

Rajkumar S.Metha vs Renuka Devi on 30 August, 2019

Equivalent citations: AIRONLINE 2019 MAD 1268

Author: P.Velmurugan

Bench: P.Velmurugan

C.R.P. (PD) No.
C.M.P.Nos.13352

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2019

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD) No.2832 of 2017 and
C.M.P.Nos.13352 & 21755 of 2017

1. Rajkumar S.Metha
2. Chandra A.Metha
3. Rajashree N.Metha
4. Shashikala R.Metha
5. Naresh S.Metha

...

Vs.

Renuka Devi

... Respondent

Civil Revision Petition has been filed under Article 227 Constitution of India to struck of the plaint in O.S.No.183 of 2017 the file of the District Munsif Court, Chengalpattu, by allowing the revision petition.

For Petitioners: Mr.S.Sathiaseelan for
M/s.R.Thamaraiselvan

For Respondent : Mr.T.V.Ramanujan, Senior Counsel
for Mr.V.P.Senguttuvel

<http://www.judis.nic.in>

C.R.P. (PD)
C.M.P.Nos.1335

ORDER

This civil revision petition has been filed by the petitioners seeking to reject the plaint in O.S.No.183 of 2017, which was filed by the respondent.

2 The petitioners are the defendants in the suit in O.S.No.183 of 2017 and the respondent is the plaintiff. The respondent/plaintiff filed the present suit seeking permanent injunction against the petitioners/defendants. Pending the above suit, the petitioners moved this Court seeking rejection of plaint, on the ground that the suit is hit by principle of re-litigation and abuse of process of Court.

3 The learned counsel appearing for the petitioners would submit that the respondent/plaintiff claims to be the owner of the property comprised in Survey No. 168/3E1A1A1C2A situated in Pattipulam Village, Thiruporur Taluk, Kancheepuram District. For the said property, the respondent/plaintiff mentioning four boundaries which are actually the boundaries of the property belonged to the <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 petitioners in Survey No. 168/4, 168/5 and 168/6 in the same village and taluk, but the petitioner's properties are not adjacent. The respondent/plaintiff herein and her mother (late) tracing their title to Survey No. 168/3E1A1A1C2A from one Munusamy Naicker, Adhimoola Naicker and subsequently from one Kishtappa Naicker. In the above circumstances, claiming title to the suit schedule property in Survey No.168/3E1A1A1C2A, the respondent/plaintiff's mother Kamatchi Ammal instituted a suit for declaration of title and for injunction in O.S.No.269 of 1999 (1st Suit) against the petitioners herein and others as defendants and the boundaries mentioned for the above Survey Number are as follows;

On the East by Bay of Bengal, On the West by ECR, On the South by Selvaraj Mudaliar land, On the North by Parthiban Vagayara land 4 The above suit was dismissed as not pressed on filing a memo to the effect by the then plaintiff Kamatchi Ammal vide judgment and decree dated, 12.09.2000 on the file of the District Munsif, Chengalpet. The respondent/plaintiff and her father Kishtappa Naicker also filed a suit for declaration and injunction in respect of the <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 property in Survey No. 168/3E1A1A1C2A in O.S. No. 577 of 1992 on the file of the District Munsif Court, Chengalpet. The said suit was also dismissed. The respondent/plaintiff and her mother Kamatchi Ammal had also instituted another suit for declaration of their title and for recovery of possession in O.S. No. 34 of 2000 (2nd Suit) on the file of the District Munsif Court, Chengalpet, filed subsequent to withdrawal of above suit in O.S.No.269 of 1999. The Survey Number mentioned in the Plaint and Schedule to

the property were identically one and same as mentioned in the previous suit, namely, Survey No. 168/3E1A1A1C2A3. The boundary mentioned for the above property is as follows:

On the North by Sivaji Nadar vagayara vacant site, On the South by Selvaraj Mudaliyar vacant land, On the West by the East Coast Road and Aalavandar Charities properties, and On the East by the Bay of Bengal

5 The above suit was also dismissed as settled out of Court based on the memo filed by the counsel for the plaintiff to the effect that the suit is settled out of Court and may be dismissed as not pressed, vide judgement and decree dated 30.09.2008. In the <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 meanwhile, the respondent/plaintiff's mother and three others, represented by Power of Attorney one Mr. Selvam, who is none other than the husband of the respondent/plaintiff, filed a suit for declaration of their title with the consequential relief for recovery of possession in O.S. No. 56 of 1996 on the file of the District Munsif Court, Chengalpet, for the properties comprised in Survey No. 168/3E1A1A1C2 with the very same set of facts, which are pleaded in the aforesaid suits in which the defendants are different from the petitioners. The said suit was dismissed by the learned District Munsif, Chengalpet, vide the judgement and decree dated, 18.08.2005 after a full-fledged trial, since the plaintiffs have not established their title and their entitlement to recovery of possession. As against the dismissal of the above suit, the respondent/plaintiff's mother and the three others had also preferred an appeal in A.S. No. 13 of 2007 on the file of the Additional Subordinate Judge, Chengalpet, in which the judgment and decree passed by the trial Court was confirmed by dismissing the appeal vide judgment and decree dated 26.03.2007 and held that the identity of the Suit property was not established and the plaintiffs have no title to the Suit property in Survey No. 168/3E1A1A1C2A. <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 6 The judgment and decree made in A.S. No. 13 of 2006 dated 26.03.2007 attained finality, since no second appeal was preferred as against the above judgment & decree. Therefore, it is very clear that the respondent/plaintiff herein has no title at all to the property which is subject matter of present civil revision petition and for which she mentioned the petitioners' property's boundary pertaining to Survey Nos.168/4, 168/5 and 168/6 with mala-fide intention to grab petitioners property, having lost in all their earlier attempts to grab the property without even any title. The respondent/plaintiff after the demise of her mother Kamatchi Ammal again instituted a vexatious, frivolous Suit for permanent injunction against the petitioners herein and others as defendants in respect of the Suit scheduled property comprised in Survey No. 168/3E1A1A1C2A by filing a Suit in O.S. No. 129 of 2011 (3rd Suit) on the file of the District Munsif Court, Chengalpet, that too after withdrawing earlier two identical suits against the petitioners in O.S.No. 269 of 1999 and O.S.No. 34 of 2000. The four boundaries mentioned in the previous suits and the present suit for the very same Survey Number in the <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 schedule of property, as follows:

