

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.10.2018

Coram

The Honourable Ms.Justice P.T.ASHA

C.R.P(PD)No.1458 of 2012

and

M.P.No.1 of 2012

1.C.Arulalan
2.C.Dhayalan

...Petitioners

Versus

1.Rajeswari @ Jayalakshmi
2.Kalyani
3.Ramachandran
4.Senthamarai
5.Vasantha
6.Rajamanickam
7.Arumugham
8.Karthika
9.Revathi
10.Venkatakrisnharajan

...Respondents

These Civil Revision Petitions are filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order in Transfer O.P.No.50 of 2011 dated 17.12.2011 on the file of the Principal District Judge, Villupuram and thereby allow the Civil Revision Petition.

For Petitioners	:	Mr.N.Suresh
For Respondents - 1, 2, 4, 6 & 7	:	No Appearance
Respondents - 3, 8 & 9	:	Given up
Respondents - 5 & 10	:	Not ready in notice

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned Principal District Judge, Villupuram in Tr.O.P.No.50 of 2011, in and by which the learned Judge had dismissed the Transfer Original Petition filed by the revision petitioners seeking to transfer the suit O.S.Nos.311 & 465 of 2009 pending on the file of the learned Principal District Munsif, Villupuram to the file of the II Additional Subordinate Judge, Villupuram to be tried along with O.S.No.210 of 2010.

2. Both the suits have been filed by the revision petitioners for declaration and permanent injunction. The revision petitioners have filed O.S.No.311 of 2009 against the defendants 6 & 9 in O.S.No.210 of 2010 with reference to the property situated at S.Nos.90/A1 & 90/B1 in Vikravandi Sub Registry at Vakkur Village of Villupuram District for declaring their title and for an injunction.

3. The suit O.S.No.465 of 2009 is once again filed by the revision petitioners with reference to 26 items of property. The properties which are shown in the suit O.S.Nos.311 & 465 of 2009 are also found in suit O.S.No.210 of 2010. The suit O.S.No.210 of 2010 has been filed by the respondents 4 & 5 herein for partition and separate possession of the properties against the revision petitioners and the defendants in O.S.Nos.210 & 465 of 2009 besides others. The learned Principal District Judge before whom the Transfer Original Petition was filed had dismissed the Petition on the ground that the properties are not identical in all the suits and the parties are also not identical. It is also seen that the scope of the suits is different in three suits and therefore, there may not be a joint trial. Challenging this order, the revision petitioners are before this Court.

4. Heard Mr.N.Suresh, learned counsel for petitioners. Despite notice was served on the respondents, none appeared on behalf of the respondents.

5. A reading of the plaint in all the three suits shows that the parties and the properties are all interlinked and the plaintiffs in

O.S.Nos.211 & 465 of 2009 are the revision petitioners herein who claimed exclusive title to the property whereas the plaintiffs in O.S.No.210 of 2009 claimed that the same are ancestral properties. The learned Principal District Judge had come to the conclusion that the parties are different and the properties are also different. In order to avoid multiplicity of proceedings and converging judgments being passed in the various suit, the learned Judge had dismissed the Transfer Original Petition. In my opinion, the order of the learned Judge suffers from an infirmity and therefore, the same is liable to be set aside.

6. In the result, this Civil Revision Petition is allowed and O.S.Nos.311 & 465 of 2009 now pending on the file of the Principal District Munsif, Villupuram are withdrawn and transferred to the file of the II Additional Subordinate Judge, Villupuram to be tried along with O.S.No.210 of 2010. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No

To

The Principal District Judge,
Villupuram.



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P.T.ASHA, J.,

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C.R.P(PD)No.1458 of 2012

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C.R.P.No.1416 of 2012:

The above Civil Revision is filed challenging the order passed by the learned Subordinate Judge, Thiruchengode allowing the Application filed by the respondents 1 to 6 herein for a direction to the first respondents to collect the rental amounts and deposit the same into the Court deposit to the suit account to the disposal of the suit. The facts in brief are as follows: the respondents 1 to 6 herein had originally filed a suit O.S.No.144 of 2007 on the file of the learned Subordinate Judge, Namakkal for a partition and separate possession of their 2/3rd share in the suit property to grant an injunction restraining the first respondent to the suit properties. The defense to the above suit was that the first respondent/plaintiff and the fifth respondent's father had partitioned the properties and therefore they were no longer joined with the other respondents.

Pending the suit, was later transferred to the Sub Court, In of this dated It is pending the suit on the file of the Subordinate Judge, Thiruchengode that the impugned Application came to be filed. The respondents 1 to 6 in paragraph No.4 of the affidavit filed in support of the petition submit that the first respondent had list out the 15 shops and receiving a monthly rent in respect of the shops. They also suspected the other respondents were colluding with the first respondent and they have taken this Application for a direction to the first respondent to deposit the amount into the suit account.

