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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2024

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THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.562 of 2019

and

C.M.P.(MD)No.2810 of 2019

Hope in Jesus Trust,
Rep.by its Managing Trustee,
S.J.Manomohan, S/o.Stephen,
Residing at Blessing T.C.11/308,
Kestone Road, Thiruvananthapuram,
Thiruvananthapuram District,
Kerala State.

... Petitioner

vs.

1.Subramanian (died)
2.Chithirai Selvi
3.Arichandran (died)
4.Sundar Karthik
5.Mariammal

...Respondents

*[R2 to R4 were brought on record as legal heirs of the deceased sole respondent
vide order dated 01.08.2024]*

*[5th respondent is brought on record as legal heir of the deceased third respondent
vide order dated 01.08.2024]*

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.386 of 2017 in O.S.No.61 of 2013 on the file of the District Munsif Cum Judicial Magistrate Court, Cheranmahadevi, dated 13.11.2018.



For Petitioner : Mr.H.Arumugam
For R2 & R4 : Mr.B.Anandan

ORDER

This Civil Revision Petition has been filed against the order passed in I.A.No.386 of 2017 in O.S.No.61 of 2013 on the file of the District Munsif Cum Judicial Magistrate Court, Cheranmahadevi, dated 13.11.2018.

2.The revision petitioner is the defendant in the suit in O.S.No.61 of 2013. The suit was filed by the plaintiff to declare the sale deed dated 16.09.2003 vide document No.1141 of 2003, as null and void and for permanent injunction. In the said suit, the defendant filed an interlocutory application with the prayer to reject the plaint under Order II Rule 2 stating that for the same relief, already two suits in O.S.No.1 of 2013 and O.S.No.54 of 2013 were also filed and the same were pending. The said application was dismissed on the ground that the present Interlocutory Application was filed in the year 2017, whereas the original suit was filed in the year 2013. It was also observed that apart from the said fact, an application in I.A.No.537 of 2013 was also filed seeking joint trial of the above said three suits and the same was allowed by the trial Court. Challenging the same, the present revision petition has been filed.



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3.The learned counsel for the revision petitioner reiterates that already the civil suits arising out of same cause of action were pending before the trial Court and in view of the same, this application was filed seeking permission of this Court to reject the plaint under Order II Rule 2. However, the trial Court without considering the factual aspects, dismissed the said application. He relies upon the judgment of this Court in the case of ***Gunaesekar vs. Balasubramaniam*** [2021 (4) CTC 439] in support of his contention.

4.Per contra, the learned counsel for the respondent/plaintiff in the suit contends that the revision petitioner has stated that the petitioner having been a party to the other suits in O.S.No.1 of 2013 and O.S.No.54 of 2013 and after the order was passed for joint of all the suits with regard to permanent injunction and for declaration between same parties and for the same cause of action, the present application is filed by the defendants under Order II Rule 2. Hence, the order passed by the trial Court needs no interference.

5.Heard the learned counsel appearing on either side and perused the materials placed on record.



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6. Admittedly, the parties to the suits in O.S.No.1 of 2013, O.S.No.54 of 2013 and O.S.No.61 of 2013 are one and the same. The relief of permanent injunction and declaration of the sale deed dated 16.09.2003 by document No. 1141 of 2003 as null and void, are the subject matters between the revision petitioner and the respondents herein in all the three suits. It is not in dispute that joint trial was ordered in I.A.No.537 of 2013 in O.S.No.1 of 2013. After the order was passed for joint trial of all the three suits, the present petition is filed before the trial Court only to protract the proceedings.

7. The judgment relied upon by the revision petitioner is with regard to the specific bar for the institution of the subsequent suit unless and until permission is sought from the Court concerned. However, it is to be noted that the above judgment is not relevant to the facts of the case as this application itself was filed after the joint trial was ordered passed by the trial Court in I.A.No.537 of 2013.

8. Therefore, this Court is of the view that the reasons given by the trial Court in dismissing the application of the petitioner herein in I.A.No.386 of 2017 need no interference by this Court. Accordingly, this Civil Revision Petition is dismissed. Since all the three suits are of the year 2013, the trial court is directed



to complete the trial proceedings within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

03.12.2024

Internet :Yes/No
NCC :Yes/No
Index :Yes/No
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To

The District Munsif Cum Judicial Magistrate Court,
Cheranmahadevi



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N.SENTHILKUMAR, J.

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