North by : Sivaji land South by: Selvaraj Mudaliar land East by : Bay of Bengal West
by : East Coast Road

7 In the above suit an interlocutory application in I.A. No. 633 of 2011 was filed for interim injunction by the respondent/plaintiff, in which since the respondent/plaintiff herein is claiming right over the property in Survey No. 168/3E1A1A1C2A by mentioning the four boundaries belonged to the petitioners/defendants' property in Survey No.168/4, 168/5 and 168/6, to ascertain whether the plaintiff's property and boundaries claimed for the said property are one and the same, an Advocate Commissioner was appointed along with the Surveyor to that effect. The Advocate Commissioner filed a report and plan, as per the report, the property described in the Plaint is not pertaining to the Survey Number claimed by the plaintiff and based on the judgment and decree in O.S. No. 34 of 2000 between the respondent/plaintiff and the petitioners was already dismissed as not pressed on the reason that the matter was settled out of Court, the petition for interim injunction was dismissed, since the petitioner had not come to the Court with clean hands vide order dated 01.10.2012. <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 Finally, the suit was also dismissed again based on the memo filed by the Counsel for the plaintiff stating that "the plaintiff don't want to proceed with the case and prays that this case may be dismissed as not pressed" by the learned District Munsif, Chengalpet, vide judgment dated 29.06.2016.

8 In the above circumstances, the respondent/plaintiff again instituted the subject matter of present suit in O.S.No.183 of 2017 (4th Suit) on the file of District Munsif Court, Chengalpet. The present suit has been filed by the respondent/plaintiff, reducing the number of defendants from ten to five, and the survey number, extent, boundaries etc., are one and same, namely, S.No.168/3E1A1A1C2A and the four boundaries, which belonged to the petitioners' properties in S.No. 168/4, 168/5 and 168/6, are as follows:

North by : Sivaji Nadar land, South by :Selvaraj Mudaliar land, East by : Bay of Bengal, and West by: East Coast Road

9 In the light of aforesaid facts and the subject matter of present suit in O.S. No. 183 of 2017 was decided in the previous three suits which are identically one and same and between the same <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 parties, it is very clear that, the respondent/plaintiff and her mother maliciously kept on indulging in speculative litigations in respect of the very same suit property namely in Survey No. 168/3E1A1A1C2A, for which they have no title at all as per the judgment and decree in A.S.No. 13 of 2017 by setting up identical, slightly different claims against the one and same persons namely, the petitioners herein and the present suit is also one such vexatious attempt without even obtaining any leave or permission from the Courts, where the previous suits were filed against the petitioners by the respondent/plaintiff on identical issue were withdrawn as spelt out supra is nothing but an abuse of process of Court and will amount to re-litigation which may lead to a miscarriage of justice and injustice, if the same is allowed to continue on the file of the Court below. Hence, the present civil revision petition preferred under Article 227 of Constitution of India to strike off the Plaint in O.S. No. 183 of 2017 has to be allowed in line with catena of judgments of the Hon'ble Supreme Court of India and this Hon'ble court in this regard, which are as follows:

1. (1998) 3 SCC 573 Pr. 43, 44 (K.K. Modi Vs. K.N. Modi & Ors.)

