

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.3399 of 2019 and
CMP.No.22311 of 2019

1. Ananda Murugan
2. Jeyakumar
3. Arun

Petitioners

Vs

1. Jothi Subramaniam
2. Sarojini
3. Vijayalakshmi
4. Savithiri
5. Baby
6. The Regional Transport Officer
Dharapuram
Tiruppur District
7. Rama Govindan
8. Aravind Rajkumar
9. The Branch Manager
Karur Vysya Bank Ltd
Kozhumam Village and Post
Tiruppur District

10. The Branch Manager
Lakshmi Vilas Bank Ltd
Kangayam
Tiruppur District

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 09.04.2019 passed in Tr.O.P.No.114 of 2018, on the file of Principal District Court, Tiruppur.

For Petitioner : Mr.N.Manoharan

ORDER

The Civil Revision Petition has been preferred as against the fair and decreetal order dated 09.04.2019 passed in Tr.O.P.No.114 of 2018 by the learned Principal District Judge, Tiruppur.

2. The respondents 4 to 6 in Tr.O.P.No.114 of 2018 on the file of Principal District Court, Tiruppur are the petitioners herein. Before the said Court, the 1st respondent in this Civil Revision Petition had filed a petition under Section 24 of Civil Procedure Code seeking the relief to transfer the case in OS No.70 of 2017 from the file of Subordinate Court, Udumalpet to the file of II Additional District Court, Tiruppur to try along with the case in O.S.No.31 of 2012, which is pending before the II Additional District Court, Tiruppur. The learned Principal District Judge, Tiruppur by an order dated 09.04.2019 had allowed the application as prayed for by the petitioners. Further the learned Judge has also granted liberty to the learned II Additional District Judge, Tiruppur to decide as to whether the suits in O.S.No.31 of 2012 and O.S.No.70 of 2017 are to be tried jointly or simultaneously. Aggrieved over the said findings, the petitioners are before this Court.

3. For the sake of convenience , herein after the petitioners are called as respondents and the first respondent in this Civil Revision petition is called as petitioner.

4. The averments made in the affidavit dated 31.10.2018 filed in support of the petition filed under Section 24 of Civil Procedure Code is as follows:-

4.1.The petitioner has filed a suit in OS No. 70 of 2017, before the Subordinate Court, Udumalpet as against respondents seeking the relief of partition and declaration declaring that the registered settlement deed dated 22.07.2011 (document No.7167 of 2011) and the registered Will dated 22.07.2011 (document No.43/BK3/2011) are null and void. The respondents 2 to 4 in this Civil Revision petition have filed O.S.No.31 of 2012 before the District Court, Tiruppur seeking the same relief as stated supra. In both the suits, the subject matter of the suit properties, party to the proceedings and the evidence, necessarily to be examined, to decide the issue raised in the respective suits are one and the same. So, in the said circumstances, if both the suits are tried in two different Courts, there may be a chance of coming out of conflicting judgments and multiplicity of proceedings. Hence, transferring the suit in OS No.70 of 2017 from the file of Subordinate Court, Udumalpet to the file of II Additional District Court, Tiruppur to try along with the case in O.S.No.31 of 2012, is the solution to avoid the multiplicity of proceedings.

5. The 5th respondent herein has filed a Counter affidavit and states as follows:-

5.1. In OS.No.31 of 2012, on completion of chief examination of PW 1, when the case is posted for cross examination of PW 1, the

petitioner has not come forward to cross examine PW 1. Hence, on 23.08.2016, exparte decree has been passed. In the meantime, through his son, the petitioner has filed an application in I.A.No.1221 of 2016, under Order 1 Rule 10 and the same was dismissed on 19.06.2017. Even after allowing the petition filed for setting aside the exparte decree once again, the petitioner has not come forward to complete the cross examination of PW 1. Hence, again the case was put into the stage of exparte and thereafter on 11.08.2018, the petitioner has filed an application under Order 9 Rule 7 and the same was allowed on payment of costs of Rs.10,000/-. Thereafter, after closing the plaintiffs' side evidence, the petitioner has been examined himself as DW 1 and the case was posted for the cross examination of DW 1. Only in the said circumstances, he has filed Transfer Original petition before the Principal District Court, Tiruppur. In the meantime, before the Subordinate Court, Udumalpet, the respondents have filed an application under Section 10 of Civil Procedure code to stay the proceedings and on 27.02.2019, the same was ordered infavour of the respondents. According to the respondents, the petitioner had attempted to protract the proceedings by way of filing such applications.

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6. Based on the above said pleadings and after hearing the arguments advanced by the learned counsel appearing on either side, the learned Principal District Judge, Tiruppur ordered the Tr.O.P.No. 114 of 2018, as already stated supra. Aggrieved over the same, the

petitioners/respondents 4 to 6 are before this Court with the present Civil Revision Petition.

