

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

**CRP (PD) No.370 of 2013 and
M.P.No.1 of 2013**

Kathiresan

.. Petitioner

Vs.

1. M.N.Balamurugan
Proprietor of Monisha Jewellers,
Marakkottai Post, Chamrajpet Via
Salem District – 636 451

2. V.Vivekananthan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside Fair and Final Order dated 21.09.2011 passed in Transfer O.P.No.196 of 2010 on the file of learned Principal District Judge, Salem.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.T.S.Vijayaraghavan for R1
R2 - served

ORDER

The Petitioner has preferred the instant Civil Revision Petition as against the Order dated 21.09.2011 in TR.O.P No.196 of 2010 passed by the Learned Principal District Judge, Salem.

2. The Learned Principal District Judge, Salem while passing the Impugned Order in TR.O.P. No.196 of 2010 had interalia at Paragraph No.8 had observed the following:-

...8. The petitioner seeks to transfer O.S.No.1312/ 2008 filed by him seeking return of documents mentioned therein like blank green sheets, N.J.S.Papers to him. The other suit is filed by the 1st respondent against the petitioner herein on the basis of pronote executed by the petitioner herein. The 2nd respondent is not party to the other proceedings. It is contended by the respondent that if the allegation of the petitioner that the pronote is not executed by him is true, the same can be contended in the suit and no other document is available with him as alleged by the petitioner and there is no need for joint trial. As it is clear from the averments in the petition and the counter that the relief sought for in both suits are different and the evidence to be let in is not one and the same, the cause of action in the suits are also different. In such circumstances, this Court is of the view there is no need for joint trial of both the suits as prayed for in the petition and the petition lacks merits and this point is answered accordingly.”

and resultantly dismissed the Petition without costs.

3. Assailing the correctness, validity and legality of the Impugned Order dated 21.09.2011 in TR.O.P.No.196 of 2010 passed by the

learned Principal District Judge, Salem, the Petitioner/Plaintiff/Petitioner has filed the present Civil Revision Petition primarily contending that the Learned Principal District Judge, Salem should not dismiss the TR.O.P. No.196 of 2010 (filed under Section 24 of Civil Procedure Code to transfer the suit in O.S.No.1312 of 2008 on the file of Learned First Additional District Munsif, Salem and try along with O.S.No.186 of 2009), because of the reason that in both the suits the issues involved are one and the same.

4. It is the prime plea taken on behalf of the Revision Petitioner/Plaintiff that subject matter of the two suits, viz, O.S.No.1312 of 2008 and O.S.No.186 of 2009 are connected and related and as such, in the interest of justice, to avoid conflict of decisions, both the suits are to be tried by a Single / Same Court.

5. The Learned Counsel for the Petitioner brings it to the notice of this Court that evidences to be let in by the parties in both the suits are one and the same and therefore, no prejudice would be caused to the Respondents/Defendants in the event of TR.O.P. No.196 of 2010 being allowed by the Court.

6. Per contra, it is the submission of the Learned Counsel for the 1st Respondent/1st Defendant that other than the Pro-note executed by the Plaintiff in Suit O.S.No.1312 of 2008, the 1st Respondent/1st Defendant has no other document/documents and only to get over the claim in O.S.No.186 of 2009 (filed by the 1st Respondent as Plaintiff before the Trial Court), the Revision Petitioner/Plaintiff had filed TR.O.P. No.196 of 2010 and the same was rightly dismissed by the Learned Principal District Judge, Salem through an Order dated 21.09.2011 and further that the said Order is a proper one, which need not to be interfered with by this Court sitting in Revision.

7. At this stage, this Court has perused the contents of the Plaint in O.S.No.1312 of 2008 filed by the Revision Petitioner/Plaintiff against the 1st Respondent/1st Defendant and the 2nd Respondent/2nd Defendant. In the relief portion of the Plaint, the Petitioner/Plaintiff had sought a relief of passing of a Decree against the Respondents/Defendants to return the suit empty Non Judicial Stamp (Rs.20/-) paper and 3 green sheets signed and affixed Left Thumb impression of the plaintiff dated 23.03.2001 detailed in the schedule by means of Mandatory Injunction and for costs. However, it comes to be known that O.S.No.186 of 2009 was filed by the 1st Respondent (Plaintiff before the Learned First

Additional District Judge, Salem) against the present Civil Revision Petitioner wherein a relief was sought for passing of a decree in favour of the 1st Respondent/Plaintiff by directing the Defendant therein (Revision Petitioner/ Plaintiff in O.S.No.1312 of 2008) to pay the suit amount with costs and future interest.

8. This Court has heard the submissions of the Learned Counsel for the Revision Petitioner/Plaintiff and the 1st Respondent / 1st Defendant (Plaintiff in O.S.No.186 of 2009) and noticed their contentions.