2. 2016 (4) CTC 353 Pr. 3,16 to 21 (DB) (Sub-Continental Equities Limited Vs. R.V.D. Ramaiah)
3. 2013 (1) CTC 180 Pr. 25, 26 & 13, 14 (N. Babu Vs. S. Shanmugam &Ors.) <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017
4. 2013-5-L.W. 810 pr. 17,19,25 (S.R. Nanda Kishore Vs. The Body of Villagers).
5. 2010 (4) CTC 690 Pr. 17, 28, 29, 31, 33 (Southern & Rajamani Transports Pvt. Ltd. Case)
6. 1998 (1) CTC 66 Pr. 9 (Ranipet Municipality Vs. M. Shamsheer khan)
7. (1987) 1 SCC 5 Pr. 7,9 (Sarguja Transport Services Vs. S.T.A.T)
8. (2008) 14 SCC 58 Pr. 61 (Ramesh Chandra Sankla & Ors. Vs. Vikram Cements) Decisions of the Hon'ble Supreme Court dealing with the abuse of process of Court & Fraud on Court"
1. (2013) 2 SCC 398 Para 32 – 32.6 (Kishore Samrite Vs. State of U.P.)
2. (2010) 8 SCC 383 Para 28 – 41 (Meghmala Vs. G. Narasimha Reddy)
3. (2012) 6 SCC 430 Para 43 - 43.5, 43.8 (A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam)
4. (2007) 4 SCC 221 Para 25,26,28-30 (A.V. Papayya Sastry Vs. Govt. A.P.) Decision of the Hon'ble Supreme Court of India on purpose and powers conferred in the High Court under Article 227 of Constitution of India – That to wipe out the injustice on account of erroneous interpretation of law, reported in (2002) 1 SCC 100 Para 12 (Roshan Deen Vs. Preeti Lal) <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 If there is a suppression of material fact of previous suit between the same party and the institution of subsequent suit liable to be struck off invoking Article 227 of Constitution of India.
1. 1999 (3) L.W. 897 Para 13-16 (T. Palanisamy Gounder Vs. Sankara Ramanathan)
2. 2002 (1) CTC 277 Para 8,9, 22,23 (S. Viswanathan Vs. M/s. Muruga Agencies)
3. 2016 SCC OnLine Mad 28469 Para 1, 4-13 (Javarilal Vs. N. Parthasarathy)
4. MANU/TN/o888/2019 = 2019 (2) L.W. 148 Para 6,9-27,30- 35 (Raahul Foundations Pvt. Ltd. Vs. S. Chandarababu)

5. MANU/TN/2978/2017 = 2017 (8) MLJ 697 Para 8,912-15 (Rajendran Vs. Ettammal)

6. MANU/TN/4477/2018 Para 5-11,14 10 Therefore, the learned counsel appearing for the petitioners prays this Court to struck off the plaint filed by the respondent in O.S.No.183 of 2017.

11 The learned Senior Counsel appearing for the respondent would submit that the petitioners herein have filed the above revision petition even before service of suit summons on them. The Hon'ble Supreme Court of India and this Court, in catena of judgments, held <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 that Petition under Art.227 of the Constitution of India is not maintainable, when there is an alternate remedy available under the Civil Procedure Code to reject the Plaint and a Petition under Art. 227 of the Constitution of India can be invoked only at an extraordinary circumstances. The above suit has been filed by this respondent on a fresh cause of action and therefore non-disclosure of earlier suits arising out of different cause of action cannot be fatal to the present suit. The issue raised in the present suit can be decided only during trial as the petitioners herein are claiming this respondents property as their property, when they claim to be owners of lands in Survey No.168/4, 168/5 and 168/6 which has different boundaries and situated in a different area out of 407.16 Acres of land in S.No.168. Therefore, the issue of identification of the suit property and the property of the petitioners herein can be decided only after trial and the civil suit cannot be struck off at the initial stage. The lands comprised in S.No.168 Part measuring an extent of 12.40 Acres out of 407.16 Acres within specific boundaries situated at No.109, Pattipulam Village, Chengalpet Taluk, Kancheepuram District originally belonged to V. Krishtappa Naicker Son of Vedagiri Naicker, as his ancestral property under Patta No.27. The said V. KrishtappaNaicker under Sale <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 Deed dt.02.10.1953 bearing Doct.No.1169/1953 on the file of Sub- Registrar, Thiruporur, sold 1.00 Acre of land comprised in Survey No.168 Part to one Raghava Naicker son of Veerasamy Naicker and therefore during sub-division and mutation of revenue records, Patta No.27 came to be issued on 07.03.1979 by the Tahsildar, Chengalpet Taluk with Survey No.168/3E1 measuring 11.40 Acres. The said V. Krishtappa Naicker son of Vedagiri Naicker was in absolute possession and enjoyment of the said land without any let or hindrance. The said V. Krishtappa Naicker and his daughter S. Renuka Devi sold 1.10 Acres comprised in Survey No.168/3E1A1 to K.Sivaji, M.P.N. Ezhilarasu and M.P.N. Parthiban under Sale Deed dt.25.03.1985 bearing Doct.No.690/85 on the file of Sub-Registrar, Thiruporur, and therefore V. Krishtappa Naicker was in possession and enjoyment of 10.30 Acres of land comprised in Survey No.168/3E1A1 without any kind of let or hindrance. V. Krishtappa Naicker bequeathed 10.50 Acres (one half of 21.00 Acres) of lands comprised in Survey No.168 Part along with 2 other lands inherited from his grandfather Kannu Naicker, in favour of this respondent under registered Will dt.15.11.1993 bearing Doct.No.128/1993 on the file of Sub-Registrar, Adyar. It is submitted that V. Krishtappa Naicker son of Vedagiri Naicker died on 29.12.1993 <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 leaving behind his wife Kamatchiammal and daughter Renuka Devi as his legal heirs and after the death of V. Krishtappa Naicker, Kamatchiammal and this respondent were in possession and enjoyment of the said lands. During sub-division and mutation of revenue records Patta No.467 with sub-divided Survey No.168/3E1A1A1C2A came to be issued Head Quarters Deputy Tahsildar Thiruporur, in the name of Kamatchiammal wife of Late. V. Krishnatappa Naicker and this respondent.

