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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).NO.2639 OF 2021

AND

CMP.NO.19547 OF 2021

1.Thenmozhi

2.Krishnan @ Divya Krishnan

..Petitioners/Petitioners/
Defendants 1 & 2

Vs.

1.Shanmugam

2.Saravanakumar

3.Vaiyapuri

..Respondents

Praye: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.09.2021 passed in IA.No.01 of 2021 in OS.No.01 of 2018 on the file of the III-Additional District Judge, Salem.

For Petitioners : Mr.R.Marudhachalamurthy

O R D E R

Challenge in this revision is to the order of the Trial Court, dismissing an application filed under Section 10 of CPC., seeking stay of further proceedings in OS.No.55 of 2016 and REP.No.169 of 2018 till the disposal of the suit in OS.No.1 of 2018.

2.The suit in OS.No.34 of 2013 was filed by the 1st respondent herein seeking specific performance of an agreement of sale dated 07.08.2012 entered into between him and the petitioners herein. Alleging that pending suit the 2nd



petitioner herein namely, Krishnan @ Divya Krishnan had executed sale deed in his favour, the 1st respondent as plaintiff in OS.No.34 of 2013 restricted the relief of specific performance in the said suit against the 1st petitioner herein alone.

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3.The suit in OS.No.34 of 2013 was decreed for the alternative relief of refund of advance. The 1st respondent filed an execution petition in EP.No.169 of 2018 seeking execution of the decree for refund of advance against the 1st petitioner herein. The 2nd petitioner herein has chosen to file a suit in OS.No.55 of 2016 contending that the sale deed executed by him in favour of the 1st respondent herein is sham and nominal. The 1st respondent herein filed a 3rd suit in OS.No. 1 of 2018 seeking partition and separate possession of his $\frac{1}{2}$ share of the suit properties based on the sale deed executed by the 2nd petitioner herein.

4.It is in this backdrop, the petitioners as defendants in OS.No.1 of 2018 sought for stay of all further proceedings in OS.No.1 of 2018 pending disposal of the suit in OS.No.55 of 2016 and REP.No.169 of 2018. The learned III-Additional District Judge, Salem had dismissed the application on the conclusion that the issues are not identical. In the execution petition, decree holder has sought for execution of a decree for money passed in OS.No.34 of 2013. Therefore, the same cannot be stayed.

5.As far as the suit in OS.No.55 of 2016 is concerned, the learned District Judge prima facie found that the finding in OS.No.34 of 2013 has become final and therefore, there cannot be a stay of the suit. I do not think I can interfere with the said conclusions of the learned District Judge. The execution petition in EP.No.169 of 2018 is for execution of a decree for refund of advance, which has become final. Pendency of the said execution petition does not have anything to do with the relief sought for either in the partition suit namely, OS.No.1 of 2018 or in the suit for declaration that the sale deed is not valid. Hence, I do not see any reason to interfere with the conclusion of the learned District Judge regarding stay of the suit pending execution proceedings.

6.As regards the suit in OS.No.55 of 2016, the learned District Judge has on a prima facie finding, concluded that the suit for partition cannot be stayed. It is seen from the records that OS.No.55 of 2016 is also pending on the file of the same Court namely, III-Additional District Court, Salem. In view of the issues involved namely, the validity of the sale deed dated 15.11.2013, which is the main issue in both the suits, I direct the learned District Judge to try both the suits



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jointly.
No costs.
closed.

This civil revision petition is therefore, dismissed.
Consequently, connected miscellaneous petition is

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kkn

To:-

The III-Additional District Judge,
Salem.

+1cc to Mr.R.Marudhachalamurthy, Petitioner, Advocate,
S.R.No.62898

C.R.P(PD).No.2639 of 2021
and
CMP.No.19547 of 2021

NR(CO)
RLP(06/01/2022)