

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.4555 of 2012
and
M.P.No.1 of 2012**

Suguna

.. Petitioner

Vs.

1.K.J.Sri Renga Perumal Raja

2.K.J.Ravichandra Raja

3.V.S.Murugan

4.Kamalam

5.B.Purushothaman

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal order dated 16.08.2012 made in Transfer Original Petition No.380 of 2011, on the file of the Principal District Judge, Coimbatore.

For Petitioner : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mr.A.Thiagarajan (for R1 and R2)

ORDER

The 4th defendant in O.S.No.20 of 2014 on the file of the Fast Track Court II, Coimbatore is the revision petitioner before this Court. The case of the petitioner herein is that the respondents 1 and 2 filed a suit in O.S.No.20 of 2014 against the petitioners herein and the respondents 3 to 5 herein on the file of the Fast Track Court II, Coimbatore for specific performance. Pending suit, the respondents 1 and 2 herein filed Tr.O.P.No.380 of 2011 before the Principal District Court, Coimbatore seeking to transfer the E.P.No.107 of 2010 pending on the file of the Principal District Munsif Court, Coimbatore to the file of the Fast Track Court II, Coimbatore for the joint and simultaneous trial with O.S.No.20 of 2004 and O.S.No.106 of 2010 which are pending before the Fast Track Court I, Coimbatore. The above said Tr.O.P. was resisted by the revision petitioner by filing counter affidavit.

2.After hearing the arguments the Learned Principal District Judge was pleased to transfer the E.P.No.107 of 2010 in O.S.No.187 of 1997 pending on the file of the Principal District Munsif Court,

Coimbatore to the file of the IV Additional District Judge, Coimbatore for joint or simultaneous trial with the suits in O.S.No.20 of 2004 and 106 of 2010 by order and decree dated 16.08.2012. Aggrieved over the above said order of transfer, the present civil revision petition is filed by the 3rd defendant/ revision petitioner.

3.The main contention raised by the revision petitioner to oppose the transfer of E.P.No.107 of 2010 in O.S.No.187 of 1997 is that the respondents herein have only filed an application as an obstructor and the enquiry in the obstruction petition is limited only to the extent of right of an abstractor to mention such a petition and not to his title to the property. Hence the execution petition mentioned above need not be transferred and to be tried along with suit in O.S.No.20 of 2004 and O.S.No.106 of 2010.

4.I have heard Mr.S.Mukunth, learned counsel appearing for the petitioner for M/s.Sarvabhauman Associates and Mr.A.Thiagarajan, learned counsel appearing for the respondents 1 and 2 and perused all the relevant records.

5.According to the learned counsel appearing for the revision

petitioner, the revision petitioner filed a suit against the respondents 3 and 4 herein in O.S.No.187 of 1997 before the Principal District Munsif Court, Coimbatore for partition and separate possession. The said suit was decreed and a preliminary decree was passed on 12.08.1999. Followed by the same, final decree was also passed on 28.04.2008 in I.A.No.3086 of 2007. Thereafter, the revision petitioner filed an execution petition in E.P.No.107 of 2010 in O.S.No.187 of 1997 for delivery of property. In the said execution petition, the respondents 1 and 2 herein filed E.A.No.54 of 2011 obstruction petition under Order 21, Rule 97 and 101 C.P.C.

6.Further the respondents 1 and 2 herein filed a suit against the revision petitioner and respondents 3 to 5 herein in O.S.No.20 of 2004 before the Fast Track Court II, Coimbatore for specific performance. Apart from that yet another suit in O.S.No.106 of 2010 is also pending. Therefore the respondents 1 and 2 herein filed Tr.O.P.No.380 of 2011 before the Principal District Court, Coimbatore seeking to transfer the E.P.No.107 of 2010 from the file of Principal District Munsif Court, Coimbatore to the file of the IV Additional District Judge, Coimbatore for joint or simultaneous trial along with suits in O.S.No.20 of 2004 and 106 of 2010.

7.The reason for transfer attributed by the respondents 1 and 2 herein is that the pendency of O.S.Nos.20 of 2004 and 106 of 2010 before the IV Additional District Judge, Coimbatore, the similar to this E.P.No.107 of 2010. Whereas the revision petitioner stated that the E.A.No.54 of 2011 in E.P.No.107 of 2010 is only a obstruction petition and the same can be decided independently. Further already enquiry commenced in E.A.No.54 of 2011 and it will be over by one or two hearing.

