



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD)No.397 of 2017

and

CMP(MD)No.1988 of 2017

1)S.Krishnan

2)Sivakumar

... Petitioners

vs.

S.Vijayalakshmi

... Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.02.2017 passed in Unfiled TROP.No. of 2016 in C.F.R.No.9742 of 2016 on the file of the Principal District Judge, Thanjavur.

For Petitioners : Mr.N.Manokaran

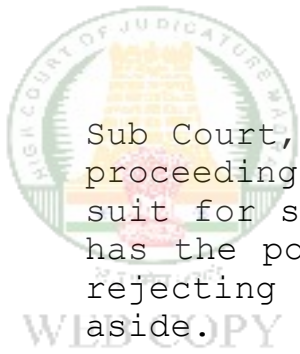
For Respondent : Mr.R.Rajaraman

ORDER

This revision petition is directed against the rejection of petition to transfer E.P.No.37/2014 arising under RCOP.No.1/2003 pending on the file of the District Munsif, Thiruvaiyaru, to the file of Additional Sub Court, Thanjavur, to try along with O.S.No.2/2015.

2.The Principal District Judge, Thanjavur, after perusing the records has rejected the Transfer O.P on the ground that rent control proceedings are governed under the Special Act before the Rent Control Tribunal. Whereas, the suit filed for specific performance is pending before the Civil Court. Hence, both cannot be transferred. Therefore, the execution petition arising out of rent control proceedings cannot be transferred to the Sub Court to try along with the suit filed for specific performance.

3.The contention of the revision petitioners is that the petitioners are running a medical shop in the suit property and they have given Rs.5,00,000/- to the respondent after the order of eviction in RCOP pursuant to the compromise entered between the parties in the presence of Panchayatars. Therefore, they filed specific performance suit in O.S.No.2/2015 pending on the file of



Sub Court, Thanjavur. There is no wrong in transferring execution proceedings pending before Tribunal to the Sub Court where the suit for specific performance is pending, since the Sub Court also has the power to proceed with the execution petition. Therefore, rejecting the Transfer O.P without numbering is liable to be set aside.

4.It is unfortunate that the revision petitioners have been wrongly advised that any petition filed under Section 24 CPC has to be numbered without application of mind. In this case, the learned District Judge has rightly pointed out that execution proceedings emanated from the Special Act by an order passed by the Tribunal cannot be transferred to be tried along with the suit which is pending before the Sub Court. It is not the general powers of the Court to execute the decree or order, but whether the said Court is competent to execute the order in the particular case matters.

5.In this case, after completion of the proceedings before the Rent Control Tribunal, the landlord has initiated execution proceedings and pending in E.P.No.37/2015. It is pertinent to note that rent control proceedings was initiated as early as in 2003 which has culminated in the year 2015. Thereafter, it appears that the tenant has filed a suit for specific performance before the Sub Court, Thanjavur, and he wants to stall the execution proceedings till the disposal of the suit filed by him for specific performance. The learned District Judge has rightly rejected the Transfer O.P. Hence, there is no scope to entertain the application under Section 24 CPC. The revision petition under Article 227 of the Constitution for the relief sought is sheer abuse of process of law.

6.The obvious intention of the revision petitioners in filing Transfer O.P is to protract the proceedings and defeat the decree holder in RCOP.No.1/2003. If at all they entered into any agreement with the landlord and have right to proceed specific performance, it is an independent right and if they ultimately succeeded in it, they can very well get the possession of the property. Hence, this Court is not inclined to entertain this sort of revision petition.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(C.S.)



To

The Principal District Judge,
Thanjavur.

+1cc to M/S.R.RAJARAMAN, Advocate SR.No.59614

+1cc to M/S.G.KARNAN, Advocate SR.No.59829

nbi

MAS/JC/SAR2:23.06.2017:3P-4C

order made in
CRP(PD) (MD) No.397 of 2017
09.06.2017