9. At this juncture, it is brought to the notice of this Court on behalf of the 1st Respondent/1st Defendant (Plaintiff in O.S.No.186 of 2009) that the suit in O.S.No.1312 of 2008 filed by the Revision Petitioner/Plaintiff on the file of Learned First Additional District Munsif Court, Salem was 'dismissed for default' on 27.06.2012 and later the Revision Petitioner/Plaintiff filed a Petition (Under Section 5 of Limitation Act, 1963) in I.A.No.434 of 2014 which was allowed on 10.04.2015. But, the I.A.No.422 of 2015 (filed under Order IX Rule 9 of Civil Procedure Code by the Revision Petitioner/Plaintiff) is pending on the file of learned First Additional District Munsif, Salem and the same is posted to 17.03.2016.

10. It is to be borne in mind that Section 24 of Code of Civil Procedure speaks of General Power of Transfer and Withdrawal. The District Court would transfer any suit, appeal or other proceeding pending before it for trial and disposal to any Court Subordinate to it and competent to try or dispose of the same in the considered opinion of this Court. It is true that the powers under Section 24 of the Civil Procedure Code are very wide and the same ought to be exercised by a Court of Law while transferring matters within the permissible parameters.

11. It is to be noted that if the facts of the suit sought to be tried together are interconnected and interlinked with the cause of action in each suit, the transfer of the suit may not be refused, provided the parties and subject matter of the suits are one of the same. Where the litigating parties in both the suits were one and the same and the subject matter involved in both the suits are common, then, to avoid conflict of decisions, a joint trial by allowing the transfer could be ordered by a Court of Law in a given case, of course, based on the facts and circumstances, which float on the surface.

12. Indeed, the powers under Section 24 of Civil Procedure Code cannot be exercised in an 'Ipsi Dixit' fashion. It may be exercised by a

Court of Law at any stage of the proceedings and even suo motu without an application as per decision in **Seshgiri Rao V. Somasundaramma reported in AIR 1949 Madras 65.**

13. In fact, the jurisdiction conferred under Section 24 of Civil Procedure Code is to be exercised with care and caution. Furthermore, only a pending suit/proceeding can be transferred as per decision in **Ramesh Chand Bharadwaja V. Ram Prakash Sharma reported in AIR 1991 Delhi 280 at page 283.** Furthermore, a 'Part - Heard Case' cannot be transferred to any other Judge unless the Presiding Judge indicates himself to that effect, as per decision in **United Commercial Bank, Bhadrak V. National Trading Corporation and another, 2002 A I H C 2115.**

14. It is to be pointed out that the exercise of powers under Section 24 of Civil Procedure Code is discretionary and one has to find out from the averments/allegations made as to whether any reasonable ground that exists for transfer of the case, as opined by this Court.

15. As far as the present case is concerned, in the cause of action, Paragraph of Plaint in O.S.No.1312 of 2008, the Revision Petitioner/Plaintiff had stated that the cause of action arose on

23.03.2001 when the Plaintiff under took the Gold Ornament making works as per the order and request of the 1st Respondent/1st Defendant and that the Plaintiff gave the security empty 20Rs. N.J.Stamp paper with three green sheets and signed LTI by him to the 1st Defendant etc., However, in the cause of auction, paragraph of the suit in O.S.No.186 of 2009 (filed by the 1st Respondent/1st Defendant as Plaintiff in O.S.No.186 of 2009 against the Revision Petitioner/Plaintiff), it is categorically mentioned that the cause of action had arisen in the suit on 30.08.2008 when the Revision Petitioner (Defendant/Plaintiff in O.S.No.1312 of 2008) borrowed amount of Rs.20,00,000/- at Marakottai, Omalur Taluk from the Plaintiff in the presence of witness and executed the Pro-note and on subsequent dates of demand and finally on 30.11.2008 when the Plaintiff demanded the same and on 3.12.2008 when the Defendant sent a letter as though blank papers are signed by him and on 30.12.2008 when a reply was sent by Plaintiff and on 31.12.2008, when the Defendant sent a lawyers notice and on 05.01.2009 when the Plaintiff sent a reply along with xerox copy of Pronote at Salem town, etc.,

16. In the Written Statement, a mere running of the eye over the contents of the Written Statement filed by the Defendant (Revision

Petitioner/Plaintiff in O.S.No.1312 of 2008 on the file of learned District Munsif, Salem) indicates that the Revision Petitioner/Plaintiff as Defendant in O.S.No.186 of 2009) at Paragraph No.5 had stated as follows:-

“... It is also true on 03.12.2008 the respondent sent a letter saying and that it must be returned to them, but it is false to say that he has signed some blank pronotes and papers and that it must be returned to them, but it is false to say that he sent a reply and there are exchanges of notices between the plaintiff and defendant.”

