

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2016

CORAM:

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

CRP (PD) No.2426 of 2016
and CMP.No.12556 of 2016

S.Easwaran

... Petitioner

Versus

1. S.Sumathi

2. S.Subbulakshmi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 21.12.2015 in Tr.O.P.No.156 of 2015 on the file of the Principal District Judge, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For R1 : Mr.L.Mouli

For R2 : Mr.R.Ravishankar Rao

ORDER

The Civil Revision Petition is directed against the order dated 21.12.2015 in Tr.O.P.No.156 of 2015, whereby and where under, the learned Principal District Munsif, Coimbatore, has withdrawn the suit in O.S.No.2005 of 2014 from the file of the learned Principal District Munsif, Coimbatore to the file of V Additional District Court, Coimbatore.

2. The first respondent filed a suit claiming easementary right before the Principal District Munsif Court, Coimbatore, in O.S.No.2005 of 2014. The second respondent on the other hand instituted a suit in O.S.No.428 of

2014 praying for a decree setting aside the settlement deed dated 13.12.2012 and for partition.

3. The first respondent filed Tr.O.P.No.156 of 2015 for withdrawal of O.S.No.2005 of 2014 and joint trial along with O.S.No.428 of 2014. The learned Trial Judge allowed the application on the ground that the parties are same in both the matters and the subject matter is also same and as such, it would be the interest of both parties to conduct a joint trial.

4. Heard the learned counsel for the petitioner and the learned counsel for the concerned respondents.

5. The suit in O.S.No.2005 of 2014 was instituted by the first respondent claiming a decree of injunction. The other suit in O.S.No.428 of 2014 is a comprehensive suit filed by the second respondent praying for a decree setting aside the settlement deed dated 13.12.2012 and for partition of the property among the parties.

6. The question raised in O.S.No.2005 of 2014 has nothing to do with the issue raised in O.S.No.428 of 2014. The only issue raised for consideration in O.S.No.2005 of 2014 is as to whether the plaintiff is having the easementary right. The other suit in O.S.No.428 of 2014 involves several questions including an issue as to whether the second respondent is entitled to a decree to set aside the settlement deed dated 13.12.2012. In

case, the suit in O.S.No.2005 of 2014 is transferred from the file of learned Principal District Munsif, Coimbatore to the file of V Additional District Court, Coimbatore, the aggrieved would loose chance of filing First Appeal before the First Appellate Court. I am therefore of the view that the Trial Court was not correct in withdrawing the Suit in O.S.No.2005 of 2014 from the file of learned Principal District Munsif, Coimbatore.

7. The order dated 21.12.2015 is set aside. The Transfer Original Petition in Tr.O.P.No.156 of 2015 is dismissed.

8. The second respondent is aged about 72 years. The learned Principal District Judge, Coimbatore, is directed to dispose of the suit in O.S.No.428 of 2014 as expeditiously as possible and in any case, within a period of seven months from the date of receipt of a copy of this order.

9. The Civil Revision Petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

14.11.2016

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K.K.SASIDHARAN, J.
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To

The Principal District Munsit,
Alandur

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