12 The learned Senior Counsel would further submit that this respondent's mother filed a civil suit in O.S.No.269 of 1999 before the District Munsiff Court, Chengalpattu against the petitioner's herein for declaration and permanent injunction and when the petitioners herein trespassed into the suit property belonging to this respondent, Kamatchiammal mother of this respondent and this respondent filed a civil suit in O.S.No.34 of 2000 for declaration and consequential relief of delivery of possession etc. The Petitioners herein also filed a Civil Suit in O.S.No.137 of 2000 before the District Munsif Court, Chengalpet, against Revenue Divisional Officer, Chengalpet, Kamatchi Ammal and this Respondent for restraining RDO, Cehngalpet from in <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 any way cancelling Patta relating to the suit property therein i.e. land comprised in Survey Nos.168/4, 168/5 and 168/6 all situated at Pattikulam Village till the disposal of the civil suits pending before District Munsif Court, Chengalpet between Plaintiffs and the defendants 2 and 3 in OS.Nos.269/99 and 34/2000. However, when the petitioner's herein approached this respondent's mother and promised for out of Court settlement, she had not pressed the civil suit in OS.No.269/99 on 12.06.2000 and the same has been dismissed as not pressed. The petitioners herein and this respondent entered into a Memorandum of Understanding on 24.09.2008 and this respondent got back possession and enjoyment of the suit property as mentioned below. Consequent to entering into the Memorandum of Understanding dated 24.09.2008, the Plaintiffs in OS.No.34/2000 made an endorsement in the suit stating "the suit may be dismissed as not pressed as settled out of Court" and the same came to be dismissed as not pressed as settled out of Court by judgment and decree dt.30.09.2008 and similarly the petitioners herein also got their suit in OS.No.137/2000 dismissed as not pressed as settled out of Court by order dt.30.09.2008. The petitioners herein deliberately and wantonly suppressed the material fact of settlement made between the parties <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 under Memorandum of Understanding dt.24.09.2008 and dismissal of their suit in OS.No.137/2000 as not pressed as settled out of court and therefore they are not entitled to get any remedy before this Court as they approached this Court with unclean hands. The Plaintiffs in OS.No.34 of 2000 by believing the arrangement made in the Memorandum of Understanding dt.24.09.2008 allowed the civil suit to be dismissed as settled out of Court, without filing an application under Order 23 Rule 3 of the Civil Procedure Code to record Memorandum of Understanding dt.24.09.2008 and this compromise made under the Memorandum of Understanding dt.24.09.2008 was out of Court and nothing was recorded in the Court. Admittedly there was a settlement out of Court as narrated above and consequentially believing that the parties will act as per Memorandum of Understanding dt.24.09.2008, plaintiffs withdrew the suit in OS.No.34 of 2000 as settled out of Court. Kamatchiammal and this respondent are not well versed in the legal procedure and they believed the defendants in the suit and their representations as recorded in the Memorandum of Understanding dt.24.09.2008. The petitioners herein failed to honour their commitment under the Memorandum of Understanding of Understanding dt.24.09.2008 and Cheque for Rs.65,00,000/- <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 mentioned therein got dishonored and failed to arrange for sale of the property. At this stage the parties got restored back to the original possession at the instance of the well-wishers who arranged for settling the issue through Memorandum of Understanding dated 24.09.2008 and in that way Kamatchiammal got back possession and continued to be in possession for which also other party to Memorandum of Understanding dt.24.09.2008 co-operated. While so, Kamatchiammal wife of late.

V. Krishtappa Naicker in order to confer absolute title to this respondent executed and registered the Settlement Deed dt.01.06.2011 bearing Doct.No.5041/2011 on the file of Sub-Registrar, Thiruporur. Therefore this respondent has become sole and absolute owner of land comprised in Survey No.168/3E1A1A1C2A measuring 10.30 Acres situated at No.108, Pattipulam Village, Thiruporur Taluk, Kancheepuram District. However when the petitioners herein once again attempted to interfere with the possession and enjoyment of the suit property this respondent filed a civil suit in OS.No.129 of 2011 before this District Munsif Court. It is submitted that once again the petitioners herein approached this respondent and made her to believe that the entire dispute with respect to the suit property will be settled out of Court and requested <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 this respondent to not press the civil suit in OS.No.129 of 2011. It is submitted that therefore, this respondent on 29.06.2016 not pressed the civil suit in OS.No.129 of 2011 and the same came to be dismissed as not pressed by judgment and decree dt.29.06.2016. The suit in OS.No.129 of 2011 was based upon a fresh cause of action and it was instituted only for permanent injunction. Advocate Commissioner's report has created a controversy regarding identity of the property based upon the Sale Deeds. This respondent was advised to withdraw the said suit believing the representations of the petitioners herein that the matter can be settled out of Court and that the parties can sit again and discuss alternate mode of settlement, since Memorandum of Understanding dt.24.09.2008 cannot be performed by them. It is submitted that after dismissal of the civil suit in OS.No.129 of 2011 on 29.06.2016, the petitioners herein have been in touch with this respondent about the mode of settlement to be arrived at and discussions were going on. But suddenly the petitioners herein started unreasonable attitude and became evasive. During the course of discussion it was realized by the parties that as per the Sale Deeds and identification of the property as per the Sale Deeds and the revenue records, the suit property have been in possession of Kamatchiammal <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 and subsequently in possession of this respondent. When this was brought to the notice of the petitioners herein, they wanted to go back from the proposed compromise and did not co-operate and attempted to forcibly dispossess this respondent and attempted to alienate the property and this necessitated this respondent to file the present suit in OS.No.183 of 2017 and sought for appointment of an Advocate Commissioner to note down the physical features of the suit property and the petitioners herein made attempts to prevent Advocate Commissioner appointed in IA.No.883 of 2017 in OS.No.183/2017 from doing his duty. The petitioners herein realized the fact that they have no case, if they contest the suit and therefore has now come out with the above civil revision petition. He would further submit that the earlier suits in OS.No.269 of 99 and OS.No.34 of 2000 were dismissed as settled out of Court to the knowledge of the petitioners herein, which has no legal consequence and there was no adjudication, legal determination or finality and OS.No.129 of 2011 for Injunction was also dismissed as not pressed, based upon a separate cause of action which no more survives. The present suit is on a fresh cause of action and the matter has to be decided on merits. The Advocate Commissioner appointed by the Trial Court in IA.No.883f of 2017 in <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 OS.No.183/2017 measured the suit property with the assistance of the Tahsildar, Thiruporur and the Taluk Surveyor and filed a report before the Trial Court by reporting that the suit property is a vacant land with compound wall on three sides and a gate, for which the petitioners herein claim to have obtained sub-division in Survey Nos.168/4 to 168/6 and since this respondent has not brought about the above mentioned facts in the Plaint in clear terms,