8.At this stage, the respondents 1 and 2 herein filed Tr.O.P with a sole aim to delay the taking delivery of possession of the property by the revision petitioner. The revision petitioner already waited for 14 years for taking delivery of the property allotted to her in the final decree. In O.S.No.20 of 2004 PW1 evidence commenced and in O.S.No.106 of 2010 so far no trial is commenced. If the execution petition is transferred and taken up along with the above suits, it will be taken for so many years. In this regard the Learned Counsel for the revision petitioner relied on the judgment of this Court reported in 2013 (5) CTC 42 wherein in para 8 it is held as follows:

“8. As noticed above, in the instant case, the suit in O.S.No.1290 of 2004 was decreed by the District Munsif

Court, Salem on 11.10.2004. The sale deed was executed pursuant to orders in R.E.P.No.309 of 2005 on 20.10.2005. Thereafter, respondents 1 to 3 have filed the petition, they wanted their title to be adjudicated and they raised a plea that the decree is not binding on them and it cannot be executed and the Execution Petition should be dismissed. Thus, having elected to file an Application under Order 21, Rule 97 and 101, CPC., they have also filed a separate suit on 12.01.2006 seeking for petition in respect of the same property in O.S.No.104 of 2006 before the Sub-Court, Salem. Thus the suit for partition before the Sub-Court, Salem having been filed much after the initiation of the Execution proceedings and after this, Respondents 1 to 3 filed an Application before the Executing Court under Order 21, Rules 97, 98 and 101, C.P.C., R.E.A.No.33 of 2006 ought not to have been transferred to be tried along with O.S.No.104 of 2006. If the Order impugned is allowed to stand, it would be contrary to the decision of the Honourable Supreme Court referred supra".

9. For the foregoing reason, in the light of the above judgment I am of the considered view that the execution petition in E.P.No.107 of

2010 need not be transferred from its file and need not to be tried along with O.S.No.20 of 2004 and 106 of 2010. As rightly contented by the revision petitioner E.A.No.54 of 2011 is filed under Order 21, Rule 97 and 101 CPC can be decided independently by the execution Court itself.

10.Order 21, Rule 97 and 101 of CPC says as follows:

“97.Resistance or obstruction to possession of immovable property.-(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

[(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.]

101.Question to be determined.- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on

an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

11. Apart from this, the trial Court is not looked into the legal point, but both the suits in O.S.No.20 of 2004 and O.S.No.106 of 2010 pending on the file of the IV Additional District Judge, Coimbatore, is yet to be pass decree whereas, in the case of E.P.No.107 of 2010 is already decided and the same is only at the stage of Execution. Therefore, after disposal of the suits in O.S.No.20 of 2004 and O.S.No.106 of 2010 only the E.P.No.107 of 2010 can be decided, apart from this, the E.P.No.107 of 2010 only is for execution of the decree and that should be decided separately.

12. Further, the contention of the revision petitioner that she has already exhausted 14 years to take delivery of the suit property as per final decree is having force. In view of the above, I am inclined to

set aside the order of transfer passed by the Learned Principal District Judge, Coimbatore in Tr.O.P.No.380 of 2011 dated 16.08.2012.

13.In the result:

(a) the Civil Revision Petition is allowed and the order and decree made in Tr.O.P.No.380 of 2011 dated 16.08.2012 on the file of the Principal District Court, Coimbatore is set aside;

(b) the learned Principal District Munsif, Coimbatore is directed to dispose of E.A.NO.54 of 2011 and E.P.No.107 of 2010 within a period of 2 months from the date of receipt of copy of this order;

(c) the learned IV Additional District Judge, Coimbatore, is hereby directed to dispose of the suit in O.S.No.20 of 2004 and O.S.No.106 of 2010 within a period of three months from the date of receipt of a copy of this order;

(d) Registry is directed to issue the copy to the IV Additional District Court, Coimbatore. No cost. Consequently, connected miscellaneous petition is closed.

03.03.2017

Internet:Yes
Index:Yes

vs

To

The Principal District Court,
Coimbatore.

M.V.MURALIDARAN, J.

VS

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