

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

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

CRP (PD) No.2645 of 2016

and

CMP.No.13609 of 2016

Mr.Yuvanesh

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Petitioner/Petitioner

Versus

1. Annammal
2. Balasbramaniam
3.Rukmani
4.Lakshmi Jain
5.Thilagavathi
6.Madhankumar
7.Nesanthkumar
8.Varanavasi Gounder
9.Sadhasivam

...

Respondents/Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Final order dated 06.06.2016 passed by the Learned Principal District Judge, Erode in Tr.O.P.No.55 of 2016 and prays to set aside the same.

For Petitioners : Mr.L.Mouli
For Respondents : No appearance

ORDER

This Civil Revision Petition is directed against the order dated 6th June 2016, in Tr.O.P.No.35 of 2016, dismissing the application filed by the petitioner, for withdrawal of the suit in O.S.No.228 of 2004, pending on the file of II Additional Subordinate Judge, Erode and transfer the same to the Principal Subordinate Court, Erode, for trial along with O.S.No.541 of 2015.

2. The first respondent filed a suit in O.S.No.228 of 2004, before the II Additional Subordinate Court, Erode praying for a decree of partition. The petitioner was a party to the said suit. The petitioner subsequently filed a suit for partition in O.S.No.541 of 2015, before the Principal Subordinate Court, Erode.

3. The learned Judge dismissed the transfer petition observing that early suits cannot be transferred, taking into account the initiation of the subsequent suits.

4. I have perused the complaints in O.S.No.541 of 2015 and

O.S.No.228 of 2004. The property in O.S.No.541 of 2015 was shown as item No.1 in O.S.No.228 of 2004. The parties are also one and the same in both the suits. Such being the factual position, the learned Principal District Judge, Erode was not correct in dismissing the transfer petition. The fact that suit in O.S.No.541 of 2015 was filed long after the initiation of suit in O.S.No.228 of 2004 alone cannot be ground to reject the transfer petition. The suits are now ripe for trial. I am therefore of the view that the petitioner was correct in initiating the transfer of petition.

4. In the result, the order dated 6th June 2016, in Tr.O.P.No.35 of 2016 is set aside. The suit in O.S.No.228 of 2004 is withdrawn from the file of learned II Additional Subordinate Judge, Erode and is transferred to the file of Principal Subordinate Judge, Erode for disposal along with O.S.No.541 of 2015.

This Civil Revision Petition is allowed with the above direction. No costs. Consequently, connected M.P. is closed.

15.11.2016

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K.K.SASIDHARAN, J.

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To

1. The Principal District Judge, Erode
2. The II Additional Subordinate Judge, Erode.

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