proposed to file an application to amend the Plaint to incorporate the above facts in the pleadings as the above civil suit is in the preliminary stage and the petitioners herein has not been served with suit summons. The above Revision Petition filed under Art.227 of the Constitution of India at the threshold stage of the present civil suit, is not maintainable and the same is liable to be dismissed, as this respondent can file an application for amendment of the Plaint under Order 6 Rule 17 while the petitioners herein have their efficacious remedy of filing an application under 7 Rule 11 for rejection of Plaint, if such a course is available as per law on the facts of this case.

13 In support of his contentions, the learned Senior Counsel has placed reliance on the decisions reported in the following cases:

1. 1970(1) SCC 761 (Vallabh Das vs. Dr.Madan Lal and others)
<http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017
2. (2015) 5 SCC 423 (Radhe Shyam and another vs. Chhabi Nath and others)
3. 2007 3 LW 515 (Ganapathy Subramanian vs. S.Ramalingam & 23 others)
4. (2010) 8 SCC 329 (Shalini Shyam Shetty and another vs. Rajendra Shankar Patil)
5. (2010) 2 SCC 432 (Abdul Razak vs. Mangesh Rajaram Wagle and others)
6. 2012 2 LW 193 (K.Ponnammal & others vs. V.Thayanban & others)
7. (2013) 9 SCC 374 (Sameer Suresh Gupta vs. Rahul Kumar Agarwal)
8. (2006) 8 SCC 294 (Jasbir Singh vs. State of Punjab)

14 The learned counsel appearing for the petitioners, in reply to the above submissions made by the learned Senior Counsel for the respondent, would contend that in the counter affidavit, the respondent/plaintiff tries to prove her rights through one Munusamy Naicker, Adhimoola Naicker and subsequently from one Kishtappa Naicker. As stated already the respondent claims title of the suit <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 schedule property in Survey No.168/3E1A1A1C2A. Admittedly, the respondent/plaintiff's mother and three others represented by one Mr. Selvam their Power of Attorney, who is none other than the husband of the respondent/plaintiff filed a suit for declaration of their title with the consequential relief for recovery of possession in O.S. No. 56 of 1996 on the file of the District Munsif, Chengalpet for the properties comprised in Survey No.168/3E1A1A1C2, which is the survey number even now claimed by the respondent/plaintiff. The said suit was dismissed by the Learned District Munsif, Chengalpet vide judgment and decree dated 18.08.2005 after a full-fledged trial, on the ground that the plaintiffs have not established their title and entitlement to recovery of possession. As against the dismissal of the above said suit, the respondent/plaintiff's mother and three others preferred first appeal in A.S. No..13 of 2006 on the file of the Additional Subordinate Judge, Chengalpet,

which was also dismissed confirming order in O.S. No. 56 of 1996 vide its judgment and decree dated 26.3.2007. It was found therein that the Plaintiffs therein, claiming rights through Adhimoola Naicker, who had only the tenancy right on these lands under Alavandar Charities and Adhimoola Naicker executed settlement deed only in respect of his tenancy rights in the year 1930. It has been <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 held that Patta in respect of the property in Survey No.168/3E1A1A1C2A stands in the name of the respondent/ plaintiff herein allegedly issued by the Headquarters Deputy Tahsildar, Chengalpet and the Legal Heir Certificate allegedly issued by the Tahsildar, Chengalpet were found to be not issued by the Taluk Office, Chengalpet and signatures of the Deputy Tahsildar and office seal affixed therein are found to be rank forgeries. It is further held that the Kist receipt relied upon by the respondent/plaintiff was also held to be a fraudulent creation. It is also held by the appellate court that the plaintiffs have not approached the Court with clean hands and they have based their claim on forged and fabricated documents. Therefore, confirming the judgment and decree of the trial court, the Appellate Court also held that the identity of the suit property is not established and the plaintiffs have no title to the suit property in Survey No.168/3E1A1A1C2A. The said finding rendered by the trial court and confirmed by the Appellate Court has attained finality since no Second Appeal was filed against the said judgment and decree. It is therefore clear the respondent/plaintiff has no title over the property which is the subject matter of the present civil revision petition and for which she mentioned the petitioners' property boundaries pertaining to <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 Survey Nos. 168/4, 168/5 and 168/6 with a mala fide intention to grab the properties having lost in all their earlier attempts to grab the properties without any title or possession.

