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C.R.P.(PD).No.734 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.734 of 2021

and

C.M.P.No.6108 of 2021

1.R.Rama Murthy

2.R.Ramachandra Rao (Died)

3.R.Abhinaya Murthy

... Petitioners

(2nd Petitioner died, Petitioners 1 and 3 LRs of the deceased P-2 viz., R.Ramachandra Rao as per the Memo dated 22.11.2021 and vide Court order dated 24.02.2021 made in CRP.No.734 of 2021)

VS

1.K.Shahul Hameed (died)

2.K.K.Rafi Ahamed

3.S.Hajira

4.Minor S.Safrin Saluha

1/6



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5.Minor S.Syed Ibrahim Gani

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(RR4 and R5 minors represented by next friend and natural guardian mother S.Hajira)

6.Kathoon Beevi

... Respondents

(R1 died, RR3 to 6 brought on record as LR's of the deceased R1 viz., K.Shahul Hameed vide Court order dated 08.10.2021 made in CMP.No.16727 of 2021 in CRP.No.734 of 2021)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to strike off the suit in O.S.No.293 of 2019 on the file of the learned District Munsif Court, Ambattur by allowing this Civil Revision Petition by exercising the power conferred under Article 227 of the Constitution of India.

For Petitioners : Mr.D.Gopal

For R2 : Mr.P.G.Thiyagu

For R1 : Died

For R3 and R6 : No Appearance

For R4 and R5 : Minor represented by R3



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ORDER

The Civil Revision Petition is filed seeking to strike off the plaint in O.S.No.293 of 2019 on the file of the learned District Munsif Court, Ambattur.

2. The respondents 1 and 2 herein filed a suit seeking declaration that Will dated 06.11.2010 executed by one J.Suryanarayana in favour of petitioners 1 and 3/defendants 1 and 3 was null and void and not binding on the respondents 1 and 2. They also sought for a declaration that Release Deed dated 15.12.2017 executed by 3rd defendant in favour of the 2nd defendant was null and void and not binding on the respondents 1 and 2/plaintiffs. Apart from the same, the respondents 1 and 2 also sought for injunction restraining the petitioners 1 to 3/defendants from interfering with their possession and also from alienating the suit property.

3. The present civil revision petition is filed seeking to strike off the plaint mainly on the ground that the respondents 1 and 2 herein failed to disclose the dismissal of the earlier suit filed by them in O.S.No.484 of 2016 and the dismissal of the interlocutory applications in said suit in



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I.A.Nos.1997 and 1998 of 2016, dated 02.01.2017.

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4. The suit in O.S.No.484 of 2016 was filed by the respondents 1 and 2/plaintiffs against the 2nd petitioner herein. The said suit was filed for permanent injunction and the same was dismissed for default on 01.02.2019. It is settled law that dismissal of the earlier suit would not bar second suit filed by them for the same relief. In fact the present suit is only for declaration that Will executed by J.Suryanarayana and Release Deed executed by the 3rd defendant were null and void and for consequential injunction. Therefore, mere dismissal of the earlier suit for default is not a ground to reject the plaint at the threshold even without affording opportunity to the plaintiffs. Further, dismissal of the interlocutory applications filed by the respondents 1 and 2 in the earlier suit and adverse findings found in the order passed in interlocutory applications will not be a ground to reject the plaint in the present suit. The findings in interlocutory applications are not binding on the Court at the time of final disposal of the suit. In such circumstances, the petitioners have not made out any case to strike out the plaint by exercising the supervisory jurisdiction of this Court under Article 227 of the



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Constitution of India.

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5. Accordingly, the Civil Revision Petition is dismissed. It is always open to the petitioners to file petition to reject the plaint, if they are so advised. No costs. Consequently, the connected civil miscellaneous petition is closed.

09.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The District Munsif Court,
Ambattur.



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S.SOUNTHAR, J.

dm

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