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C.R.P. No.2238 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.2238 of 2018
and
C.M.P.No.14055 of 2018

1. M.Dharmalingam,
S/o. Late S.A.Muthusamy

2. Minor Deepika

3. Minor Hariprasad

Petitioners 2 and 3 are rep. By
their guardian/father M.Dharmalingam/
1st petitioner

4. R.Sivagami
W/o. Radhakrishnan

5. Mrs. Mancikam,
W/o. Late S.A. Muthusamy

... Petitioners

Vs.

1. Mr. C.Easwaran,
S/o. Chinnasamy gounder

2. Mrs.M.Rajamani
W/o.Muthusamy gounder

1/7



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3. Mr.A.M.Mummurthi,
S/o. M.C.Nachimuthu

4. Mrs.M.Suganthi,
W/o. A.M.N. Mummurthy

... Respondents

PRAYER: Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and final order passed in I.A.No.1076 of 2017 in O.S.No. 791 of 2009 on the file of II Addl. District Judge, Tiruppur dated 12.01.2018.

For Petitioners : Mr. V.P.Sengottuvel

For Respondents : Mr.S.Mukunth,
for M/s. Saravhauman Asso.

For R1 & R2

Mr. T.Sai Krishnan for R3 & R4

ORDER

The revision petitioners are the defendants 3 to 7 in the suit filed in O.S. No. 791 of 2009 on the file of II Addl. District Judge, Tiruppur, which was filed by the respondents/plaintiffs herein for the relief of specific performance of the agreement dated 13.10.2008 against the defendants 1 and 2.



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2. The 2nd defendant died during the pendency of suit proceedings and his legal heirs are impleaded as defendants 3 to 7 in the suit. The defendants denied the sale agreement by submitting the written statement and thereafter, the suit was dismissed for default due to non-impleading of legal heirs of 2nd defendant. Subsequently, the suit was restored and after restoration of the suit, the defendants filed an application in I.A.No.1076 of 2017 under Order 7 Rule 11 of C.P.C. and under Sec.151 of C.P.C. praying to reject the plaint for the reason that during the pendency of proceedings, the plaintiffs made over the sale agreement along with original suit proceedings in favour of one Chandrasekar to that effect. Thereafter, the plaintiffs have no right to conduct the proceedings, but suppressing all these facts, they have filed an application to restore the suit in I.A.No. 1021 of 2011 along with condone delay application in I.A.No.219 of 2014, but the cause of action of that suit came to an end after the said made over. Thereafter, the plaintiffs have no right to conduct the suit proceedings. Furthermore, originally, the cause of action claimed by the plaintiffs as such is also not maintainable in law for the reason that alleged agreement is not true and valid one. Accordingly, they prayed to reject the plaint.



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3. The said application was strongly opposed by the original plaintiffs stating that on 24.02.2011 they gave a made over of the sale agreement in favour of one Chandrasekar and also permitted them to conduct the suit proceedings. Since the suit was dismissed for default, the plaintiffs have filed necessary applications before the trial court to implead the party, as such is maintainable in law and the same cannot be objected by the defendants after allowing the impleading application. Moreover, the plaintiffs filed an application to implead the legal heirs and the same was allowed by the trial court on hearing both sides. Apart from that, the restoration application along with condonation application filed by plaintiffs also allowed on merits by hearing the defendants. Therefore, after allowing all those applications, the defendants have no right to object the made over, and in order to drag on the proceedings, the defendants filed vexatious application under Order 7 Rule 11 of C.P.C.

4. On considering both applications, the trial court held that the objections raised by the defendants with regard to execution of made over has to be decided only on considering the oral and documentary evidence



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and not mere allegation, besides with regard to payment of court fee also to be adjudicated only on hearing both side evidence. So also, the cause of action in the suit, in total, the trial court held that all those allegations are to be decided is the mixed question of law and facts, which cannot be decided at this stage. Challenging the said findings, the defendants 3 to 7 preferred this Civil Revision Petition.

5. When both the learned counsels admits that there is no Stay in C.R.P. Proceedings, the witnesses were examined before the trial court and the evidence of P.W.1 to P.W.3 are completed and the defendants witness yet to be cross-examined. The assignee, who obtained the very alleged made over agreement was examined and he was also cross-examined. In such circumstances, speedy trial is to be conducted by the trial court. Therefore, this court is not inclined to pass any order, however, already what are all the defence took in Order 7 Rule 11 application was already raised by the defendants before the trial court. Furthermore, all the issues, which are raised in these applications are subject to mixed question of law and on facts as it was rightly considered by the trial court, which needs no interference.



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6. In the result, this Civil Revision Petition is dismissed. However, the trial court is directed to proceed with the trial and dispose the case within a period of three months from the date of receipt of copy of this order. Liberty is granted to the defendants to raise all their objections before the trial court. No costs. Consequently, connected Civil Miscellaneous Petition is also closed.

02.12.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

II Addl. District Judge,
Tiruppur.



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T.V.THAMILSELVI, J.

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