15 The learned counsel would further contend that the three suits filed earlier viz., O.S. No. 269 of 1999, O.S. No.34 of 2000 and O.S. No. 129 of 2011 were all dismissed as settled out of court and not pressed. Further, in respect of O.S. No.129 of 2011, an order under O. 39 R. 1 & 2 of C.P.C. dated 01.10.2012 was passed, wherein it was found that the respondent/plaintiff is claiming right over the property comprised in Survey No. 168/3E1A1A1C2A but the four boundaries mentioned by the plaintiff in the description of the property is only in respect of Survey Nos. 168/4, 168/5 and 168/6 which belongs to the petitioners herein. The respondent/plaintiff has no right over the property and they are not in possession and enjoyment and therefore the injunction cannot be granted against the true owners. In the face of the aforesaid earlier proceedings, judgments and decrees and the instant suit filed by the respondent/plaintiff, against which the above said civil revision petition has been filed, which is nothing but a blatant, deliberate attempt to somehow or other grab the properties of <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 the petitioners knowing fully well that they are not entitled to even file the suit in question in view of the earlier judgments and decrees mentioned above. The only explanation that the respondent/plaintiff given is that the respondent/plaintiff was advised to withdraw the said suit believing that the petitioners herein would settle the matter and that the parties can sit again and discuss alternate mode of settlement and giving certain other reasons. The said contention is an afterthought to justify the blatant falsehood and abuse of process of court. Further, nothing prevented the respondent/plaintiff herein to have filed the Memorandum of Understanding of Compromise before the court and got a decree in terms of the compromise or in the alternative they could have sought for liberty under Or. 23 Rule 1 (3) of CPC. Therefore, the said averment far from being unsustainable

in law is a deliberate attempt to justify otherwise unsustainable right to file the suit in question, which cannot be countenanced in law. The averment of the respondent that the present suit has been filed for the reason that the earlier settlement has not been acted upon by the petitioners herein and which gives a fresh cause of action cannot at all be countenanced for the reasons already stated above. There is no question of any fresh cause of action arising in the above <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 circumstances. From the narration of aforesaid facts, it is clear that the respondent/plaintiff herein wants to somehow keep on clutching the property by giving constant trouble to the petitioners herein and try to find out whether the petitioners could be coerced to yield to certain terms of the respondent knowing fully well that all that would be impossible in law. The attempt of the respondent/plaintiff herein in filing the above said suit in question is a sheer and blatant abuse of the process of court. It is also seen from the affidavit under counter that an ex-parte advocate commissioner seem to have been appointed in the suit in question. When the filing of the aforesaid suit itself is an abuse of process of law, such fatal defect cannot be rectified by making a claim that there was an ex-parte commissioner report, which by itself cannot bind the petitioners and will have no effect on the earlier judgments and decrees, which have reached finality, in the absence of any leave of the court while withdrawing the earlier suits. The defence of the respondent/plaintiff is that the revision petitioners herein filed a suit in O.S. No.137 of 2000 before the District Munsiff, Chengalpet for restraining the DRO, Chengalpet from in any way cancelling the patta relating to the properties comprised in Survey Nos. 168/4, 168/5 and 168/6 and the averment to the effect that the filing <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 of the said suit has been suppressed is totally irrelevant to the present civil revision petition and for the reason that the suits filed by the respondent/ plaintiff herein have already been dismissed as being settled out of court and therefore the apprehension in the mind of the petitioners that the revenue authorities could cancel the patta in respect of their lands, no longer exist and there was no need to continue litigation in the said suit and hence it was withdrawn. The said suit has no relevance in the circumstances and there could be no suppression as alleged. The respondent/plaintiff cannot simply deny that the judgment and decree in O.S. No. 56 of 1996 and A.S. 13 of 2006 etc., are not related to subject matter of suit property in O.S. No. 183 of 2017 by citing that the above previous suit in O.S. No. 56 of 1996 is pertaining to Survey No. 168/3E1A1A1C2 and not Survey No. 168/3E1A1A1C2A. Since in the above O.S. No. 56 of 1996 and A.S. 13 of 2006., the courts below have categorically held that the respondent/plaintiff and her ancestors have no title right to whatever extent but only the tenancy right under the Alavandar Charities. That apart the present survey number which is subject matter of present civil revision petition is a subdivision made out of the larger extent; and when the courts below in several litigations have already held that <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 the respondent/plaintiff and her ancestors are not entitled for larger extent itself, the respondent/plaintiff now cannot come and claim for the lesser extent subdivided out of the larger extent. Therefore the suit filed by the respondent/plaintiff in O.S.No.183 of 2017 is liable to be summarily rejected.

16 Heard the learned counsel appearing for the petitioners and the learned Senior Counsel appearing for the respondent and carefully perused the materials placed on record and the reported cases referred to by both the learned counsel on either side.

