

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No. 1231 of 2019

and

C.M.P.No.7912 of 2019

1.Imrana

2.Abu Syed Papa

..Revision petitioners/Petitioners

Vs

1.K.Samanthakamani

2.Kutty Padmini

3.P.Suyambu

4.S.Kasthuri

..Respondents/Respondents

This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 09.10.2018, passed in TR.O.P.No. 49 of 2017, by the learned Principal District Judge of Kancheepuram at Chengalpet and thereby allow the above Civil Revision petition and transfer the suit in O.S.No. 219 of 2017, from the file of the learned Subordinate Court, Tambaram to the file of the Hon'ble Principal District Court of Kancheepuram at Chengalpet for joint trial with O.S.No. 36 of 2012.

For Petitioner : Mr.R.Abdul Mubeen

For R1 : Mr.K.M.Ramesh

For R2 : M/s.S.Ramadevi

ORDER

The above Civil Revision Petition is filed challenging the order of dismissal of the transfer of O.P.No. 49 of 2017, by the learned Principal District Judge, Kancheepuram. The said O.P. has been filed by the revision petitioners herein and the first respondent in the Transfer O.P is the plaintiff in the suit in O.S.No.36 of 2017, on the file of the learned Principal District Munsif, Chengalpattu and the second respondent is the second defendant in that suit and the second defendant had filed another suit in O.S.No.219 of 2017, on the file of the Subordinate Court, Tambaram, against the revision petitioners herein and respondents 3 and 4. The suit O.S.No. 36 of 2012, has been filed by the first respondent for a declaration of a title to the 'B' Schedule property. It is a part of the 'A' schedule property, which she had purchased under a sale deed dated 18.01.1990 and directing the first defendant namely first revision petitioner to deliver vacate possession to plaintiff/first respondent of the 'B' schedule after removing the illegal construction put up by her and the same schedule of property have been described as follows:

"A' Schedule:-

*All that piece and parcel of vacant house site
bearing Plot No.273, 3rd Main Road, LIC Nagar,
Madipakkam, Chennai-91, measuring 4800 Sq.ft., or 2*

Grounds, the site comprised in Old Paimash No.36, S.No.143/4, since sub-divided as S.No. 143/26 under Patta No. 10525, situate in Madipakkam Village, Pallikaranai Firka, Sholinganallur Taluk, Kancheepuram District, with the following boundaries:-

*On the North by : 30 feet road
(3rd Main Road)
On the South by : Plot No.280
On the East by : Plot No.272
On the West by : Plot No.274*

'B' Schedule:-

A portion of 'A' schedule measuring 3040 Sq.ft., comprised in Plot No.273, marked in red in the sketch attached to the plaint."

In the written statement that has been filed in the said suit, the revision petitioners herein has taken the following stand in paragraph 9 of the written statement:

"The field measurement sketch clearly shows that the sub-divisions of the lands owned by the plaintiff and this defendant. The plaintiff's S.No. 143/26 and the defendant's S.No.143/13 are abutting property. The suit

property described in the plaint as S.No. 143/26, which is on the eastern side of this defendant's property (i.e.) S.No. 143/13, which has been clearly earmarked in the Field Measurement Book maintained by the Revenue Officials."

Therefore, as per the very averments by the revision petitioners, the properties of the first respondent and plaintiff/ first respondent are totally different.

2 Thereafter, it appears that the second defendant in the O.S.No.36 of 2012, had filed the suit O.S.No.219 of 2017, on the file of the Subordinate Court, Tambaram, for cancellation of the sale deed executed by her in favour of the first respondent herein dated 01.03.2000 at S.R.O.Velacherry. The suit schedule has been described as follows:

"All that piece and parcel of vacant land in Plot No:4 in 154, Madipakkam Village, previously in SRO Alandur, Saidapet taluk, Chengai M.G.R. District and presently in SRO Valacherry, Tambaram Taluk, Kanchipuram District, in Survey No: 143/4A1A (Paimash No.361), measuring total extent of 3040 Sq.Ft, bounded

on the

Northern Side by	Vandi Pathai
Southern Side by	S.No.143/5A1CA
Eastern Side by	Plot No.5 (Land of Padmaja)
Western Side by	Plot No.3 (Land of Venkatasubramania Raja)

Measuring: East to West on Northern side 38 feet and on the Southern side 38 feet and from North to South on the Eastern side 80 feet and on the Western side 80 feet, in all 3040 Sq.Ft, and the property is situated within the Registration District of Chennai South and Sub Registration District of Velacherry."

