

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.2331 OF 2016
AND CMP NO.12027 OF 2016

Durga Vijayakumar

... Petitioner

Versus

B.Damodaran

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.01.2016 passed in I.A.No.11993 of 2015 in O.S.No.3870 of 2013 on the file of the II Assistant City Civil Judge, Chennai.

For Petitioner	:	Mrs.Chitra Sampath Senior Counsel for Mr.T.S.Baskaran
For Respondent	:	Ms.R.Bamini

ORDER

This Civil Revision Petition is directed against the order dated 06.01.2016 in I.A.No.11993 of 2015 dismissing the application filed by the petitioner for simultaneous trial of the suits in O.S.Nos.3870 and 4460 of 2013.

2. There are two suits pending between the parties. The petitioner is the defendant in O.S.No.3870 of 2013. There is yet another suit filed by the daughter of the respondent in O.S.No.4460 of 2013.

3. The petitioner filed the application in I.A.No.11993 of 2015 for simultaneous trial of both the suits. The application was dismissed by the Trial Court only on the ground that trial had already been commenced in O.S.No.3870 of 2013 and that is not the case with respect to O.S.No.4460 of 2013.

4. The learned Senior Counsel for the petitioner contended that there is a common defense taken in so far as the petitioner is concerned in both the matters and as such, the Trial Court was not correct in dismissing the application. According to the learned Senior Counsel, the suit in O.S.No.4460 of 2013 was delayed only on account of the pendency of interlocutory application filed by the plaintiff in the said suit and as such, the Trial Court was not correct in dismissing the application on the ground of delay.

5. The learned counsel for the respondent justified the impugned order. According to the learned counsel, it was only to drag

on the matter, the petitioner filed the application for simultaneous trial of the suits.

6. There are two suits pending between the parties. It is a matter of record that in both the suits, the cancellation deed executed by the mother of the petitioner is an issue. The petitioner is a party in both the suits. The suits were filed in the year 2013. Merely because one suit was posted for trial and the other suit is yet to be posted for trial, it cannot be said that the request of the petitioner for simultaneous trial of the suits is unjustified.

7. The learned Senior Counsel for the petitioner submitted that in O.S.No.4460 of 2013, the Trial Court has already framed issues and it is yet to be posted for trial. According to the learned Senior Counsel, in view of the order impleading parties, the issues need to be framed afresh and in any case, the matter is also ready for trial.

8. Since common issues are involved in both the matters, the learned Trial Judge ought to have allowed the application for simultaneous trial of the suits in O.S.Nos.3870 and 4460 of 2013. I am therefore of the view that the impugner order is liable to be set aside.

9. In the result, the order dated 06.01.2016 is set aside.

The application in I.A.No.11993 of 2015 is allowed.

10. The learned Trial Judge is directed to conduct simultaneous trial of the suits in O.S.Nos.3870 and 4460 of 2013 and dispose of both the suits, as expeditiously as possible.

11. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected civil miscellaneous petition is closed.

17.11.2016

TK

To

The II Assistant Judge
City Civil Court
Chennai.

K.K.SASIDHARAN, J.

TK

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