17 It is the main contention of the learned counsel for the petitioners that subject matter of the present suit in O.S.No.183 of 2017 is hit by principles of re-litigation and it amounts to abuse of process of Court, since the respondent/plaintiff has suppressed the earlier suits filed mentioned the same properties. Per contra, the learned Senior Counsel contended that the present suit is not hit by any law, since it has been filed only on the basis of fresh cause of action. To substantiate their claims, both the learned counsel have argued extensively on the issue to be decided by this Court, whether <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 the present suit filed by the respondent/plaintiff is hit by re-litigation or amounts to abuse of process of Court. The learned counsel has placed reliance on plethora of judgments of Hon'ble Supreme Court and this Court, stating that the act of the respondent filing the present suit, suppressing the earlier suits, amount to abuse of process of Court and it is hit by principle of re-litigation and hence stated that the present suit in O.S.No.183 of 2017 is liable to be rejected.

18 This Court has carefully perused judgments referred to by the learned counsel for the petitioners. There is no quarrel with the propositions of law laid down by the Hon'ble Supreme Court in the above judgments regarding abuse of process of Court and re-litigation and also the alternative remedy available under CPC is not a bar to invoke Article 227 of the Constitution of India and when the parties suppressed the material facts and not approached the Court with clean hands are not entitled to get any relief from the Court. The first suit, which was filed by the mother of the respondent, Kamatchiammal, through the power of attorney, one Selvam, who is none other than husband of the present respondent in O.S.No.56 of 1996, tried and decided on merits and against which an appeal was also filed and <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 decided on merits. In the said suit for declaration and recovery of possession the trial Court has held that the plaintiffs have neither established their title nor their entitlement for recovery of possession and dismissed the suit, appeal filed against the said judgment was also dismissed. However, no second appeal was filed as against the dismissal of the appeal. The petitioners herein are not party to the above suit in O.S.No.56 of 1996 and in that suit, the Court has held that Ex.P12 and 13 are only forged, since the Tahsildar did not admit the execution of the above documents, but admitted the Patta Passbook, which shows that it is only a joint patta and disputed only the patta, which is exclusively in the name of the mother of the respondent. Further Ex.P14 was also disputed, which is joint patta issued in the name of Kamatchiammal and Renuka Devi, the Court has not stated anything about the Ex.P14 joint patta and since they are not party to that suit, neither resjudicata nor re-litigation would arise. Further it is not the case filed by the petitioners and obtained decree of declaration declaring the right over the properties. It is the suit filed by the mother of the respondent herein and was dismissed on the ground of identity of the property has not been proved. Therefore the citations referred to by the learned counsel for the petitioners reported in <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 (2011) 5 SCC 532 para 37 of the judgment in the case of Booz Allen & Hamilton Inc. vs. SBI Home Finance Lt.d,) is not helpful to the case of the petitioners herein.

19 As far as the citations referred to by the learned counsel for the petitioners regarding re-litigation and process of abuse of Court is concerned, no doubt, the respondent along with her mother and father, had initially filed two suits for declaration and injunction, which were not tried and finally allowed to be dismissed as not pressed. The suit in O.S.No.34 of 2000 filed by the respondent and

her mother was allowed to be dismissed as not pressed based on the memo filed by the respondent/plaintiff therein as settled out of Court. All the suits filed earlier has been dismissed as not pressed. Therefore as stated by the learned counsel for the petitioners no liberty was obtained.

20 It is contended by the learned counsel for the respondent that the petitioners have also filed suit in O.S.No.137 of 2000 before the District Munsif Court, Chengalpattu, against the respondent and the revenue authorities and the same was also dismissed as settled out of Court on the same day when the suit in O.S.No.34 of 2000 filed <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 by the respondent and her mother was dismissed as settled out of Court. Even though, the learned counsel appearing for the petitioners contended subsequent to the dismissal of the suit filed by them in O.S.No.137 of 2000 they have not filed any suit, but, the respondent herein filed two suits even without obtaining leave of the Court and even not disclosed the earlier suits filed by the respondent and her mother, which would amount to re-litigation and abuse of process of Court, for which, the learned Senior Counsel appearing for the respondent contended that since some settlement has been arrived at between the parties in the Memorandum of Understanding dated 24.09.2008 and hence the suits were withdrawn by the parties and subsequently the petitioners had failed to act upon the said Memorandum of Understanding and violated the conditions in the Memorandum of Understanding and therefore the respondent filed another suit in O.S.No.139 of 2011 only for bare injunction. For some reason or other, the respondent allowed the suit to dismiss as not pressed. Thereafter, the respondent filed the present suit in O.S.No.183 of 2017 for permanent injunction and the suit in O.S.Nos.269 of 1999 and 34 of 2000 were filed seeking different reliefs and on different cause of action. Since, there was settlement <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 between the parties in the suit in O.S.No.34 of 2000 and Memorandum of Understanding also executed, subsequently the petitioners did not act upon the Memorandum of Understanding, the respondent had instituted the present suit for permanent injunction on the basis of different cause of action, which would not at all amount to re-litigation. It is further contended by the learned Senior Counsel for the respondent that the petitioners had also filed suit in O.S.No.137 of 2000 and the same was also dismissed as settled out of Court and he has also not mentioned about the same in the present revision petition, which would also amount to suppression of materials facts and therefore, once the petitioners, being a revision petitioners has not approached this Court with clean hands, they did not blame the respondent. Further he submitted that there is triable issue whether the suit filed by the respondent and the earlier suits are filed on the same cause of action and the respondent is entitled for the reliefs claimed by her has to be decided only after trial and not at this stage. <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 21 On a careful reading of the entire materials it reveal that the suit in O.S.No.56 of 1996 and appeal in A.S.No.13 of 2006, the petitioners are not parties and the suit filed by the mother of the respondent was dismissed only on the ground that identity of the properties has not been proved. Admittedly, since parties are not one and the same, neither re-litigation nor abuse of process of Court would arise. As far as suit in O.S.No.269 of 1999 is concerned, it is for declaration and permanent injunction and that was dismissed as not pressed. The suit in O.S.No.34 of 2000 filed by the respondent herein and the suit in O.S.No.137 of 2000 filed by the petitioners herein were dismissed as not pressed as settled out of Court on the same day i.e. On 30.09.2008 after eight years. If the petitioners got any grievance on the dismissal of the suits as not pressed on the ground of settled out

