

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1395 of 2017
& C.M.P.No.6451 of 2017

M.S.Marudhachalam

.. Petitioner

Vs.

1.S.K.Boopathy

2.S.B.Sree Maragatham

3.A.Velusamy

4.V.Prakash

5.The Coimbatore Municipal Corporation
by its Commissioner, the Office of the
Coimbatore Municipal Corporation,
B.B.Street, Coimbatore 641 001.

6.The Coimbatore Municipal Corporation
by its Assistant Commissioner, the Office of the
Coimbatore Municipal Corporation
South Zone, Palaghat Road, Kuniyamuthur,
Coimbatore 641 008.

7.The Tahsildar,
The Office of the Taluk, Madukkarai Taluk,
Coimbatore 641 105.

8.The Assistant Engineer,
Office of the TNEB Phase – 1, Kurichi
Madukkarai Road,
Coimbatore-18.

9.The Sub Registrar-Joint-I,
The Sub Registrar Office,
Coimbatore-18.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.11.2016 passed in Transfer O.P.No.226 of 2015 on the file of the learned Principal District Judge, Coimbatore.

For Petitioner : Mr.J.Pothiraj

ORDER

The petitioner has filed O.S.No.26 of 2015 on the file of the learned IV Additional District Judge, Coimbatore, for partition and for other consequential reliefs against the respondents 1 to 10. The first respondent filed O.S.No.1137 of 2015 on the file of the District Munsif Court, Coimbatore, for injunction restraining the defendant/petitioner and his men from disturbing the plaintiff/respondent's peaceful possession and enjoyment of the suit properties.

2. The petitioner has filed Transfer O.P.No.226 of 2015 on the file of the learned Principal District Judge, Coimbatore, for transferring O.S.No.1137 of 2015 pending on the file of Principal

District Munsif, Coimbatore filed by the first respondent to the file of the learned IV Additional District Judge, Coimbatore to be tried along with O.S.No.26 of 2015.

3.According to the petitioner, the parties and suit summons are one and same and in order to avoid multiplicity of proceedings and to avoid conflicting decisions being delivered by two different Courts, the petitioner has filed the said Transfer OP.

4. The first respondent filed counter affidavit which was adopted by the second respondent. Further, the respondents have also filed an application in I.A.No.257 of 2015 before the Principal District Munsif, Coimbatore, for rejection for the plaint. It is stated in the counter affidavit that in order to avoid the hearing of the said application, the petitioner has come out with the Transfer OP to transfer the suit i.e. O.S.No.1137 of 2015.

5.The suit filed by the first respondent is pending on the file of Principal District Munsif, Coimbatore, if the suit is transferred to the file of the learned IV Additional District Judge, Coimbatore, first respondent will loose the right of appeal to the court in Coimbatore.

The Principal District Judge, Coimbatore considering all the averments in the affidavit and counter affidavit and materials on record, and arguments of the counsel appearing on behalf of the parties dismissed the application holding that if the suit filed by the first respondent is transferred, he will lose the right of appeal to the court in Coimbatore and both the suits are pending in different stage.

Aggrieved by the said order, the petitioner has come out with the present civil revision petition.

6.The contention of the learned counsel for the petitioner that the reason given by the learned Judge that the first respondent will lose his rights of appeal to the Court in Coimbatore is not a valid reason and the learned Judge having held that the subject matter of both suits are one and the same ought to have allowed the transfer OP, is without merits. From the materials on record, it is seen that the first respondent has filed suit for permanent Injunction on the file of Principal District Munsif, Coimbatore, whereas the petitioner has filed suit for partition on the file of the learned IV Additional District Judge, Coimbatore. Though the property involved in both

the suits are one and the same, cause of action for permanent injunction is different from the suit for partition.

The contention of the first respondent that if the suit filed by first respondent is transferred to the Court of IV Additional District Judge, Coimbatore, he will be losing right of appeal to the Court in Coimbatore, is well-founded.

7. Further, both the suits are pending at different stages and the relief sought for in both suits are different and there will not be any conflicting judgement being delivered by the learned Judge. In the circumstances is no illegality or irregularity warranting interference by this Court with the order of the learned Principal District Judge, Coimbatore, dated 04.11.2016.

8. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

17.04.2017

Index : Yes

dm/kua

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V.M.VELUMANI, J.

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