

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP(PD)Nos.2339 & 2340 of 2014

and
M.P.Nos.1 & 1 of 2014

P.Krishnakumar

..Petitioner
in CRP(PD).No.2339 of 2014

P.Varadharaj

..Petitioner
in CRP(PD).No.2340 of 2014

.vs.

1.Smt.Marammal
2.N.Soundararajan
3.M.Dhanabalselvan

..Respondents
in both CRPs

Common Prayer:

Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 17.02.104 passed in Tr.O.P.Nos.183 & 184 of 2013 on the file of Principal District Judge, Coimbatore.

For Petitioner : Mr.R.Kannan
(in Both CRPs)

For R 1 & R 2 : Mr.B.Gopalakrishnan
(in Both CRPs) for Mr.S.Gunalan

For R 3 : Dismissed
(in Both CRPs)

COMMON ORDER

The petitioner in CRP (PD).No.2339 of 2014 is the respondent No.1 in Tr.O.P.No.183/2013, on the file of the Principal District Judge, Coimbatore. Similarly, the petitioner in CRP (PD).No.2340 of 2014 is also the respondent No.1 in Tr.O.P.No.184/2013. Since both the civil revision petitions has arisen out of a common order passed in Tr.OP.Nos.183/2013 & 184 of 2013, this Court decided to dispose these two civil revision petitions by way of pronouncing a common order. In earlier Respondents 1 and 2 in this revisions filed the above two transfer original petitions, in which, one is for transferring the suit in O.S.No.22/2012 from the file of Principal Sub Court, Coimbatore to the file of IV Additional District Court, Coimbatore, and another one is for transferring the suit in O.S.No.88/2013 from the file of Principal Sub Court, Coimbatore, to the file of IV Additional District Court, Coimbatore.

2.The learned Principal District Judge, after affording an opportunity to the revision petitioner herein and to the 3rd respondent, who is also one of the defendants in all the suits, by order dated 17.02.2014 allowed both the petitions filed by the respondents 1 and 2 herein and ordered to transfer O.S.No.22/2012 and O.S.No.88/2013, both are pending on the file of Principal Sub Court, Coimbatore to the file of IV Additional District Court, Coimbatore.

3.Aggrieved over the said finding, the petitioner who is the 1st respondent in the said application is before this Court, with the present Civil Revision and praying to set aside the order dated 17.02.2014.

4.Today, when the petition is came up for hearing, the learned counsel appearing for the petitioner in both the civil revision petitions are present and made a submission, as before the Court below, P.Krishnakumar, petitioner in CRP (PD).No.2339 of 2014 as a plaintiff filed a suit as against the respondents 1 and 2, seeking the relief of direction directing the defendants to pay a sum of Rs.5,99,200/- with subsequent interest for Rs.3,50,000/-. Similarly, on 16.11.2012 P.Varadharaj, petitioner in CRP(PD).No.2340 of 2014 filed a suit in O.S.No.88 of 2013 as

against respondent Nos.1 and 2 in which, they also claim a sum of Rs.6,79,500/- with subsequent interest. Both the above suits are pending before the Principal Sub Court, Coimbatore. On the other hand, one M.Dhanabalselvan, 3rd respondent in CRP(PD).No.2340 of 2014 as a plaintiff filed a suit in O.S.No.38 of 2013 as against respondents 1 and 2, who is also claiming a sum of Rs.10,19,500/-with subsequent interest, which was pending on the file of IV Additional District Court, Coimbatore.

5.As per the impugned order passed, all the cases are to be tried before IV Additional District Court., further he would submit if the cases pending before file of Sub Court, Coimbatore is transferred to IV Additional District Court. The revision petitioners herein have lost their right of appeal before the District Court, Coimbatore, further since all the three suits are instituted by three different persons, it cannot be possible for the Presiding Officer, IV Additional District Judge to try the suits jointly, because of the reason that all the suits are having different cause of action. Accordingly, he prayed to set aside the impugned order dated 17.02.2014.

6.On the other hand, the learned counsel appearing for the respondents 1 and 2 present and made a submission that as in all the suits, since the respondents 1 and 2 are the same persons and also all the cases are instituted for claiming the money from the respondents 1 and 2. If those suits are tried in the same Court, it will be convenient to either parties to appear before the Court below for early disposal.

7.Upon considering the arguments advanced by the counsels appearing on either side, it is not in dispute that all the suits pertains to these two civil revision petitions, all are instituted by the different plaintiffs. Though, all the suits are filed for the relief of direction directing the defendants/respondents 1 & 2 to pay a various sums borrowed by one R.Natraj, who is the father of respondents 1 and 2. As per the averment set out in the plaint, the transaction made between the Natraj and plaintiffs are in different dates. Further, the sums availed as loan by the deceased R.Natraj are also different one. Therefore, because of the said reason that the cause of action for above three suits are different one.

8.In the said circumstances, it cannot be possible for the

Presiding Officer, IV Additional District Court to try all the three suits jointly, though in the impugned order passed, there was a clause for simultaneous trial. If the said order is enforced, definitely, the plaintiff in O.S.Nos.22/2012 & 88 of 2013 have lost their right of appeal before the District Court. In general, if more than one Court having jurisdiction under the Court to try the suit, the plaintiff as *dominus litis* as a right to chose the Court and the defendants cannot demand that the suit should be tried in any particular Court convenient to them. The mere convenience of the parties or any of them may not be enough for exercise of the powers. But it must also be shown that the trial in the chosen forum will result in denial of justice. More over, if the three suits are tried jointly, it cause much inconvenience to the Presiding Officer as well as to the plaintiffs in the respective suits in recording the evidence on the side of the plaintiff.

9.As already observed, the convenience of the defendant is not at all taken into account for ordering joint or for simultaneous trial. In this occasion, the learned counsel appearing for the respondents would contend that since the plea of the defendants is one and the same in all the three cases, if all the suits are tried in the same Court, it would cause convenience to either parties. In this regard, on going through the written

statement filed by the respondents 1 and 2 in all the three suits, they denied the execution of pro-note, which is the basic document for filing the suit. In the written statement, the respondents 1 and 2 contended that the pro-note alleged to be executed by the deceased R.Natraj is fabricated. According to him, all the pro-notes are fabricated document.

10.Though, the contention of the learned counsel for the respondents is as alleged pro-notes are fabricated, it is for the plaintiff to prove the execution during the time of trial. In otherwise, the said plea taken by the respondents 1 and 2 is no way helpful and it cannot be taken into account, for considering the application filed before the District Court, Coimbatore for transferring that case.

11.In fine, I am of the considered view that the impugned order passed by the Court below is liable to be set aside. Accordingly, both the civil revision petitions are allowed. Since the suit is filed in the year 2012 and 2013, it is appropriate to give some direction to the Court concerned to dispose the suits within a specific period. The learned Principal Sub Judge, Coimbatore and the IV Additional District Judge, Coimbatore is directed to dispose the above referred suits as early as

within a period of four months from the date of receipt of a copy of the order.

Accordingly, both the civil revision petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2019

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

1. Principal Sub Court,
Principal Sub Judge,
Coimbatore.
2. IV Additional District Court,
IV Additional District Judge,
Coimbatore.
3. Principal District Court,
Principal District Judge,
Coimbatore.



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R.PONGIAPPAN,J.



CRP(PD)Nos.2339 & 2340 of 2014

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