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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.06.2018

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)(MD) No.1089 of 2018

J.Indira ... Petitioner/Plaintiff

-vs-

1. S.Karuppayee
2. S.Tamilmaran
3. P.V.Dharmalingam
4. D.Yashodha
5. P.Radhakrishnan
6. K.Radha Krishnan ... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records connected with the order dated 28.04.2018 in unnumbered suit in O.S.SR.No.775 of 2018 filed by the petitioner and set aside the same as illegal, consequently direct the learned District Munsif-cum-Judicial Magistrate, Thiruppathur to number the suit and conduct the trial in accordance with law.

For Petitioner : Mr.S.Malaikani

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O R D E R

The plaintiff / revision petitioner herein sought to file a suit before the learned District Munsif-cum-Judicial Magistrate, Thiruppathur in O.S.SR.No.775 of 2018, seeking the relief of declaration, declaring the sale deed dated 03.10.2005, executed by the 1st and 2nd defendants in favour of the 3rd and 4th defendants registered in Doc.No.1659 of 2005 as null and void among various other relief. The District Munsif-cum-Judicial Magistrate, Thiruppathur did not entertain the suit and also refused to number it on the ground that the disputed questions in the suit have already been decided and in this regard, a second appeal is pending before this Court. Challenging the same, the plaintiff / revision petitioner is before this Court.

2. It is the case of the revision petitioner that the property in question was purchased from one Sundarammal and the legarheirs of Ramasamy Ambalam and since then, the plaintiff has been in possession and enjoyment of theproperty. Subsequently, one Shanmugam filed a suit in O.S.No.394 of 1995 against the plaintiff and one Buru was decreed in his favour, against which, the plaintiff filed A.S.No.2 of 2000 and the Sub-Court, Sivagangai also confirmed the judgment and decree rendered by the Trial Court

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in the suit. Thereafter, the plaintiff had filed S.A.No.420 of 2004 before this Court and the same is still pending. It is the further case of revision petitioner that pending Second Appeal, the respondents 1 and 2 have executed a sale deed registered on the file of the Thiruppathur Sub-Registrar Office in Doc.No.1659 of 2005 in favour of the 3rd and 4th defendants transferring the property to an extent of 5 acres and 70 cents and on the same day, the 1st and 2nd respondents have executed another sale deed in Doc.No.1660 of 2005 in favour of the 5th defendant in respect of land to an extent of 44 cents.

3. It is submitted by the petitioner that when the subject matter is pending before this Court by way of S.A.No.420 of 2004, as per Section 52 of the Transfer of Property Act, there cannot be any transfer by any party to the proceeding and therefore, those documents are construed as invalid in the eye of law. It is also submitted that Defendants 1 to 6 and their men, by taking advantage of the sale deeds, have been attempting to disturb the peaceful possession and enjoyment of the property, which compelled the plaintiff to lodge a criminal complaint against them. Contending that cause of action arose from 03.10.2005, when the defendants 1 and 2 registered the sale deeds and attempted to trespass into the property, it is prayed that the Trial Court may be directed to number the suit and conduct the trial.

4. Heard the learned counsel for the petitioner and notice to other side is dispensed with, in view of the nature of disposal of this case.

5. Admittedly, on earlier occasion, the plaintiff had filed a suit in O.S.No.394 of 1995 before the learned District Munsif Court, Thiruppathur for declaration, injunction etc., in which the plaintiff did not succeed. Then, the plaintiff, filed A.S.No.2 of 2000 and the First Appellate Court confirmed the judgment of the Trial Court. At last, the lis initiated by the plaintiff has been pending before this Court by way of S.A.No.420 of 2004 and in the interregnum period, the very same plaintiff / revision petitioner, claiming that the defendants 1 to 6 have executed sale deeds during pendency of the subject matter before this Court and making hue and cry, had sought to file yet another suit on the very same issue, thereby, attempted to give life to a dead snake, which was rightly curtailed by the Trial Court.

6. A perusal of the averments made in this petition, coupled with the facts narrated in the plaint in unnumbered O.S.SR.No.775 of 2018 would amply unravel the fact that the plaintiff wants to some how succeed in the matter through back door entry. It is not the case of the revision petitioner that any interim order has been granted by this Court in S.A.No.420 of 2004, in absence of which, there is no bar for the parties, who have succeeded in the suit to move further, but, of course, the same is

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subject to the outcome of the final decision to be rendered in the Second Appeal. The petitioner, knowing full well that the suit sought to be filed is barred under Section 11 of CPC and is liable to be dismissed in limine under Order VII Rule 11(d) CPC, once again made an attempt to pull the rock with a leash, which is highly condemnable, un-sustainable and is an abuse of process of law. Moreover, the revision petitioner has not approached the Court with clean hands, as false averments have been raised in the plaint as if the plaintiff has been in possession and enjoyment of the suit schedule property, whereas the Trial Court in O.S.No.394 of 1995 had clearly held that the suit schedule property had been enjoyed by the defendants 1 and 2. Hence, this Court is of the view that though this petition is liable to be dismissed with heavy costs, considering the fact the revision petitioner is a lady, aged about 45 years, this Court refrains itself from imposition of any costs.

7. In the result,

a) this Civil Revision Petition is dismissed, confirming the order dated 28.04.2018 passed in unnumbered suit in O.S.SR.No.775 of 2018 by the learned District Munsif-cum-Judicial Magistrate, Thiruppathur;

b) the petitioner/plaintiff is at liberty to invoke the appeal remedy against the order impugned herein, before the appropriate forum, if so desired.

No costs.

Sd/
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To:

The District Munsif-cum-Judicial Magistrate,
Thiruppathur.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.**(2 copies)**

+1cc to Mr.S.MALAIKANI, Advocate, SR.No. 67103

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