17. Be that as it may, this Court on going through the said averments made in the Written Statement of the Revision Petitioner/Plaintiff as defendant in O.S.No.186 of 2009 unerringly point out that the defence taken by the Revision Petitioner/Plaintiff (as Defendant in O.S.No.186 of 2009) can very well to be agitated / raised before the learned First Additional District Judge, Salem and it is for him to appreciate the defences taken by the Revision Petitioner/Plaintiff as Defendant in O.S.No.186 of 2009 and to proceed further in the said suit in the manner known to Law and in accordance with Law.

18. In this connection, it is to be pointed out by this Court very relevantly that in O.S.No.1312 of 2008 (filed by the Revision Petitioner/Plaintiff on the file of Learned District Munsif, Salem), apart

from the 1st Defendant (Plaintiff in O.S.No.186 of 2009), there is 2nd Defendant in the case. But in O.S.No.186 of 2009 filed by the 1st Respondent/1st Defendant, one Vivekandan, the 2nd Defendant in O.S.No.1312 of 2008 is not a party. In fact, the suit in O.S.No.186 of 2009 is between the 1st Respondent/1st Defendant (as Plaintiff in O.S.No.186 of 2009) and the Revision Petitioner/Plaintiff in O.S.No.1312 of 2008. Also that in O.S.No.186 of 2009, the trial had commenced and the matter was posted for cross-examination and only at that point of time, the TR.O.P. No.196 of 2010 was filed by the Revision Petitioner before the Learned Principal District Judge, Salem. It is to be pointed that when the trial had commenced in O.S.No.186 of 2009 (filed by 1st Respondent/1st Defendant as Plaintiff) before the trial court, the trial in O.S.No.1312 of 2008 filed by the Revision Petitioner/Plaintiff had not commenced. As on date, the fact situation is that O.S.No.1312 of 2008 was dismissed for default on 27.06.2012 on the file of the Learned Additional District Munsif, Salem. Only I.A.No.434 of 2014 (Filed by the Revision Petitioner/Plaintiff) under Section 5 of the Limitation Act, 1963 was allowed on 10.04.2015. But the Application/Petition under Order IX Rule 9 of Civil Procedure Code filed by the Revision Petitioner/Plaintiff is pending on the file of Trial Court and is posted to 17.03.2016.

19. In the upshot of detailed qualitative and quantitative discussions mentioned supra and also this Court considering the rival contentions to the effect that even though the Suit in O.S.No.1312 of 2008 was dismissed for default on 27.06.2012 and as on date, the same has not restored to file (and in this regard I.A.No.422 of 2005 filed under Order IX Rule 9 of Civil Procedure Code is pending before the trial court for adjudication) and also this Court taking note of the entire facts and circumstances of the present case on hand comes to an inevitable conclusion that the Revision Petitioner/Plaintiff can in Law take a defence/defences in the trial of the suit in O.S.No.186 of 2009 on the file of learned 1st Additional District Judge, Salem. The trial Court is directed to provide adequate opportunity to the respective parties by adhering to the Principles of Natural Justice.

20. In this connection, this Court significantly points out that Section 114 of the Indian Evidence Act, 1872 is a general provision which enables a Court of Law to presume though not oblige to do so, that a Bill of Exchange or Pronote was founded on a good consideration. However, Section 118 of the Negotiable Instruments Act, 1881 is a special rule of evidence which operates between the parties to the instrument or persons claiming under them in a suit or proceeding

relating to 'Bill of Exchange' and does not affect the rule contained in Section 114 of the Evidence Act, in cases not falling within Section 118 of the Negotiable Instruments Act. Inasmuch as that the O.S.No.186 of 2009 is pending Part-Heard, at this stage, this Court, exercising its judicial discretion, is not inclined to allow the instant Civil Revision Petition, but, dismisses the same, to prevent an aberration of Justice.

21.In the result Civil Revision Petition is dismissed, leaving the parties to bear their own costs. Resultantly, the Order dated 21.09.2011 passed by the Learned District Judge, Salem in TR.O.P No.196 of 2010 is confirmed by this Court for the reasons assigned in this Revision. In view of the fact that O.S.No.186 of 2009 is in Part - Heard stage, this Court, in the interest of Justice and Fair Play, directs the Learned 1st Additional District Judge, Salem to dispose of the said Suit within a period of three months from the date of receipt of copy of this Order. No costs. Consequently, connected Miscellaneous Petition is closed.

05.02.2016

Index:Yes/No
Internet:Yes/No
ssd

To
The Learned Principal District Judge,
Salem.

M.VENUGOPAL, J.

ssd

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