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CRP.No. 2311 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

CRP.No. 2311 of 2023

and

CMP.No. 14050 of 2023

1.P.V. Jothi
2.Devaraj
3.J. Natarajan
4.J. Sankar
5.J.Suresh Kannan

...Petitioners

Versus

1.P.V.Venu Pillai
2.V.Adikesavan
3.V. Umapathi

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays to set aside the impugned order and decree dated 20.03.2023 passed in I.A.No. 2 of 2023 in O.S.No. 172 of 2016 on the file of the District Munsif Court, Madurantakam.

For Petitioners : Mr.N. Nithianandam



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ORDER

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This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order, dated 20.03.2023 passed in I.A.No. 2 of 2023 in O.S.No. 172 of 2016 by the District Munsif Court, Madurantakam.

2. The contention of the petitioners/defendants is that they are ready and willing to proceed with the application in IA.1170 of 2017. The petitioners/defendants were examined in chief on 04.02.2020 after a lapse of two years. Thereafter, the respondents/plaintiffs had taken steps to examine the court Amin and summon had been served and witness appeared before the Court below. Hence, the petitioners are ready to proceed with the case and there is no necessity to stop the proceedings of preliminary issues in IA.No. 1170 of 2017. Hence, the above Revision is liable to be allowed.

3. The contention of the respondents/plaintiffs is that the petitioners/defendants had disputed the valuation of the suit and filed a petition in I.A.No. 1170 of 2017 under Section 12 of the Tamil Nadu Court Fees and Suit Valuation Act, by allowing the petition and the preliminary issues were framed on 04.02.2020 and trial has also been commenced. PW1



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was cross examined on 31.08.2021. However, the petitioners/defendants wantonly to drag on the proceedings taking proper steps to examine further witnesses. The trial of the suit is also getting delayed. Therefore, the preliminary issues can be decided along with other issues in the main suit as per the settled law of this Court. Hence, the learned counsel for the respondents/plaintiffs pray the above Revision has to be dismissed.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. On a perusal of the records, it reveals that the respondents/plaintiffs have filed a suit in O.S.No. 172 of 2016 before the District Munsif Court, Madurantakam, for declaration and consequential injunction. The petitioners/defendants have contested the suit by filing written statement denying all the averments made in the plaint. During the pendency of the suit proceedings, the petitioners/defendants have filed IA.No.1170 of 2017 under Section 12 of the Tamil Nadu Court Fees Act, seeking to decide the preliminary issues. After perusing the entire records, the trial Court allowed the application by order dated 10.01.2018. Against which, the



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respondents/plaintiffs have filed IA.No. 2 of 2023 under Section 151 of CPC., seeking to stop the proceedings of preliminary issues in IA.No. 1170 of 2017 in O.S.No. 172 of 2016 and to decide all the issues framed in the suit including the preliminary issues with regard to valuation of the suit together with other issues framed in the suit. However, the trial Court allowed the application by order dated 20.03.2023 after perusing the records. Aggrieved by the said order, the petitioners/defendants have come forward with the present Civil Revision Petition.

6. It is also seen that the respondents/plaintiffs had filed the application on the ground of delay. Except resisting the same by stating that the petitioners/defendants had not caused any delay, they had not stated any fact with regard to necessity for deciding the preliminary issues. The preliminary issues were framed on 04.02.2020 and it was not completed for more than two years. The suit is of the year 2016. Though it is not made out that the delay was caused by the petitioners/defendants as per the dictum laid down by this Court in the above case, the preliminary issues can be decided along with other issue in order to avoid the delay in disposing of the suit. Hence, the trial Court has not considered with regard to the framing of the



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preliminary issues for the past two years. As such, the trial Court passed the impugned order in a mechanical manner without considering the preliminary issues. Therefore, this Court is not inclined to interfere with the impugned order of the trial Court.

7. Taking into the above facts and circumstances of the case, and the submissions made by the learned counsel for the petitioners, this Court is inclined to pass the following order:-

(i) The trial Court is directed to consider the preliminary issues in respect of the suit in O.S.No. 172 of 2016.

(ii) Further, the trial Court is directed to dispose of the suit in O.S.No. 172 of 2016 pending on the file of the District Munsif Court, Madurantakam, as expeditiously as possible, preferably, on or before 30.04.2024.

13.07.2023

Index :Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
MSM

To



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1. The District Munsif Court, Madurantakam.
2. The Section Officer, High Court, Madras.

V.BHAVANI SUBBAROYAN, J.

msm

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