3 It appears that when the suit O.S.No.36 of 2012, was pending at the stage of arguments and service of notice was yet to be completed in the suit O.S.No. 219 of 2017, the revision petitioner come forward with the transfer O.P to transfer, the suit O.S.No. 219 of 2017, pending on the file of the learned Subordinate Judge, Tambaram, to the file of the learned District Judge, Chengalpattu, to be tried along with O.S.No. 36 of 2012 and said application has been dismissed by the learned District Judge,

Chengalpattu, on the ground that the two suits are totally different, the parties are different and the subject matters are different and the suit in O.S.No. 36 of 2012 was at the stage of arguments, whereas, the other suit is still at the stage of service of notice. Challenging the said order, the revision petitioners are before this Court.

4 The only ground on which transfer O.P. has been filed is that the cause of action is same and to avoid multiplicity of proceedings and conflicting judgments.

5 Heard the counsel on either side.

6 From a perusal of the two complaints, it is evident that the subject matter of the suits are totally different, it has also been admitted by the revision petitioners in their written statement as has been extracted above. Further, the parties to the suits are also totally different. The courts have also to take note of the fact that a suit which is posted for arguments is sought to be transferred to be tried along with suit, which is at the service of notice stage. When the respondents/defendants are different in that suit, especially, when parties to the two suits are totally different, this Court do not find any infirmity in the order by the Court below.

7 In the result, the Civil Revision Petition stands dismissed and order passed in TR.O.P.No.49 of 2017, by the learned Principal District Judge of Kancheepuram at Chengalpet, dated 09.10.2018 is confirmed. No costs. Consequently, connected miscellaneous petition is also closed.

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Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order

To

- 1.The learned Principal District Judge of Kancheepuram, Chengalpet.
- 2.The learned Subordinate Court, Tambaram.

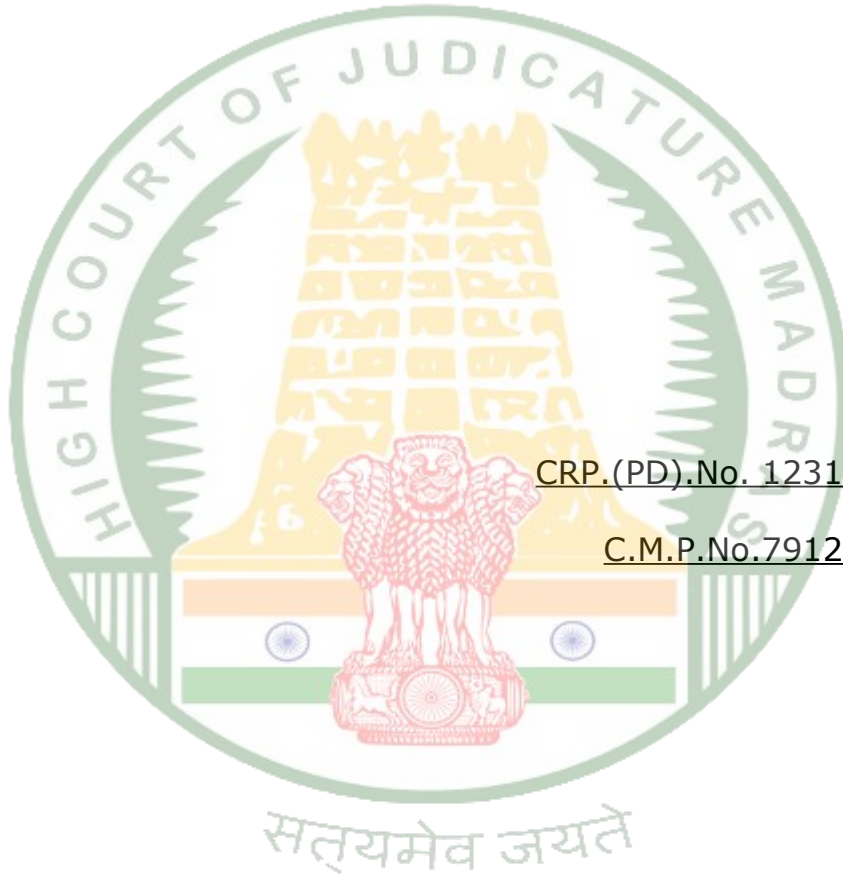
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