

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM:

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

CRP(PD)No.2980 of 2016
and C.M.P.Nos.15053 to 15055 of 2016

Dr.C.Kannan

... Petitioner

Versus

1. Dr.S.Chitra
2. C.Ruckmani
3. Amsavel
4. Madhusudanan
5. Vallinayagi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair order and decree dated 20.07.2016 in Tr.O.P.No.140 of 2014 on the file of the Principal District Judge, Salem.

For Petitioner	:	Mr.T.Nirmaleswar
For R1	:	Mr.B.Vasudevan
For R2, R3 and R5:		Mr.A.Durai Eswar
For R4	:	Door locked

ORDER

The petitioner filed H.M.O.P.No.66 of 2010 before the Subordinate Court at Sankari praying for a decree of divorce. The first respondent, who was shown as respondent in H.M.O.P.No.66 of 2010, filed H.M.O.P.No.25 of 2011 before the Subordinate Court at Sankari, praying for a decree under Section 9 of the Hindu Marriage Act. The first respondent instituted a civil suit in O.S.No.70 of 2011 before the Subordinate Court at Salem, praying for

a decree of partition. The petitioner was arrayed as one of the defendants in the said suit along with his parents.

2. The petitioner filed an application in Tr.O.P.No.140 of 2014 before the learned District Judge, Salem, seeking an order for transfer of proceedings in H.M.O.P.Nos.66 of 2010 and 25 of 2011 from the file of Subordinate Court, Sankari, to the file of Subordinate Court, Salem, for joint trial. The learned Trial Judge dismissed the application with an observation that there is nothing common for directing joint trial. The said order is under challenge in the Civil Revision Petition.

3. The learned counsel for the petitioner contended that the parties in the matrimonial proceedings and the original suit are one and the same. The issues to be decided are more or less the same. Such being the factual position, the Trial Court was not correct in dismissing the Transfer Petition.

4. The learned counsel for the first respondent, while justifying the order passed by the trial Court, contended that the petitioner has been deliberately dragging the proceedings in H.M.O.P.Nos.66 of 2010 and 25 of 2011 and attempting to stall further proceedings in O.S.No.70 of 2011.

5. There are three proceedings pending between the very same parties. The matrimonial proceedings are pending before the Subordinate

Court, Sankari. The first respondent filed the suit for partition in O.S.No.70 of 2011 before the Subordinate Court, Salem. The learned Judge dismissed the application primarily on the ground that there cannot be any joint trial in a matter of this nature. When the issues are more or less the same and the parties are also the same, necessarily, the parties should be permitted to agitate the matters before a particular Court instead of taking up the matters by different Courts.

6. The suit is pending before the Subordinate Court at Salem. The first respondent is residing nearly 20 Kms. away from the Subordinate Court, Salem. Since the suit for partition is pending before the Subordinate Court, Salem, I am of the view that the other two matrimonial proceedings are required to be transferred to the Subordinate Court at Salem for simultaneous trial.

7. In the result, the order dated 20.07.2016 in Tr.O.P.No.140 of 2014 on the file of the Principal District Judge, Salem, is set aside. The matrimonial proceedings in H.M.O.P.Nos.66 of 2010 and 25 of 2011 are withdrawn from the file of the Subordinate Court, Sankari and are transferred to the file of Subordinate Court at Salem for simultaneous disposal.

8. The petitioner is directed to co-operate with the Trial Court for an early disposal of the proceedings.

9. The learned counsel for the petitioner submitted that the suit is now posted on 25.11.2016 for trial. The learned Trial Judge is directed to take up the matter for evidence on that day and complete the trial as expeditiously as possible. The other two proceedings are also to be taken up along with the suit simultaneously.

10. The learned Subordinate Court, Salem is further directed to dispose of the proceedings simultaneously as expeditiously as possible and in any case, on or before 31st March 2017.

11. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

03.11.2016

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To

1. The Principal District Judge,
Salem.
2. The Subordinate Court,
Sankari.
3. The Subordinate Court,
Salem.

K.K.SASIDHARAN, J.

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