

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(PD).No.23 of 2018
and CMP.No.68 of 2018

V.Sujatha

.. Petitioner

Vs.

1.Ramadoss

2.Jayalakshmi

3.Narayanan

.. Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records pertaining to the fair and decreetal order dated 21.11.2017 passed in I.A.No.9729 of 2017 in O.S.No.1571 of 2011 on the file of III Assistant City Civil Court, Chennai and set aside the same.

For petitioner : Mr.P.G.Thiyagu

ORDER

The revision petitioner has filed a suit in OS.No.1571 of 2011 before the XVIII Assistant City Civil Court, Chennai for permanent injunction. The respondents 1 and 2 have also filed a suit in OS.No.4381 of 2011 for declaration and permanent injunction against the revision petitioner and others before the III Assistant City Civil Court, Chennai. Thereafter, the suit in OS.No.1571 of 2011 was transferred to the III Assistant Judge, City Civil Court, Chennai as per the order passed by the Hon'ble Principal Judge, City Civil Court, Chennai in Tr.OP.No.235 of 2012. The plaintiff has filed the instant application in IA.No.9729 of 2017 in OS.No.1571 of 2011 on 24.07.2017 for conducting joint trial. But the said application was dismissed by the court below. Therefore, the plaintiff has filed the present Civil Revision Petition before this Court.

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2. The learned counsel for the revision petitioner would submit that the earlier suit in OS.No.1571 of 2011 has been filed by the revision petitioner for permanent injunction and subsequent suit was filed by the respondents 1 and 2 for declaration and permanent

injunction. The subject matter of the suit property and the parties are one and the same. Therefore, the revision petitioner has filed the instant application to conduct joint trial. According to the learned counsel for the revision petitioner, even though one of the party in the present suit is not a party in the earlier suit in OS.No.4381 of 2011 that could not be a ground for rejecting the said application in the light of the decision of the Hon'ble Supreme Court in the case of *Chowdri Kalyan Chand and Ors Vs. V.R.Dwarknath and Ors* reported in 2006 (1) ALD 583 :: 2006 (1) ALT 215, wherein in paragraph 20 it is held as follows:

"Where there is one plaintiff and two or more defendants and several causes of action, the plaintiff may unite in the same suit several causes of action against those defendants, if the defendants are jointly interested in the causes of action. Therefore, two or more defendants can be joined in one suit, provided the following conditions are fulfilled:

(1) The relief claimed must have been based on the same act or transaction; and (2) Common questions of law or fact must have been

involved;"

Therefore the order of the court below is liable to be set aside.

3. On perusal of the impugned order, the revision petitioner has filed the suit for bare injunction on the basis of sale deed dated 30.06.1999 executed by the vendor of the revision petitioner. There is a dispute regarding the title of the suit property. The respondents 1 and 2 have filed a suit in OS.No.4381 of 2011 for declaration and permanent injunction. Pending the above suits, the revision petitioner has filed a petition in Tr.OP.No.235 of 2012 and in the aforesaid OP, the Principal Judge, City Civil Court, Chennai has allowed the Transfer OP and directed the trial court to decide whether joint trial or simultaneous trial is to be conducted. The petitioner has not chosen to file an application till the matter is taken up for trial. Therefore, it is evident from the aforesaid facts, firstly, the revision petitioner has not filed an application within reasonable time before the trial court pursuant to the order passed in the Transfer OP, till the trial is commenced in the aforesaid suit. Secondly, the revision petitioner has filed the suit for permanent injunction, and the second suit has been filed by the respondents 1 and 2 in OS.No.4381 of 2011 for declaration and

permanent injunction. Defendant in one suit is not a party in another suit. Therefore, there will be complication in recording the evidence if the joint trial is ordered, hence, simultaneous trial shall be conducted in both suits. Therefore, there is no reason to interfere with the orders passed by the court below.

4. In view of the facts and circumstances of the case, the Civil Revision Petition fails and accordingly, the same is dismissed. No costs.

08.01.2018

Speaking / Non Speaking order

Index :Yes/No

Internet :Yes/No

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D.KRISHNAKUMAR.J,

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To

The III Assistant City Civil Court,
Chennai



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