

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.09.2016**

CORAM:

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

C.R.P.(P.D.) No.1615 of 2016 and
CMP.No.8760 of 2016

Jayanthi

...Petitioner

versus

1.P.Govindasamy

2.Palanisamy

3.Subramani

4.Siddayee

5.Palaniammal

6.Pappa

7.Alamelu

8.S.Sudhanthiraraj @ Sundaram

(Respondents 2 to 8 are given up)

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order passed in Tr.O.P.No.307 of 2014 dated 03.09.2015 on the file of Court of Principal District Judge, Salem.

For Petitioner : Mr.S.Sounthar

For Respondents : Mr.R.Nalliyappan for R1

ORDER

The order passed by the learned Principal District Judge, Salem, transferring the proceedings in R.E.A.No.341 of 2014 in R.E.P.No.314 of

2014 in O.S.No.374 of 2013 pending on the file of I Additional Sub-Court, Salem to II Additional District Court, Salem for trial along with the suit in O.S.No.254 of 2014 is challenged in this Civil Revision Petition.

2. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the first respondent.

3. The petitioner filed a suit in O.S.No.374 of 2013 before the II Additional District Court, Salem against respondents 6 and 7 praying for a decree of specific performance of contract. The suit was decreed by judgment and decree dated 08.10.2013. Thereafter, the petitioner filed Execution Petition in E.P.No.314 of 2014 for execution of the decree.

4. The first respondent resisted the Execution Petition by filing R.E.A.No.341 of 2014 invoking Order XXI Rule 97 CPC. The first respondent thereafter filed O.S.No.254 of 2014 before II Additional District Judge, Salem against the petitioner and other respondents for a declaration that the decree passed in O.S.No.231 of 1996 is null and void.

5. The first respondent with a view to club all the matters together filed a transfer petition in Tr.O.P.No.307 of 2014 before the Principal District Court, Salem. The transfer petition was allowed and a direction was issued for trial of both the matters.

6. The petitioner filed this civil revision petition primarily on the ground that execution petition being one filed under Order XXI Rule 97 of CPC can be decided on merits, as if it is a suit, without the necessity of filing a separate suit. According to the petitioner, the issue raised in O.S.No.254 of 2014 can very well be decided in the petition in R.E.A.No.314 of 2014.

7. Order XXI Rule 97 of CPC permits to file an obstruction petition against the execution of a decree for possession of property. Order XXI Rule 101 of CPC provides that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by way of separate suit.

8. The petitioner wanted the legality and correctness of the decree in O.S.No.374 of 2013 to be tested in a petition filed under Order XXI Rule 97 of CPC in R.E.A.No.341 of 2014 in R.E.P.No.314 of 2014. However, in the subject case, the attack is to the decree in O.S.No.231 of 1996 dated 19.02.2004 which was the basis for executing an agreement with the petitioner and the resultant decree in O.S.No.374 of 2013. The first respondent wanted the decree in O.S.No.231 of 1996 to be declared as null and void. The said decree is not the subject matter in R.E.A.No.341 of 2014. Since larger issues are raised in the suit in O.S.No.254 of 2014, the same has to be considered independently.

9. The learned Principal District Judge, transferred the proceedings in REA No.341 of 2014 only on the ground that a larger question which has reference to the issue raised in the Execution Application is pending before another court of competent jurisdiction. The order was passed taking into account the background facts. I do not find any error or illegality in the said order warranting interference by this Court.

10. In the up shot, I dismiss the Civil Revision Petition. No costs.
Consequently, connected miscellaneous petition is closed.

26.09.2016

Index:Yes/No
Internet:Yes/No
svki
To

The Principal District Judge, Salem.

K.K.SASIDHARAN, J.

(svki)

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