of Court, if at all against their consent, they should have very well raised objection on the same. On conjoint reading of the orders passed on 30.09.2008 in O.S.No.34 of 2000 filed by the respondent herein and O.S.No.137 of 2000 filed by the petitioners herein allowed to be dismissed on the same day as not pressed on the ground of settled out <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 of Court, there is Memorandum of Understanding between the parties and even though, the learned counsel for the petitioners had disputed the Memorandum of Understanding, they admitted in the reply filed by them to the counter filed by the respondent, that both the suits in O.S.No.34 of 2000 and 137 of 2000 were dismissed as not pressed as the matter was settled out of Court. Therefore, the contention of the learned Senior Counsel for the respondent that there was Memorandum of Understanding executed between the parties and subsequently the petitioners violated the conditions of the Memorandum of Understanding, the respondent filed the present suit for permanent injunction. Even though, as stated by the learned counsel for the petitioners that the respondent has not stated anything about the earlier suits in the subject matter of present suit in O.S.No.183 of 2017, the petitioners have also not stated anything about the suit in O.S.No.137 of 2000 filed by them and subsequently dismissed as not pressed as settled out of Court. The facts and circumstances of the present case is different from facts and circumstances of the cases in the citations referred to by the learned counsel for the petitioners. Admittedly in this case there were several suits between the parties, but, it is to be noted that the petitioners <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 have not come forward to offer any explanation as to why they have allowed the suit in O.S.No. 137 of 2000 filed by them dismissed as not pressed as settled out of Court on 30.09.2008 after eight years. Therefore, this Court is of the view that as stated by the learned Senior Counsel for the respondent there is triable issue and the same can be decided only after trial. The respondent/plaintiff has also stated that they have filed application to amend the plaint and it is also stated the suit summons also not served on the petitioners. It is also seen that Advocate Commissioner was appointed in I.A.No.883 of 2017 in O.S.No.183 of 2017 and the report filed by him, it was stated that notice was served on the petitioners herein, who are defendants in the suit and they did not appear for inspection of the properties, even after causing fresh notice, instead of present at the time of inspection of the properties by the Advocate Commissioner, they have sent twenty five Advocates being counsel for the petitioners and with the help of the police officials, the Commissioner had inspected the properties.

22 There is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd, Vs. Pranay Seth reported in (2017) 16 SCC 680 para 15-23 <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 referred to by the learned counsel for the petitioners. In case, any quarrel or dispute or misunderstanding on any question of law, the case can be referred to larger Bench and not for deciding the case on merit based on the factual aspects. The present case on hand is peculiar in nature. The petitioners, being received the notice from the Advocate Commissioner, neither appeared for inspection of the properties nor raised any objection and waited till filing of the report by the Advocate Commissioner and after filing of the report, rushed to this Court invoking Article 227 of the Constitution of India, seeking rejection of plaint. Further neither in the affidavit nor in grounds of present civil revision petition, the petitioners/defendants have disclosed anything about the suit filed by them in O.S.No.137 of 2000, which was allowed to be dismissed as not pressed after eight years and the

decree passed in the said suit shows that the case was dismissed as settled out of Court.

23 On a careful reading of the entire records placed before this Court, this Court is of the view that both the parties have not approached this Court with clean hands and therefore, the prayer sought for in this civil revision petition cannot be granted and the civil <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 revision petition is liable to be dismissed.

24 It is seen that even the respondent herein, who is plaintiff in O.S.No.183 of 2017 admitted that he has not mentioned anything about the Memorandum of Understanding executed between the parties in the present suit and stated that the present suit has been filed on the basis of different cause of action i.e. breach of conditions in the said Memorandum of Understanding. Therefore, as stated by the learned counsel for the petitioners, there is suppression of previous suits, but the respondent has also stated that they intend to amend the plaint by mentioning the earlier suits and the Memorandum of Understanding. Admittedly suit summons was not served on the petitioners herein and even before serving of suit summons, they have approached this Court. Under these circumstances, this Court is of the view that the present suit is liable to be struck off on the ground of suppression of materials with liberty to file a fresh suit mentioning about all the facts and change of cause of action.

25 In view of the above, the plaint in O.S.No.183 of 2017 is hereby struck off, however, the respondent is at liberty to file a fresh <http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017 suit disclosing the earlier suits and the Memorandum of Understanding, which according to the respondent/plaintiff gives fresh cause of action for the fresh suit, if she so desire and the petitioners may also have a chance to defend their case.

26 With the above observations and directions, this civil revision petition is disposed of. Consequently connected miscellaneous petitions are closed. No costs.

30.08.2019 Index: Yes/No cgi To The District Munsif Court, Chengalpattu.

<http://www.judis.nic.in> C.R.P.(PD)No.2832 of 2017 and C.M.P.Nos.13352 & 21755 of 2017
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