

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.70 of 2016

&

C.M.P.No.375 of 2016

P.Ponnusamy

... Petitioner

vs.

1. G.Govindaraj

2. Sumathi

3. A.Radha

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 13.10.2015 passed in Tr.OP.No.31/2015 on the file of the Principal District Judge, Erode and to withdraw the suit in O.S.No.44 of 2015 pending on the file of the District Munsif cum Judicial Magistrate Court, Perundurai, Erode District and transfer the same to Second Additional District Court, Erode by allowing the present revision.

For Petitioner : Mr.I.C.Vasudevan

ORDER

In respect of the very same property, the opposite parties filed suits one in the District Munsif cum Judicial Magistrate Court, Perundurai and the other in the Second Additional District Court, Erode.

2. The revision petitioner is the plaintiff in the suit filed on the file of the District Munsif cum Judicial Magistrate Court, Perundurai and it is pending as O.S.No.43 of 2015. The suit filed by the respondents before the District Court in respect of the very same property is pending on the file of the Second Additional District Court, Erode as O.S.No.55 of 2015. The petitioner herein filed a petition before the Principal District Judge, Erode, as Tr.OP.No.31 of 2015 for the transfer of his case, namely, OS.No.43 of 2015, pending on the file of the District Munsif cum Judicial Magistrate Court, Perundurai to the file of the Second Additional District Court, Erode for joint or simultaneous trial with O.S.No.55 of 2015. The said petition was dismissed by the impugned order dated 13.10.2015 on the premise that the petitioner had suppressed the fact that a petition under Order 7 Rule 11 CPC for rejection of the plaint in O.S.No.43 of 2015 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai, was pending.

3. Mr.I.C.Vasudevan, learned counsel for the petitioner admits the fact

that the respondents herein have filed an Interlocutory Application No.139 of 2015 in O.S.No.43 of 2015 for rejection of the plaint filed by the petitioner herein in the said suit. The learned counsel also admits the fact that in the Tr.OP., the pendency of the said petition was not adverted to.

4. In view of the fact that the pendency of the application under Order 7 Rule 11 CPC is an impediment for the transfer of the petitioner's suit to the file of the Second Additional District Judge, Erode, to be tried jointly or simultaneously with O.S.No.55 of 2015, the learned counsel for the petitioner seeks the Leave of the Court to withdraw the Civil Revision Petition, but at the same time seeks a direction to the trial Court, namely, the District Munsif cum Judicial Magistrate Court, Perundurai to dispose of the I.A.No.139 of 2015 filed under Order 7 Rule 11 CPC within a time to be stipulated by this Court. The learned counsel also seeks the Leave of the Court to file a fresh Tr.OP., in case, the petition filed under Order 7 Rule 11 CPC is dismissed by the District Munsif cum Judicial Magistrate Court, Perundurai. An endorsement to that effect is made.

5. Endorsement is recorded and the Civil Revision Petition is dismissed as withdrawn. The liberty sought for, as indicated above, is granted. The District Munsif cum Judicial Magistrate Court, Perundurai is directed to take

up the I.A.No.139 of 2015 filed under Order 7 Rule 11 CPC and dispose of the same within a month from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

01.02.2016

Index: Yes/No
Internet: yes/No

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Note to office:
Issue copy by 02.2.2016

Registry is directed to mark a copy to

1. The District Munsif-cum-Judicial Magistrate
Perundurai, Erode District
2. The Second Additional District Court, Erode
3. The Principal District Judge, Erode.

P.R.SHIVAKUMAR.J.,

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