

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2383 of 2014

V.Muthulingam : Petitioner
versus

V.Gunasekaran : Respondent

PRAYER: Revision filed against the order dated 5.5.2014, in Transfer O.P.No.142 of 2013 on the file of the Principal District Judge, Villupuram.

For petitioner : Mr.C.Munusamy

For respondent : Mr.S.Thiruvengadam

ORDER

The petitioner filed a transfer petition before the learned Principal District Judge, Villupuram, with a request to withdraw the proceedings in O.S.No.267 of 2013 from the file of the I Additional Sub Court, Villupuram to the file of II Additional Subordinate Court, Villupuram, for disposal along with O.S.No.188 of 2012. The transfer petition was dismissed by the Trial Court primarily on the ground that there is no need for joint trial. Feeling aggrieved, the petitioner in the transfer OP is before this Court.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner and the respondents are brothers. There are two suits pending between the parties. The suit in O.S.No.267 of 2013 was instituted by the petitioner for partition and separate possession of his 2/7 share. The suit in O.S.No.188 of 2012 was instituted by the respondent against the petitioner and five others praying for a decree of declaration and consequential injunction.

4. The suit in O.S.No.267 of 2013 is pending on the file of I Additional Subordinate Court, Villupuram. The other suit in O.S.No.188 of 2012 is pending on the file of learned II Additional Subordinate Court, Villupuram.

5. The petitioner wanted both the suits to be taken up together in view of the common issues.

6. The learned Principal District Judge, Villupuram, appears to have compared the schedule property in O.S.No.267 of 2013 with reference to the schedule in O.S.No.188 of 2012 and observed that there are discrepancies in Survey numbers and four boundaries. According to the learned District Judge, the parties in O.S.No.188 of 2012 are different and as such, there was no need to transfer the proceedings in O.S.No.267 of 2013 to the file of II Additional Sub Court, Villupuram, where the suit in O.S.No.188 of 2012 is pending trial.

7. There is no dispute that the petitioner filed a suit against the respondent and five others in O.S.No.267 of 2013 before the I Additional Subordinate Court, Villupuram. In the suit filed by the respondent in O.S.No.188 of 2012, the petitioner was shown as third defendant. Defendants 1, 2, 5 and 6 in O.S.No.267 of 2013 are also parties in the suit in O.S.No.188 of 2012. The properties are also by and large the same in both the civil suits. The learned trial Judge took a too technical view of the matter and dismissed the transfer petition. Since the issues are interconnected, the learned trial Judge ought to have transferred the suit so as to enable the Trial Court to take up the suits simultaneously. I am therefore of the view that the impugned order is liable to be set aside.

8. The order dated 5 May 2014 is set aside. The proceedings in Transfer O.P.No.142 of 2013 is allowed. The suit in O.S.No.267 of 2013 is withdrawn from the file of I Additional Sub Court, Villupuram and transferred to the file of II Additional Sub Court, Villupuram for simultaneous trial, along with O.S.No.188 of 2012.

9. The civil revision petition is allowed as indicated above. No costs. Consequently, M.P.No.1 of 2014 is closed.

26.10.2016

Index:Yes/no
tar

K.K.SASIDHARAN, J.

(tar)

To

1. The Principal District Judge, Villupuram
2. The I Additional Sub Court, Villupuram
3. The II Additional Subordinate Court, Villupuram

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