



A. Nos. 666 & 667 of 2024
in
C.S. No.581 of 2013 and 713 of 2016

P.B.BALAJI, J.,

These applications have been filed in C.S.No 581 of 2013 and C.S.No 713 of 2016, praying for an order of interim stay of all further proceedings in the above suits, pending disposal of probate of the last Will dated 09.07.1988 filed on 03.11.2023 in O.P Diary No. 143123 of 2023.

2. The case of the applicants is that pending the above suits, the applicant has come to know of the existence of a Will executed by the mother of the 1st defendant and proceedings have been initiated in O.P Diary No. 143123 of 2023, seeking grant of probate. According to the applicants/defendants 2 to 4, the suit in C.S.No 581 of 2013 has been filed for specific performance of an agreement of sale dated 23.04.2007, which has been entered into between the plaintiff and the 1st defendant and for consequential permanent injunction. Yet another suit was filed before the City Civil Court in O.S.No.4021 of 2014 for relief of bare injunction and the said suit has been transferred by orders of this Court and renumbered as TR C.S.No 713 of 2016.

3. According to the applicants, under Will dated 09.07.1988, the suit property has been bequeathed to the grandchildren of the Testatrix and the 1st defendant had no right to deal with the suit property, much less enter into an



agreement of sale with the plaintiff. According to the applicants, they have already filed a petition for probate and without proving the last Will and Testament, the suit for specific performance cannot go on. The applicants would therefore pray for grant of stay of both the suits, pending disposal of the probate proceedings.

4. The 1st respondent/plaintiff has filed a detailed common counter affidavit, where he has stated that trial of the suits have commenced even as early as in July 2022 and the plaintiff is in the box and has been cross examined by the defendant's counsel and that the present Application is only an attempt to protract the proceedings. In fact, the 1st respondent has already filed a Caveat and to his knowledge, the O.P is not yet numbered and no papers have been served on him, at least as of 15.04.2024. It is also stated that the Will is now projected only to defeat the rights of the 1st defendant and consequently, the rights of the plaintiff as a bonafide agreement holder in respect of the suit property. The 1st respondent would therefore pray for dismissal of both the Applications.

5. I have heard Mr. K.M.Venugopal, learned counsel for the Applicants and Mrs. Aishwarya S Nathan, learned counsel for the 1st respondent, Mr.PM.Solendran, learned counsel for R2 and Dr.S.Surya, learned



6. The learned counsel for the Applicant has contended that when the property had been bequeathed to the grandchildren and the 1st defendant had no right in the suit property, the suit for specific performance cannot be allowed to be proceeded with and it has to necessarily await the decision of the probate proceedings. He would further state that since the 1st respondent had also filed a Caveat, no prejudice would be caused if stay of the above suits is granted.

7. Per contra, Mrs. Aishwarya S Nathan, learned counsel for the 1st respondent would submit that despite filing a detailed written statement and also cross examining the plaintiff, who examined himself as P.W.1 on several occasions, there has been absolutely no whisper about the alleged Will executed by the mother of the 1st defendant. She would also contend that, pending the suit, in order to deprive and deny the plaintiff of his valuable rights, a Settlement Deed also came to be executed on 09.04.2014, which was also only to defeat the rights of the plaintiff. Even in the Settlement Deed, according to learned counsel for the 1st respondent, there is no mention about any of the Wills which are now projected, namely an alleged Will of the year 1977 or the subsequent Will of the year 1988. The learned counsel for the 1st respondent would further contend that the suits have been adjourned 38 times after filing the proof affidavit and the present applications are clearly an abuse of process



of law and procedure.

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8. I find that the Applications in A.Nos.666 & 667 of 2024 have been filed in the respective suits for specific performance and permanent injunction invoking Section 151 of the Code of Civil Procedure, 1908. There is a specific provision regulating stay of suits, namely Section 10 of the Code of Civil Procedure, 1908. However, even Section 10 of the Code of Civil Procedure, 1908 enables the Court to grant stay of only a subsequent suit, where the issues are substantially the same in an earlier pending suit. Thus, even if the present Applications are treated to be Applications under Section 10 of the Code of Civil Procedure, 1908, though filed under Section 151 of the Code of Civil Procedure, 1908, the earlier suit cannot be stayed by any stretch of imagination. Moreover, the testamentary proceeding would not confer title and it pertains only to the adjudication of the truth and genuineness of the Will in question in the said proceedings.

9. Here admittedly, the plaintiff has already filed a Caveat, objecting to the grant which is sought for by the respondents by way of probate proceedings. The two suits, as already discussed, are for specific performance and permanent injunction. No prejudice would be caused to the respondents if the trial of the suits are proceeded with.



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10. Though the learned counsel for the Applicants has stated that the O.P has been numbered, from the affidavit and Judges Summons, I find that only the O.P Diary Number has been furnished. According to the learned counsel for the 1st respondent/plaintiff, no papers have been served even though a Caveat has been lodged, intending to oppose the grant of probate.

11. The present suits are in a part heard stage and it can be seen from various orders and adjudications, that though trial commenced as early as on 26.07.2022 and the plaintiff has been examined in chief, cross examination has not yet been completed despite more than 38 adjournments. The present attempt of the Applicants seems to be yet another ruse to protract and delay the trial of the suit.

12. As already discussed, even pending the suit, the Settlement Deed has been executed on 09.04.2014 and the same is also challenged in the suit by way of seeking an amendment to the plaint in 2019.

13. I therefore do not see any just or sufficient cause to grant stay of the trial of the suits as prayed for by the Applicants. In fine, the Applications are ***dismissed*** and the suits are directed to be posted before the Additional Master III on 05.06.2024 for continuation of cross examination of P.W.1. The trial shall be concluded on or before 31.07.2024 and the matter shall be



referred back to the Court on **07.08.2024** for arguments.

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30.04.2024



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