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CRP No.490 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.490 of 2023
and
CMP.No.3346 of 2023

1.K.Shakila
2.S.Kumarasamy
3.S.Premnath

... Petitioners

Versus

1.K.Amsa
2.P.Kavitha
3.V.Kalvikarasi
4.K.Velu

...Respondents

Civil Revision Petition filed Under Section 227 of Constitution of India,
praying to set aside the impugned order passed by the learned I Additional
District Munsif, Puducherry dated 14.10.2022 in I.A.No.165 of 2020 in
O.S.No.1517 of 2015.

For Petitioners : Mr.E.V.Chandru

For Respondents : Mr.R.Thiagarajan



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ORDER

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The petitioners have filed this revision petition to set aside the impugned order passed by the learned I Additional District Munsif, Puducherry dated 14.10.2022 in I.A.No.165 of 2020 in O.S.No.1517 of 2015.

2. Heard, Mr.E.V.Chandru learned counsel for the petitioners, Mr.R.Thiagarajan learned counsel for the respondents and perused the materials available on record.

3. Before the trial Court the petitioners have filed I.A.No.165 of 2020 in O.S.No.1517 of 2015, under Order VII Rule 11(1)(a) of CPC to reject the plaint on the ground of non disclose of the cause of auction and the same was dismissed, challenging the same, revision. According to the revision petitioners / defendants the suit involves multiple items and the plaintiffs have collectively filed a suit against the defendants and clubbing all the suit properties in one suit would not be entertained under law and as such cause of auction also not established in accordance with law. Accordingly the plaint is liable to be rejected.

<https://www.mhc.tn.gov.in/judis> 4. The said application was strongly resisted by the respondents /



plaintiffs stating that all the respondents / plaintiffs are family members, equally purchased the entire suit properties and doing agricultural work, the defendants cause interference in the suit properties, they have filed the suit.

5. Considering both side submissions, the learned trial Judge held that examination of P.W.1 was partly completed on 16.09.2018, and at this stage the defendants filed application for rejection of plaint. The learned trial Judge observed that the by relying the judgment of " Azhar Hussain vs.Rajiv Gandhi reported in [1986(Supp.) SCC 315] pg.324 as follows:

" In substance, the argument is that the Court must proceed with the trial, record the evidence, and only after the trial... is concluded that the powers under the Code of Civil Procedure for dealing with a defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court"

6. But on seeing the ratio laid down in the above referred case, squarely support the case of the defendants but the learned trial Judge erroneously



dismissed the application, by relying the authority, as rightly pointed out by the learned counsel for the revision petitioners. However the learned trial Judge has not discussed anything about the plaintiffs in respect of clubbing of 3 sale deeds in one suit.

7. The learned counsel appearing for the respondents / plaintiffs submitted that already trial has begun, and P.W.1 was partly cross examined by the defendants, at this stage they have preferred an I.A.No.165 of 2020 and the same was rightly rejected by the learned trial Judge.

8. On considering the fact that issues were framed on 06.03.2018 and the trial has begun and P.W.1 was partly cross-examined by the defendant on 16.09.2019. Thereafter, the present application came into force. However, the defendants are entitled to put forth all their defence before the trial Court. The main objection is that the plaintiffs have purchased the properties through three separate sale deeds, but they are not entitled to file the present suit by clubbing all the sale deeds. Admittedly all are family members, who all are mother and daughters. The defendants are entitled to raise all the defence before the trial Court. Since the trial is commenced more over with regard to cause of action has to be proved by oral evidence. Though the findings given



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by the learned trial Judge is not to be appreciated.

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9. However, since the trial has begun, liberty is granted to the defendants to put forth their defence before the trial Court.

10. The learned trial Judge is directed to dispose of the case within a period of 4 months from the date of receipt of a copy of this order.

11. In view of the above, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

06.12.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

1.The I Additional District Munsif, Puducherry
2.The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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