



C.R.P. No. 3630 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3630 of 2023

and

C.M.P.No. 22734 of 2023

A.Devikumari,
W/o. G.Ananthakrishnan

... Petitioner

Versus

1. V.Padma,
W/o. P.V.Ramesh
2. V.Krishnamurthy,
S/o. K.Venkataraman
3. V.Anuradha,
W/o. late G.Venkataraman
4. V.Saikumari,
W/o. R.Muthuswamy
5. S.Sridivya
W/o. T.Sivasubramaniam

... Respondents



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PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order and decretal order in I.A.No.1 of 2022 in O.S.No.3375 of 2019 dated 09.08.2023 on the file of the learned VII Addl. Judge, City Civil Court, Chennai.

For Petitioner : Ms. A.Kruthika
For Respondents : Mr.Richardson Wilson for
M/s.P.Wilson Associates

ORDER

Challenging the impugned order passed in I.A.No.1 of 2022 in O.S.No. 3375 of 2019 by the VII Addl. Judge, City Civil Court, Chennai, the 2nd defendant preferred this Civil Revision Petition.

2. Before the trial court, the 2nd defendant filed an Interlocutory Application under Order VII Rule 11 of C.P.C. to reject the plaint in the above suit on the ground that on the same cause of action, the plaintiff filed a suit in the year of 2005 in O.S.No. 8583 of 2005 on the file of XII Asst. Judge, City Civil Court, Chennai and in that suit, the plaintiff claimed the relief of bare injunction only, thereby she claimed that the property is not a



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joint family property and by virtue of sale deed dated 06.04.1998, all the legal heirs are having division of property. The said suit was contested by the defendants denying the plaintiff's claim. Since the suit is pending for nearly about 18 years without any progress, it was dismissed as not pressed. Thereafter, she filed the present suit on 13.03.2017 before this court and there was no progress in the suit. Therefore, the 2nd defendant filed an application to reject the plaint stating that for the same cause of action, without obtaining leave of the court under Order II Rule 2 of C.P.C., the present suit was filed, as such is not maintainable in law. Accordingly, he prayed to dismiss the suit. But the trial judge had failed to appreciate the said legal proposition and dismissed the application. Challenging the said findings, the present Civil Revision Petition has been filed.

3. The learned counsel for Revision Petitioner would argue that nearly after lapse of about 18 years, the case is pending before the trial court without any progress, however, all of a sudden, the suit was withdrawn by the plaintiff and filed the present suit by harassing this defendant, who is aged about 80 years. Further, he would argue that while the earlier suit



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pending, the plaintiff has not reserved right to file a comprehensive suit by invoking Order II Rule 2 of C.P.C. Therefore, the plaintiff is not entitled to file the present suit, but the said legal proposition was not properly appreciated by the trial judge. Hence, he prayed to set aside the findings of trial judge.

4. By way of reply, the learned counsel for 1st respondent/plaintiff would submit that the earlier suit filed by him only for permanent injunction and thereafter, her right was denied. Hence, she filed the present suit for partition and the same can be filed at any stage of proceedings, which cannot be objected by this defendant.

5. Admittedly, the partition suit can be filed at any stage of proceedings, provided denial of the right also to be taken into consideration. In this case, on earlier occasion in the year of 2005 itself, the plaintiff has filed a suit for permanent injunction and in that suit itself, the defendants filed the written statement much earlier in the year of 2005, but the suit for partition was not filed in time. However, the relief claimed in the present



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suit is comprehensive in nature and the plaintiff is entitled to claim right in the property, which cannot be prevented. Therefore, the reasons assigned by the learned trial judge is acceptable one, however, on seeing the fact that the Revision Petitioner is aged about 80 years, now undergone for renal surgery. Considering the facts and circumstances as well as on considering submissions of Revision Petitioner stating that she is aged about 80 years and also undergone renal surgery, this court is inclined to direct the trial judge to commence the trial from the month of January 2024 and thereafter, to complete the trial and dispose the case within a period of four months. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

06.10.2023

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

VII Addl. Judge, City Civil Court,
Chennai.

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T.V.THAMILSELVI, J.

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