



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD) No.1852 of 2012
and M.P.No.1 of 2012

1.Veeraraghavan
2.V.Chandra

... Petitioners

-VS-

C.Kaliyannan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 25.08.2010 in TR.O.P.No.16/2010 on the file of the District Judge, Virudhunagar District at Srivilliputhur.

For Petitioners : Mr.M.Ashokkumar
For Respondent : Mr.G.Aravindhnan

O R D E R

The present Civil Revision Petition has been filed against the order passed by the Principal District Judge, Virudhunagar allowing the transfer petition that was filed by the respondent and transferring the suit in O.S.No.38/2005 to the file of the Sub Court, Sivakasi to be heard along with R.C.A.No.1/2010.

2. The respondent filed R.C.O.P.No.6/2004 against the petitioners for eviction on the ground of wilful default, onus occupation and denial of title. The RCOP came to be decided on merits and it was dismissed by order dated 26.11.2009. As against the order of dismissal, the respondent filed R.C.A.No.1/2010 and the same is pending on the file of the Sub Court, Sivakasi.

3.The petitioners had filed a suit in O.S.No.38/2005 seeking for the relief of mandatory injunction on the ground that the sale deed that has been executed in favour of the respondent on 22.11.2001 is null and void and not binding on the petitioners. This suit was pending.

4.The respondent filed a transfer OP before the Principal District Judge, Virudhunagar to transfer O.S.No.38/2005 to the file of the Sub Court, Sivakasi in order to try the same along with R.C.A.No.1 of 2010, which was pending before the same Court. This



petition was allowed by the learned District Judge.

5. The learned counsel for the petitioners submitted that the order has been passed without giving an opportunity to the petitioners. The learned counsel further submitted that the suit cannot be tried by an appellate authority and if the suit is transferred to the sub Court, the petitioners will lose an opportunity of filing an appeal and therefore, the order passed by the Court below is *per se* illegal.

6. The learned counsel for the respondent submitted that the issue involved in both the cases are the same and if each case is allowed to be tried separately, there will be multiplicity of proceedings and it may result in contradicting judgments. Therefore, the learned counsel submitted that the order passed by the Court below is just and proper and does not require interference by this Court.

7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. In this case, RCOP that was filed by the respondent has been dismissed and the rent control Court has already taken into account the defence that was raised by the petitioners and rejected the petition. As against the order of the rent controller, appeal is now pending in R.C.A.No.1/2010 before the Sub Court, Sivakasi. Even on the date on which the RCOP was tried and disposed of, the suit in O.S.No.38/2005 was admittedly pending. At that point of time, no steps were taken to get that suit transferred to be tried along with RCOP. This exercise has not sought to be done, when the appeal is pending before the concerned Court.

9. As rightly pointed out by the learned counsel for the petitioners, the suit being transferred to the file of the Sub Court, Sivakasi, will result in the petitioners losing an opportunity of appeal. Even otherwise, the suit cannot be tried along with the rent control appeal and the appellate authority has to necessarily decide the appeal based on the materials placed before him and after considering the findings given by the learned Rent Controller. The Court below has unnecessarily complicated the entire proceedings and it is a clear non application of mind to have transferred the suit to the file of the appellate authority and directed that appellate authority to decide the suit along with the rent control appeal. The Court below lost sight of this fundamental issue and has mechanically passed the order without understanding the repercussions that will arise out of the said order. The order passed by the Court below has to be necessarily interfered with.

10. In the result, the order passed by the Court below in TR O.P.No.16/2010 dated 25.08.2010 is hereby set aside and the Civil Revision is allowed. The Sub Court, Sivakasi is directed



to complete the proceedings in R.C.A.No.1/2010 within a period of two months from the date of receipt of copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

Sub Assistant Registrar(CS)

RR

To

1.The Sub Court,
Sivakasi.

2.The District Judge,
Virudhunagar District at Srivilliputhur.

+1CC TO MR.M.ASHOK KUMAR, Advocate Sr. No. 100704

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KMV(CO)

TR(11.12.2019) 3P 4C