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A.No.5282 of 2023

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in

C.S.No.345 of 2019

N.SATHISH KUMAR, J.

This application has been filed for rejecting the plaint in C.S.No.345 of 2019.

2. The suit has been filed by the plaintiff seeking for recovery of possession and damages. The suit property was originally owned by the second defendant, who is the mother of the defendants 1 and 3. The second defendant has executed two separate settlement deeds in favour of the defendants 1 and 3 / sons of the second defendant equally.

3. On 31.01.2005, she has executed a settlement deed in favour of the third defendant in respect of the land and building comprising of first floor having built up area of 500 sq.ft., and 250 sq.ft., being the rear portion in the second floor together with 311.37 sq.ft., undivided share in the land. Thereafter, it appears that on 23.12.2004, the second defendant has cancelled the settlement deed executed in favour of the third defendant. In the meanwhile, the defendants 1 and 2 have sold the property in favour of the plaintiff in respect of the remaining property which is the subject matter of the



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present suit. Challenging the said cancellation of the settlement deed dated 23.12.2004, the third defendant has filed a suit in O.S.No.2429 of 2012 on the file of the XV Assistant City Civil Court. Similarly, the second defendant has also filed a suit in O.S.No.3126 of 2012 claiming absolute owner of the property. Both suits were tried jointly and the Trial Court has granted permanent injunction in favour of the third defendant in respect of the property settled in his favour vide judgment dated 11.12.2013. However, the suit filed by mother/second defendant was dismissed in entirety holding that settlement cannot be cancelled. Therefore, the plaintiff being the purchaser has filed the suit for recovery of property transferred in his favour. The same is sought to be recalled by the fourth respondent herein.

4. It is relevant to note the suit has been filed only against the defendants 1 to 3, the fourth defendant has come before this Court to implead herself as a party. The fourth defendant is none other than the wife of third defendant. Though she has no absolute right to be added as a party, this Court, by Order dated 01.12.2021, has allowed the application and permitted the fourth defendant to be a party defendant in the suit. While allowing the application, this Court has recorded the following facts:



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"6.This Court is of the considered view that without prejudice to the rights and contentions of the respondents/plaintiff in the main suit with regard to the claim made by the applicant in this application viz., A.No.8906 of 2019, this application can be allowed in order to see the early disposal of the suit C.S.No.345 of 2019, in which, trial has already commenced.

7. Mr.R.Sankarasubbu, learned counsel for the applicant/proposed fourth defendant has given an undertaking before this Court, on instructions, that the written statement to be filed by the proposed fourth defendant viz., applicant herein will be filed within a period of three weeks from today. The said undertaking is recorded. He has also given an undertaking that pending disposal of the suit, no further applications will be filed by the applicant/proposed fourth respondent. The said undertaking is also recorded by this Court."

5. On perusal of the above Order, it would indicate that this Court had made it very clear it had allowed the third party to be added as defendant only in order to avoid the delay in proceedings, since the trial is already commenced and evidences have been tendered substantially. At that stage, taking note of the undertaking given by the Mr.R.Sankarasubbu, learned counsel for the fourth defendant/applicant that he will not make any further delay and no other application will be filed, this Court allowed the fourth defendant to be a defendant in the suit. Be that as it may, now the application has been filed to reject the plaint mainly on the ground that the suit is nothing but re-litigation and further contention that the fourth defendant has paid certain amount mortgage amount in respect of the property.

<https://www.mhc.tn.gov.in/judis> 6. It is relevant to note that the suit can be rejected only in the



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circumstances narrated under Order VII Rule 11 of the Code of Civil Procedure, 1908. Sub-clause (b) and (c) with regard to under valuation cannot be a ground to reject the plaint, since sub-clause (b) and (c) would not apply to the Chartered High Court as per the Order XLIV Rule 3 of the CPC. Therefore, any suit to be rejected only to show that there is no cause of action or the suit itself is barred by any law from the statement made in the plaint, the suit cannot be non-suited at the initial stage. Other than that there is no scope for rejection automatically. Be that as it may, the only two grounds urged before this Court is the present suit is nothing but re-litigation.

7. The fourth defendant mainly relied upon the previous proceedings. It is relevant to note that the suit filed by the third defendant in O.S.No.2420 of 2012 is filed for relief of permanent injunction against his mother and other brother in respect of the properties settled in his favour. Not beyond that. That suit has been decreed in entirety. Therefore, merely, because permanent injunction is granted in respect of the property settled in his favour that will not confer absolute right to desist the present suit, which has been filed to recover the property on the basis of transfer made by other owners in favour of the plaintiff.

8. In respect of other contention that some amount of mortgage amount



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has been paid by the fourth defendant, therefore, the suit has to be rejected also cannot be countenanced and the same cannot be gone at this stage. When the third defendant namely the husband of the fourth defendant has filed a suit only in respect of his portion which was the subject matter of settlement is decreed in his favour, he cannot travel beyond the rights conferred to him under the settlement.

9. Such view of the matter, I do not find any merits in this application to reject the suit in its entirety. It is also to be noted that whether or not the suit is in time has to be seen only from the statement made in the plaint and not by the documents or the submissions made by the parties. Therefore, this Court is of the view that previous suit is confined to subject matter of the gift in favour of the third defendant and that will not be a bar for the present suit and the same will not be construed as a re-litigation.

10. In view of the above, this application stands dismissed.

22.11.2023

dhk

N.SATHISH KUMAR, J.



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