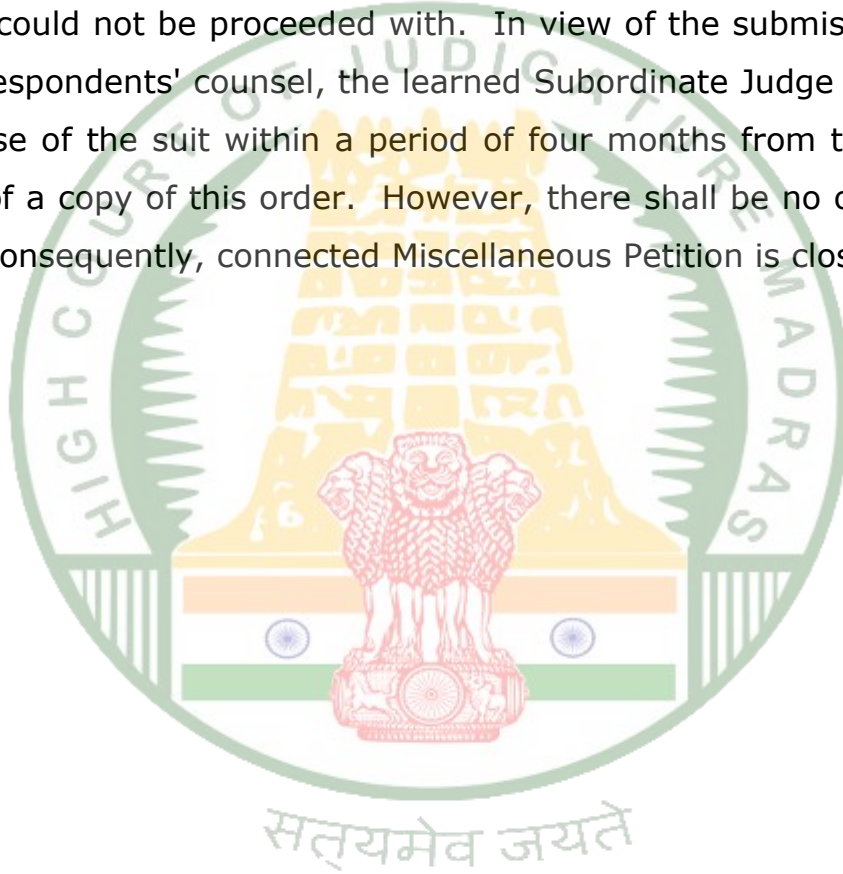
The only defense that has been raised in the counter affidavit is that petitions of such a nature is unknown law and that the respondents 1 to 6 were trying to confering the Civil Court into control. The learned Subordinate Judge, Thiruchengode after hearing the parties, allowed the petition by observing that the respondents 1 to 6 come forward with the serious contention that the first respondent had exclusively enjoying the income from the property and the respondents 1 to 6 who were entitled to 2/3rd share were deprived of the same and the learned Judge also observed that the respondents 1 to 6 were only seeking to deposit the amount and therefore, the petition was allowed. Challenging the said order, the revision petitioners are before this Court.

Heard Mr.Vijay, learned counsel for the revision petitioners. He would submit that the Application filed under Section 151 of C.P.C was unknown and the respondents ought to have filed an Application for

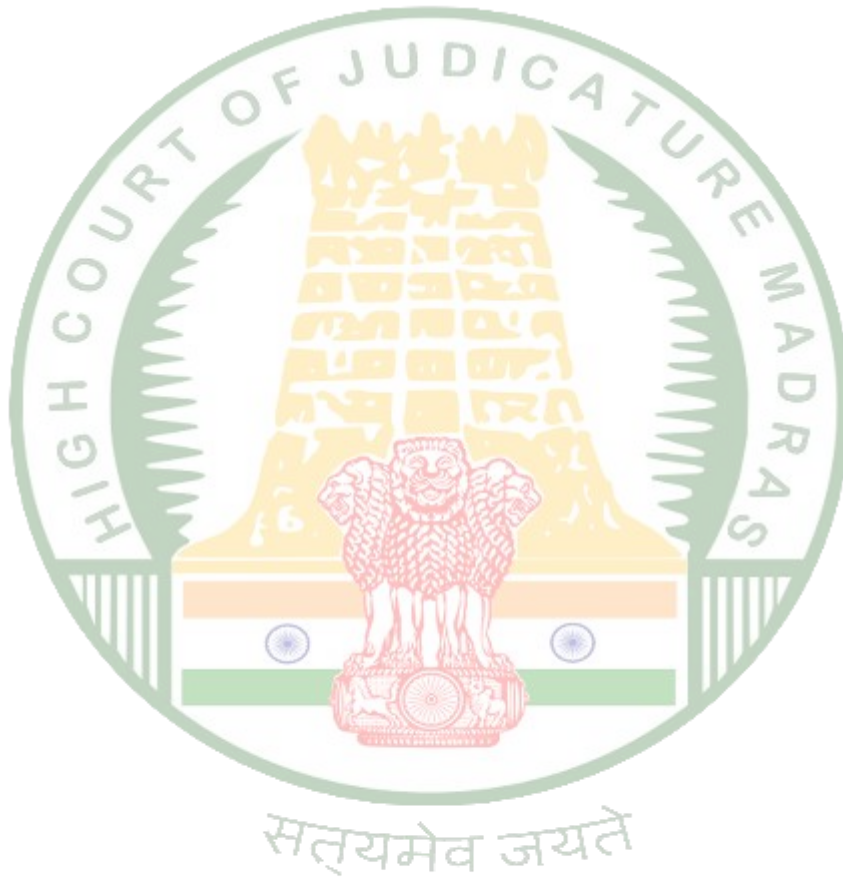
This Court is unable to accept the said arguments since as rightly said by the learned Subordinate Judge, the respondents 1 to 6 have put forward a claim to the 2/3rd share and the revision petitioners are enjoying the entire income from the property to the exclusive of the respondents 1 to 6. Further, they have only sought for a deposit and had not ask for the amounts have to be paid to them. I find no infirmity in the order of the learned Subordinate Judge, Thiruchengode.

In the result, this Civil Revision Petition is dismissed and the

order passed by the learned Subordinate Judge, Thiruchengode in is confirmed. The learned counsel appearing for the respondents submitted that the suit is of the year 2009 and therefore, directions being issued to the learned Subordinate Judge, Thiruchengode to expedite the hearing of the suit. He would also submit that the suit had been posted for trial and in view of the same, the suit could not be proceeded with. In view of the submission made by the respondents' counsel, the learned Subordinate Judge is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.



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