

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2015

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THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.4503 of 2015
& M.P.No.1 of 2015

1.K.P.Krishnamurthy
2.Lakshmi

.. Petitioners

Versus

1.M.Ramasamy
2.M.Rajendran

3.Government of Tamil Nadu,
Rep.by the District Collector,
Collectorate Building,
Erode District.

4.The Tahsildar, Bhavani Taluk.

5.The Village Administrative Officer,
Chinnalpuliur Village,
Bhavani Taluk, Erode District.

.. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order of the Principal District Judge, Erode, made in Transfer O.P.No.94 of 2014 dated 07.09.2015.

For Petitioners : Mr.P.Dinesh Kumar

For Respondents : Mr.A.K.Kumarasamy

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 07.09.2015 made in Transfer O.P.No.94 of 2014 on the file of the Principal District Court, Erode.

2.The first respondent as a plaintiff filed the suit in O.S.No.213 of 2013 for permanent injunction restraining the second defendant / first petitioner to interfere with his peaceful possession and enjoyment of the suit property and also restraining the defendants 3 and 4 /respondents 4 and 5 not to make any manner of alterations in the revenue records affecting the plaintiff's right in the suit property in favour of the second defendant / first petitioner by way of permanent injunction and other reliefs. During pendency of the suit, the first petitioner / second defendant in O.S.No.213 of 2013 filed a suit in O.S.No.260 of 2013 for declaration of title and also permanent injunction in respect of the property. Hence, he filed an application for Transfer O.P.No.94 of 2014 for transfer O.S.No.213 of 2013 on the file of the District Munsif Court, Bhavani and transfer to Sub-Court, Bhavani for joint trial with O.S.No.260 of 2013, which was dismissed, against which, the present revision has been preferred by the petitioners.

3.Challenging the same, the learned counsel appearing for the revision petitioners, the suit in O.S.No.260 of 2013 is larger in extent and the survey number is one and the same. He further submitted that both the parties are claiming title and possession of the same property. So, both suits have to be tried jointly to avoid multiplicity of proceedings and conflicting judgments and that factum was not considered by the Trial Court. Hence, he prayed for setting aside the impugned order passed by the Trial Court.

4.Resisting the same, learned counsel appearing for the respondents submitted that even though survey number is one and the same, the suit properties are not one and the same. So the Trial Court has rightly held that there is no need for joint trial. Hence, he prayed for dismissal.

5.Considering the rival submissions on both sides and on perusal of the typed set of papers, the first respondent herein filed suit for bare injunction in respect of the suit property situated in Natham Re-survey No.159/148 for injunction stating that they are in possession and enjoyment of the suit property. The first respondent purchased the property on 06.02.1995 from one Palanisamy, from the date on which, he is in possession and enjoyment and now, the first petitioner attempted to interfere with the same. Hence, first respondent / plaintiff filed suit in O.S.No.213 of 2013. The first petitioner /

plaintiff has also filed a suit in O.S.No.260 of 2013 for declaration of title and injunction stating that his mother, the second petitioner/first defendant in O.S.No.213 of 2013 has encroached the Natham Poramboke and enjoying the property for the past 65 years and put up thatched shed and enjoying the same and recognising her possession, patta has been issued in favour of her. Now, the first respondent, who is the plaintiff in O.S.No.213 of 2013 has attempted to interfere with the same. Hence, the first petitioner has forced to file the suit in O.S.No.260 of 2013 for declaration of title, injunction and also for other reliefs.

6.It is true that the parties in O.S.No.213 of 2013 and O.S.No.260 of 2013 are one and the same and the dispute between the first petitioner and the first respondent are also one and the same. In such circumstances, I am of the view that it is a fit case for joint trial. In the description of property in O.S.No.213 of 2013, the first respondent has stated that the house is situated in 805sq.ft. but he is claiming right of way to common well. So that can be decided only if the suits are tried jointly. Since O.S.No.260 of 2013 is a comprehensive suit for declaration and injunction, it is a fit case for ordering transfer and for joint trial.

7.Considering the aforestated circumstances of the case, I am of the view that the impugned order passed by the Trial Court is unsustainable and hence, it is hereby set aside. Accordingly, O.S.No.213 of 2013 pending on the file of Principal District Munsiff Court, Bhavani, is ordered to be withdrawn and transferred the same to the Subordinate Court, Bhavani, for joint trial along with O.S.No.260 of 2013. The Presiding Officer, District Munsif Court, Bhavani is directed to transmit all the records pertaining to O.S.No.213 of 2013 to the file of the Subordinate Court, Bhavani, within a period of two weeks from the date of receipt of a copy of this order. The Presiding Officer, Subordinate Court, Bhavani, is directed to dispose of both the suits jointly within six months from the date of receipt of material papers, after following the procedure and giving opportunity to both sides.

8.Accordingly, this Civil Revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.12.2015

Index : Yes / No
Internet : Yes / No

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R.MALA,J.

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To

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