

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2016

CORAM:

THE HON 'BLE MR. **JUSTICE K.K.SASIDHARAN**

Civil Revision Petition (PD) No.2849 of 2014
and M.P.No.1 of 2014

M.Palani

... Petitioner

Versus

1. Jothi
2. J.Rajendiran
3. M.murugesan
4. M.Saravanan
5. M.Thiyagarajan
6. M.Suresh Babu
7. Shanmugapriya
8. K.Selvarani
9. J.Lakshmi
10. B.Saraswathi
11. K.Rajendiran
12. V.D.Dharmalingam
13. Jagadeesan
14. V.Selvaraj
15. P.Ramani

... Respondents

Prayer:- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders, dated 07.02.2010, passed in Tr.O.P.No.68 of 2010 on the file of the Principal District Judge, Vellore, Vellore District.

For Petitioner : Mr. A.Gouthaman
For Respondents : No Appearance, for R-1, R-2, R-9,
R-13, R-14 & R-15.
R-3 to R-8, R-10 to R-12, given up

ORDER

The petitioner filed a Transfer Original Petition in Tr.O.P.No.68 of 2010 before the Principal District Judge, Vellore, praying for an order to transfer the suit in O.S.No.520 of 1999 from the District Munsif Court, Vellore, to the Subordinate Court at Vellore. The Transfer Petition was dismissed by the learned Trial Judge. The said order is under challenge in this Civil Revision Petition.

2. There are two suits pending between the parties. Both suits were filed by the petitioner. The earlier suit in O.S.No.347 of 1992 was filed by the petitioner for partition and separate possession of his share. It is stated to be a comprehensive suit. Subsequently, the suit in O.S.No.520 of 1999 was filed by the petitioner before the District Munsif Court, Vellore, for a decree of permanent injunction. In the said suit, the petitioner impleaded respondents 1 and 2 as defendants. The suit property in O.S.No.520 of 1999 is also an item to be partitioned in O.S.No.347 of 1992. It was only under such circumstances, the petitioner filed the transfer petition.

3. The learned Trial Judge was of the view that the suit in O.S.No.347 of 1992 is pending for so many years and as such it would not be possible to transfer the subsequent suit for joint trial.

4. Since common questions are involved in both the suits and the involvement of same properties in both the suits, the learned Trial Judge ought to have allowed the transfer petition. I am therefore of the view that the learned Trial Judge committed a jurisdictional error by dismissing the transfer Petition.

5. In the result, the order dated 07.02.2014 is set-aside. The Transfer O.P.No.68 of 2010 is allowed.

6. The suit in O.S.No.520 of 1999 is withdrawn from the file of the learned Principal District Munsif, Vellore, and is transferred to the file of learned Subordinate Judge, Vellore, for simultaneous trial, along with O.S.No.347 of 1992.

7. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, the connected MP is closed.

16.11.2016

srk

To

1. Principal District Judge, Vellore, Vellore District.
2. Sub-Court, Vellore.

K.K.SASIDHARAN, J.,

srk

C.R.P.(PD) No.2849 of 2014
and M.P.No.1 of 2014

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