

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

CRP (PD) No.3950 of 2013 and
M.P.No.1 of 2013

1. N.K.Palanisamy
2. N.K.Chenniappan
3. Muthayammal

... Petitioners

Vs.

1. Ramasamy Gounder
2. S.K.Chenniappan
3. S.K.Palanisamy
4. Chinnammal
5. Thangamuthu
6. K.K.Thangavelu
7. Venkatachalam

... Respondents

Prayer: Civil Revision petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 27.06.2013 passed in Tr.O.P.No.46 of 2013 by the Principal District Judge, Erode.

For Petitioners

: Mr. N.Manokaran

For Respondents

: Mr.Kaithamalai Kumaran
for R2, R5 and R6

No appearance for R1, R3, R4 and R7

ORDER

The civil revision petitioners are the petitioners in Tr.O.P.No.46/2013 on the file of the Principal District Judge, Erode. They filed the above said transfer original petition under Section 24 of the Code of Civil Procedure to withdraw the suit in O.S.No.120/2005 on the file of the District Munsif cum Judicial Magistrate, Perundurai and transfer the same to the file of the Principal District Judge, Erode to try the same along with the suit in O.S.No.41 of 2013 on its file.

2. The learned Principal District Judge, Erode dismissed the said Tr.O.P.No.46/2013 vide his fair and decreetal orders dated 27.06.2013. Aggrieved over the same, the present civil revision petition is filed.

3. Mr.N.Manokaran, learned counsel appearing for the civil revision petitioners contended that the first respondent filed the suit in O.S.No.120/2005 before the District Munsif cum Judicial Magistrate, Perundurain against the petitioners 1 and 2 and respondents 2 to 6 for declaration, permanent injunction or in the alternative partition of the suit property and that the civil revision petitioners have filed the suit in O.S.No.41 of 2013 against the respondents 2 to 7 for partition and separate possession of the properties indicated in the said suit. He further contended that since the suit property described in O.S.No.120/2005 is a portion of the properties

described in O.S.No.41/2013 and the parties are almost one and the same, both the suits should be tried jointly. He therefore contended that the learned Principal District Judge, Erode without considering this aspect had dismissed the Tr.O.P.No.46/2013.

4. Per contra, Mr.Kaithamalai Kumaran, learned counsel appearing for the respondents 2, 5 and 6 contended that the revision petitioners were set exparte in the suit in O.S.No.120/2005 and till date, they have not filed any application to set aside the exparte order passed against them and therefore, they cannot seek transfer of O.S.No.120/2005 pending on the file of the District Munsif cum Judicial Magistrate, Perundurai to the file of the Principal District Judge, Erode for being tried along with the suit in O.S.No.41/2013.

5. The learned counsel appearing for the revision petitioners did not dispute the fact that the revision petitioners were set exparte in O.S.No.120/2005. Therefore, the observation of the learned Principal District Judge, Erode that the petitioners, who remained absent and were set exparte in a suit, cannot as a matter of right, seek transfer of the suit in O.S.No.120/2005 merely on the ground that they filed a subsequent suit in the year 2013 (O.S.No.41/2013). The learned Principal District Judge, Erode had also observed that the decision in the former suit would bind on both the

parties and the subsequent suit would be hit by doctrine of resjudicata.

6. In the instant case, the revision petitioners had deliberately remained exparte in the earlier suit in O.S.No.120/2005 on the file of the District Munsif cum Judicial Magistrate, Perundurai and had filed a subsequent suit in O.S.No.41/2013 before the Principal District Judge, Erode. In such circumstances, all the observations made by the learned Principal District Judge, Erode are perfectly in order and I do not see any reason to interfere with the same.

7. Accordingly, the civil revision petition is dismissed. No costs. The connected miscellaneous petition is closed. The fair and decreetal order dated 27.06.2013 passed in Tr.O.P.No.46/2013 by the Principal District Judge, Erode is upheld.

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Index : Yes/No

Internet:Yes/No

Speaking/Non speaking order

mst

To

The Principal District Judge, Erode.

R. HEMALATHA, J.,
mst



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