



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 25.10.2024

Order pronounced on : 30.10.2024

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.617 of 2020
& C.M.P.No.3239 of 2020

1.Kasthuri
2.M.Shanmugam

..Petitioners

Vs.

1.V.Deela
2.A.Sarala
3.V.Sundaramurthy

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to strike off the plaint filed in O.S.No.1 of 2019 dated 13.09.2019 on the file of the District Munsif Court Judge, Madhavaram.

For Petitioners : Mr.T.S.Rajamohan

For Respondents

For R1 & 2 : No appearance

For RR3 : Mr.T.Sundaravadanam

ORDER

This civil revision petition is filed to strike off the plaint filed in O.S.No.1 of 2019 dated 13.09.2019 on the file of the District Munsif Court Judge, Madhavaram.



2.The revision is at the instance of the defendants 1 and 2 in the said suit in O.S.No.1 of 2019 on file of the District Munif Court, Madhavaram.

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3.I have heard Mr.T.S.Rajamohan, learned counsel for the Revision Petitioner.

4.Despite the 3rd respondent entering appearance through a counsel and respondents 1 and 2 having been served with notice in the above revision and several opportunities being granted to the respondents to make their submissions, none appeared and therefore on 19.10.2024, I listed the matter under the caption for orders today. Today also, there has been no representation on the side of the respondents 1 and 2 and with no other option, I proceeded to hear the Counsel for the Revision Petitioner.

5.The learned counsel for the revision petitioner would submit that there is an earlier suit originally filed before this Court in C.S.No.773 of 2016. The said suit has been filed by the 1st defendant herein i.e., 1st revision petitioner. In the said suit, the reliefs sought for are partition of 17 items of immovable property; direction to defendants 1 to 7 in the said suit to render true and proper accounts with regard to sale of items 3 to 15; pay mesne profits, declaration that



sale deed is executed in the name of 14 to 23rd defendants on null and void and not binding on the plaintiff and; declare the partition deed dated 15.10.2003 in document no.7451 of 2003 as null and void and not binding on the plaintiff and for a permanent injunction to restrain all the defendants from in any manner encumbering or alienating the suit properties numbering items 1 to 17.

6.While so, according to the learned counsel for the revision petitioner, the plaintiffs in O.S.No.1 of 2019, who are defendants 9 and 10 in C.S.No.773 of 2016 have chosen to file the suit before the District Munsif Court, Madhavaram, praying for the following relief “*grant permanent injunction restraining the defendants, their men, agents, servants, relatives, or anybody claiming under them not to disturb the construction work of plaintiffs and peaceful possession and enjoyment of the suit property by trespass or others*”. The said suit has been filed in respect of Plot No.14, Vadivelu Nagar, comprised in Survey No.1385/2, Madhavaram village, Ambattur taluk, presently Madhavaram taluk, Thiruvallur district. The very same item of the property has been set out in C.S.No.773 of 2016 in item 15.

7.I have also gone through the records besides considering the submissions of the learned Counsel for the Revision Petitioner.



8.The suit in CS No.773 of 2016 is a substantive suit where larger reliefs of declaration and partition have been sought for.

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9.Admittedly, the suit property which is subject matter of O.S.No.1 of 2019 is the very same property which is set out as item 15 in C.S.No.773 of 2016. The said suit is in fact pending before this Court on the Original Side. In fact, I also find that in O.A.No.963 of 2016 by order dated 16.07.2019, this Court has granted an interim order restraining the respondents/defendants in C.S.No.773 of 2016 from alienating the properties which are subject matter of the suit. The item number 15 is also part of the judges' summons in the OA in which injunction has been granted.

10.While so, the defendants 9 and 10 in C.S.No.773 of 2016 have chosen to file O.S.No.1 of 2019 before the District Munsif Court, Madhavaram arraying the revision petitioners herein as defendants 1 and 2 and one Sundaramurthy, who is the 7th defendant in C.S.No.773 of 2016 as the 3rd defendant.

11.On a perusal of the plaint, it is seen that the respondents herein i.e., the plaintiffs in O.S.No.1 of 2019 have disclosed the fact that the suit is pending in C.S.No.773 of 2016. In fact, I find that a written statement has also been filed by these respondents as defendants 8 to 12 in the said suit.



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12.While so, if at all the respondents required any relief by way of permission to put up construction in item 15 of the suit property, they ought to have moved an application in C.S.No. 773 of 2016 instead of filing a separate suit in O.S.No. 1 of 2019, that too before the District Munsif Court, Madhavaram despite interim orders being granted to this Court in O.A.No. 1 of 2019.

13.Therefore, filing of a separate suit is clearly an abuse of process and in fact, more of a forum shopping as well by the respondents herein are defendants in C.S.No. 773 of 2016 who have also opted to file their defense by way of a written statement and it is seen that said suit before this Court is in a part heard stage of recording evidence and it is clearly malafide on the part of the respondents herein to have filed a separate suit in O.S.No.1 of 2019 in respect of the very same cause of action. Also when the defendants in O.S.No. 1 of 2019 are none else than the plaintiffs and the 7th defendant. The act of the respondents in filing O.S.No. 1 of 2019 is also clearly in the nature of multiplying litigation and such action has to be nipped in the bud.

14.Even in *The Tamil Nadu Civil Supplies and Others vs S.Muthukumar*



in C.R.P.No.4161 of 2022 dated 16.02.2022, this Court has struck off the case exercising its power under Article 227 of the Constitution of India. This is also a similar case warranting exercise of jurisdiction vested by Article 227 of the Constitution of India.

15.For all the above reasons, the Civil Revision Petition is allowed and the plaint filed in O.S.No.1 of 2019 dated 13.09.2019 on the file of the District Munsif Court Judge, Madhavaram is hereby struck off. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

30.10.2024

Speaking/Non-speaking order
Index : Yes/No
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To
The District Munsif Court Judge, Madhavaram, Chennai.

P.B.BALAJI.J.

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