this juncture it is significant to note that this B Schedule suit properties were already taken over by the defendants 1 to 3 even as early as 28.10.1982 from its previous owners. Thereafter B Schedule properties belong to and vested with (the defendants 1 to 3) Tamil Nadu Housing Board and the possession of the said properties has also been taken by the defendants 1 to 3.' So far as B Schedule property is concerned, plaintiffs allege that defendants 1 to 3 and Madurai Corporation colluded together and changed the revenue records in favour of 7th defendant, who is the petitioner herein and on that basis he is attempting to put up construction in B Schedule properties.

6. With regard to C Schedule items, para X of the plaint says thus: "The plaintiffs further submit that the suit C Schedule properties comprised in R.S.No. 18/2 in Ponmeni Village, Madurai are situated on the western side of their A Schedule suit properties and these lands including the possession of the same were also already acquired and taken over by the defendants 1 to 3 on 28.10.1982 from its previous owners. The defendants 1 to 3, Tamil Nadu Housing Board has also changed the patta, adangal and all other revenue records in its name, and thereby the defendants 1 to 3 Tamil Nadu Housing Board became the owner of these C Schedule properties. But the 7th defendant recently with the collusion and connivance of the defendants 1 to 3 has trespassed into those lands and encroached the same. The 7th defendant is also now taking speedy steps to convert those C Schedule suit properties into house site plots in order to sell those lands also to third parties and thereby the 7th defendant is trying to trespass and encroach the plaintiffs A Schedule suit properties."

7. It is clear from these averments in the plaint that plaintiffs are not claiming any right over B and C Schedule properties and it is admitted in the pleading that defendants 1 to 3, Tamil Nadu Housing Board are the absolute owner and in possession of plaint B and C Schedule properties. In spite of stating that defendants 1 to 3, the Tamil Nadu Housing Board are absolute owners and in possession plaintiff are not claiming any relief as against them in the suit. Relief is confined only as against petitioner, who is the 7th defendant.

8. Present revision is filed by petitioner alleging when plaintiff is not claiming any right over the property, he cannot maintain suit. It is not public interest litigation. It is further said that with regard to A Schedule items, injunction itself has been vacated and when a suit is already pending, second suit for the purpose of injunction is not maintainable and it will amount to abuse of process.

9. When the matter came for admission, I ordered notice of motion and further proceedings in the suit was also stayed.

10. After receiving notice, plaintiffs entered appearance and placed their arguments.

11. Learned Counsel also placed on record the contentions raised by petitioners in the suit with regard to B and C Schedule properties, With regard to A Schedule property, counsel submitted that was in respect of same property earlier suit was instituted and the same is pending. According to Senior Counsel for respondents entire plaint cannot be struck off, especially when B and C Schedule properties are not subject matter in the earlier litigation.

12. Having heard both sides, I feel the suit has to be struck off the file for the following reasons: (a) With regard to A Schedule items in the suit, it is agreed by both sides that in respect of same property and for the same relief O.S.No. 1459 of 1996 was filed. When earlier litigation is already pending, there is no necessity for filing another suit. Even though one more survey number is added, that will not give new right to plaintiffs when property is same, (b) With regard to B and C Schedule Items, I have already extracted relevant portions of plaint, which shows that even according to plaintiffs, defendants 1 to 3 Tamil Nadu Housing, Board are the absolute owner and in possession of those items. With regard to B Schedule, case of plaintiffs is that they have right of access through B Schedule Property to enter into A Schedule. Once A Schedule is not in possession of plaintiffs, there is no question of giving access through B Schedule. No relief is claimed against defendants 1 to 3, the Tamil Nadu Housing Board. Persons who are affected by construction or trespass if any are only defendants 1 to 3, the Tamil Nadu Housing Board. Plaintiffs have no locus standi to file a civil suit in which they have no interest. By this finding it should not be understood that I accepted the case of plaintiffs that with regard to B and C Schedule items defendants 1 to 3 are the owners. I am only referring to the case of plaintiffs for the limited purpose that plaintiffs do not claim any right over the same. If plaintiffs have no right or interest over B and C Schedule items, naturally they cannot have any cause of action in regard to those properties. A simple reading of plaint will disclose that plaintiffs have no cause of action nor any locus standi to file the suit.

13. For what purpose other defendants were impleaded in the suit when no relief is claimed as against them is not explained anywhere in the plaint.

14. It is submitted by learned senior counsel for respondents that in the written statement and counter filed by petitioner in the suit, he had taken contradictory stand and therefore plaintiffs are justified in bringing the suit. It is also submitted by the learned senior Counsel for respondents that if petitioner agrees that with regard to B and C Schedule properties he is not the owner, there is no necessity for them to prosecute the suit.

15. I do not find any merit in the said submissions. Plaintiffs are coming to this Court for relief, which does not depend upon the admission of defendants or in what way they defend suit. If plaintiff has no cause of action for instituting the suit or locus standi for filing the same, plaint will have to be rejected and the question whether petitioner had taken contradictory stand will not arise for consideration.

16. What was the necessity for filing such suit when no relief is claimed as against other defendants? It shows lack of bona fides on the part of plaintiffs.

17. Honourable Supreme Court in a recent decision reported in K.K. Modi v. K.N. Modi , had occasion to consider this question. In paragraph 44 of the judgment, their Lordships held thus, One of the examples cited as an abuse of the process of the court is relegation. 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 cases. The Court should also be satisfied that there is no chance of the suit succeeding.

[Italics supplied] In that case, Lordships also accepted the explanation to the phrase 'abuse of process of court' as published in the Supreme Court Practice, 1995 published by Sweet & Maxwell in paragraphs 18/19/33 of the book. In paragraph 43 of the Judgment the same is stated thus, This term connotes that the process of the court must be used bona fide 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 Consideration of public policy and the interests of justice may be very materials.

In paragraph 42 of the same judgment, their Lordships also recognised the inherent power of the court to strike out pleading which is an abuse of process.

18. Taking into consideration above decision, I feel it is not fit a case where the said power should be invoked. On going by the averments in the plaint, I am satisfied that there is no chance of the plaintiff succeeding in the suit and the claim is made only for collateral purpose or it is only a spurious claim. It is of frivolous nature and to prevent the time of public and court being wasted the suit should not be allowed to be proceeded with. Improper use of machinery of court also should not be allowed to be continued for the continued prosecution of this vexatious litigation. Interest of justice being, paramount considerations, I feel it is the fit case where the plaint should be struck off the file.

19. In the result, the civil revision petition is allowed, O.S.No. 94 of 1997 on the file of District Munsif Court, Madurai is struck off the file. Petitioner is entitled to cost and the same is quantified as advocate fee Rs. 3,000. Consequently, C.M.P.No. 16172 of 1998 is closed.