

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2016

CORAM:

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

C.R.P.No. 1339 of 2016

And

C.M.P.No.7538 of 2016

Raja ... Petitioner/Petitioner/Defendant

Versus

Lalithamani ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in I.A.No. 502 of 2015 in O.S.No. 480 of 2014 dated 10.12.2015 on the file of IV Additional District Court, Coimbatore.

For Petitioner : Mr.B.Nedunchezhiyan

O R D E R

The respondent initially filed a suit for specific performance in O.S.No. 2968 of 2012. During the currency of the suit, another suit was filed for a money decree in O.S.No. 480 of 2014.

2. The petitioner filed an application in the said suit contending that the subsequent suit is barred as leave was not taken in the earlier suit to file a separate suit. The application was dismissed by the trial Court. The said order is under challenge.

3. The learned counsel for the petitioner submitted that the respondent failed to obtain leave to file a second suit, under Order 2 Rule (3) of CPC and as such, the subsequent suit is barred by limitation.

4. The documents on record indicate that the second suit was filed by the respondent on the ground that a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs) was taken as loan and the same was not repaid. However in the first suit, the claim was for a decree of specific performance on the strength of an agreement stated to have been executed by the petitioner. In the plaint filed in O.S.No. 480 of 2014, the respondent claimed only a money decree. It has no reference to the earlier suit in O.S.No. 2968 of 2012. The question raised by the petitioner that both the suits arise out of a single transaction is a matter to be considered during the time of trial. While considering an application of this nature,

the Court, has to consider the plaint alone and the defence taken by the defendant has no relevancy. I am therefore of the view that there is no merit in the contention taken by the petitioner.

5. The learned counsel for the petitioner submitted that since identical issues are involved in both the suits, joint trial should be ordered in the matter. The petitioner is given liberty to make an application before the learned District Judge, Coimbatore, for the purpose of transferring the suit in O.S.No. 480 of 2014 from the file of learned IV Additional District Court, Coimbatore to the file of Principal District Munsif, Coimbatore where the Civil Suit in O.S.No. 2968 of 2012 is now pending.

6. The Civil Revision Petition is disposed of with the liberty as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

27.09.2016

vsg

To

1. IV Additional District Court, Coimbatore.
2. Principal District Munsif, Coimbatore.

K.K.SASIDHARAN. J.

vsg

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