7. Today when the petition came up for admission, the learned counsel appearing for the petitioner was present and made a submission that since the suit pending before the Subordinate Court, Udumalpet was filed subsequent to the filing of the Suit pending before the II Additional District Court, Tiruppur. Transferring the same from the file of Subordinate Court, Udumalpet, will cause much prejudice to the petitioners. Further, the suit pending before the Court, Udumalpet was stayed under Section 10 of Civil Procedure Code. Therefore, it will not be possible for the II Additional District Judge, Tiruppur to try the suits jointly or simultaneously, though the suit has been transferred from the Subordinate Court, Udumalpet to the II Additional District Court, Tiruppur.

8. Submissions made by the learned counsel is considered.

9. In the impugned order passed by the learned Principal District judge, Tiruppur, it was observed that since for the reason that the party to the proceedings and the subject matter of the suit properties are one and the same, transferring the suit i.e OS No.70 of 2017 from the file of Subordinate Court, Udumalpet to the file of II Additional District Court, Tiruppur will not cause any prejudice to either parties and only on such findings, he has ordered the transfer as mentioned above.

10. Now on considering the said aspect, it is not in dispute that in both suits, the party to the proceedings and the subject matter of the property are one and the same. Further, it is also admitted that the suit pending before the II Additional District Court, Tiruppur is posted for examination of defendants side evidence. On the other hand, stay under Section 10 of Civil Procedure Code is granted in the suit pending before the Subordinate Court, Udumalpet. In the said circumstances, though the Suit in OS No.70 of 2017 has been transferred from the Subordinate Court, Udumalpet to the II Additional District Court, Tiruppur, the learned II Additional District Judge is not in a position to proceed with the trial in O.S.No.70 of 2017, since the said suit was stayed under Section 10 of Civil Procedure Code. The said circumstances reveals the fact that only after disposing OS No.31 of 2012, further proceedings in OS No.70 of 2017 has to be started.

11. Be that as it may, it is true that due to the transfer of suit, either the petitioners nor the respondents are no way prejudiced. Further, it is the easiest way for both sides to watch the proceedings of suits in the same Court. Moreover, it is not necessary for the parties to attend two different Courts for finalizing the dispute pending between them.

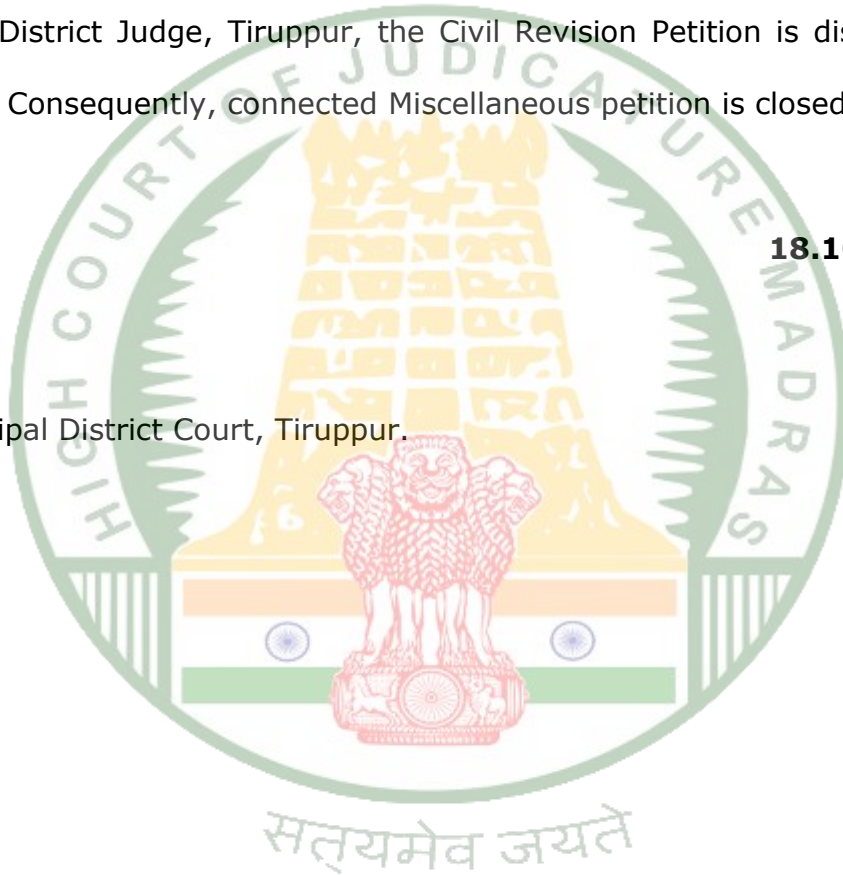
12. Hence, I am of the opinion that though the order of transfer in respect to OS No.70 of 2017 is not necessary at this stage, considering the other aspects as discussed above and also there is no material irregularity found in the impugned order, passed by the learned Principal District Judge, Tiruppur, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

vrn

18.10.2019

To

The Principal District Court, Tiruppur.



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R.PONGIAPPAN, J.,

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