

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP.(PD)No.3354 of 2017
and CMP.No.15584 of 2017

R.Matheswaran .. Petitioner

Vs

R.Maniyarasu ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 11.07.2017 made in I.A.No.504 of 2017 in O.S.No.31 of 2010 on the file of the District Munsif, Rasipuram.

For Petitioner : Mr.M.Sivavarthanan

For Respondent : Mr.M.Rajesh

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 11.07.2017 passed in I.A.No.504 of 2017 in O.S.No.31 of 2010 on the file of the District Munsif, Rasipuram.

2. The petitioner has filed three suits in O.S.No.31 of 2010; O.S.No.179 of 2010 and O.S.110 of 2011 for permanent injunction and declaration respectively. The trial Court has already ordered joint trial of the aforesaid

suits before the District Munsif Court, Rasipuram. The proof affidavits have been filed by P.W.1 to P.W.3 on 13.08.2014, 29.09.2014 and 18.03.2016 respectively and thereafter, the plaintiff's side evidence was closed on 23.01.2017. In the meantime, the respondent herein has filed the suit in O.S.No.97 of 2016 before the District Munsif Court, Rasipuram seeking permanent injunction. The petitioner has filed a written statement on 13.07.2016. The petitioner herein has filed an application in I.A.No.504 of 2014 in O.S.No.31 of 2010 seeking joint trial of O.S.No.97 of 2016, O.S.No.31 of 2010, O.S.No.179 of 2010 and O.S.No.110 of 2011 before the District Munsif Court, Rasipuram and the same were dismissed. Therefore, the revision petitioner has filed the present civil revision petition before this Court.

3. According to the learned counsel for the petitioner, the respondent has filed the suit in O.S.No.97 of 2016 stating that the lands in survey Number 192/2 belongs to him and the petitioner herein had filed written statement in O.S.No.97 of 2016. The trial Court has passed an order of joint trial for O.S.No.31 of 2010, O.S.No.179 of 2010 and O.S.No.110 of 2011 and the said suits are pending for disposal. The parties and the subject matter in the aforesaid suits and the suit in O.S.No.97 of 2016 are one and the same. The revision petitioner/plaintiff's side evidence was closed in the earlier suits. At this stage, the learned counsel for the petitioner would submit that the

respondent/defendant in the present suit can lead evidence in O.S.No.97 of 2016 in the joint trial. Counsel for the petitioner undertakes that the revision petitioner will not seek to reopen the revision petitioner/plaintiff's side evidence in all the three suits. Therefore, no prejudice will be caused to the respondent in conducting joint trial in all the three suits. The proof affidavit has been filed by D.W.1 and further witnesses of the defendant/respondent will be examined. Therefore, the order of the Court below is liable to be set aside.

4. Per contra, the learned counsel for the respondent would submit that plaintiff's side evidence was concluded and the proof affidavit has been filed by DW1. At this stage, the joint trial was conducted in all three suits and the case was posted for cross examination of D.W.1 and proof affidavit affidavit has been filed by the defendant in the said suit. At this stage, the present application is not maintainable. Hence, the court below has rightly dismissed the said application.

5. Considering the submissions made by both parties, admittedly the subject matter in the present suit and the earlier suit are one and the same. Further, in all the suits, the parties are one and the same. The present application has been filed by the revision petitioner after the evidence of

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plaintiff's side was closed. Thereafter, the petitioner has filed the instant application to conduct joint trial in all the suits, simultaneously, to avoid multiplicity of proceedings. In the interest of justice, this Court is inclined to direct the trial Court to conduct joint trial. The petitioner/defendant shall be permitted to lead evidence in O.S.No.97 of 2016 by filing proof affidavit and thereafter, to proceed with evidence of the respondent's side. Hence, the order passed by the trial Court is liable to be set aside.

6. In view of the above, the learned District Munsif, Rasipuram is directed to conduct a joint trial and dispose of the suits in O.S.Nos.97 of 2016, 31/2010, 179/2010 and 110/2011 on merits on or before 30th March 2018.

7. With the above observation, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

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To

The District Munsif Court,
Rasipuram.**CRP.(PD)No.3354 of 2017**
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