



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2019
(Reserved on 28.08.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(NPD) (MD)No.646 of 2019

and

CMP(MD)Nos.3316 and 3317 of 2019

K.Krishnammal @ Krishnaveni ... Petitioner/Respondent

vs.

1)C.S.Mohan

2)C.S.Ramamoorthy

... Respondents/Respondents

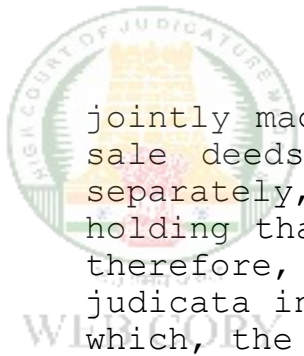
Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 29.01.2019 passed in T.O.P.No.214 of 2018 on the file of the Principal District Judge, Kanyakumari District at Nagercoil.

For Petitioner	: Mr.R.Murugan
For R1	: Mr.N.Pragalathan
For R2	: Mr.T.Lajapathi Roy

ORDER

Aggrieved by the dismissal of the transfer petition, the petitioner/plaintiff has filed this revision petition.

2.The revision petitioner is the plaintiff in O.S.No.15/2016 filed against the 1st respondent/defendant before the Additional District Judge, Nagercoil, for cancellation of the sale deed dated 31.12.2012 registered as Document No.2091/2012 on the file of Sub Registrar Office, Thoivalai. She has also filed O.S.No.45/2017 against the 2nd respondent/defendant before the I Additional Sub Judge, Nagercoil, for cancellation of the sale deed dated 31.12.2012 registered as Document No.2092/2012 on the file of Sub Registrar Office, Thoivalai. Pending the above suits, the petitioner filed Tr.O.P.No.214 of 2018 before the Principal District Court, Kanyakumari District at Nagercoil, seeking to transfer O.S.No.45/2017 from the I Additional Sub Court, Nagercoil, to the Additional District Court, Nagercoil, to be tried along with O.S.No.15/2016, contending that the cause of action in both the suits arose on 31.12.2012 on which date, both the respondents



jointly made the petitioner to sign the stamped papers and got two sale deeds executed in their favour and if two suits are tried separately, there may be conflicting judgments. The Court below holding that both the suits are filed against different persons and therefore, the finding in one suit will never operate as res judicata in the other suit, dismissed the transfer petition, against which, the petitioner has filed this revision petition.

3.Learned counsel for the petitioner would submit that the Court below failed to consider that though the defendant in both the suits are different persons, they are brothers and the suits have been filed to cancel the fraudulent sale deeds jointly obtained by them from the petitioner. He would further contend that pleadings and evidence in both the suits are one and the same and therefore, to avoid conflicting decisions, the Court below ought to have ordered for transfer. Thus, he would pray for allowing this revision petition.

4.Learned counsels for the respondents would submit that the cause of action and schedule of properties in both the suits are different and both the suits have been filed against the different persons and therefore, joint trial of the suits is not necessary and it is only an attempt to drag on the proceedings and the Court below has rightly dismissed the transfer petition which does not require any interference by this Court.

5.Heard both sides and perused the records.

6.Perusal of records shows that the revision petitioner is none other than the wife of the brother of the respondents who died on 08.11.2012 and according to the petitioner, taking advantage of her condition who was a helpless widow, the respondents exercised coercion, undue influence and fraud on the petitioner and got the above two sale deeds executed on the same day.

7.Perusal of the plaint averments in both the suits, it is pleaded that both the respondents took the petitioner to Thovalai Sub Registrar Office, where, she was made to sign the stamped papers by the respondents on the pretext that the same were meant for transferring of the properties of her late husband in her favour, but later on, when the respondents disturbed her possession, the petitioner came to know that the respondents played fraud on her and got the sale deeds executed in their favour. Thus, it is seen that the pleadings and evidence in both the suits are one and the same and the cause of action arose on the same day due to the joint action of the respondents. Though the properties in the two sale deeds are different, it is the specific case of the plaintiff that both the respondents acting jointly, got the sale deeds executed from the petitioner fraudulently. However, the petitioner has filed suits in two different forum based on the value of the suit property in the pecuniary jurisdiction of the courts. It is stated



that both the suits ripe for trial and at this stage, the petitioner came to know that joint trial of the suits is necessary and filed the above transfer petition.

8. In **V.Ramamirtham vs.Rama Film Service reported in AIR 1951 Madras 93 (FB)**, a Full Bench of this Court has held that a Court cannot be said to be not having jurisdiction over suits below its minimum pecuniary jurisdiction. While Section 15 of the CPC enjoins the institution of a suit in the Court of lowest grade competent to try it, it does not oust the jurisdiction of the Court of a higher grade; even if the Court of a higher grade tries and disposes of a suit which could have been instituted in a Court of a lower grade, the decision rendered is not without jurisdiction and is not a nullity. It has been further held that the object of Section 15 CPC is only to prevent superior courts being flooded or overcrowded with suits triable by Courts of inferior grade and it merely regulates procedure and not jurisdiction and a Court of superior grade does not act without jurisdiction in trying a suit which under Section 15 might and ought by reason of its valuation, to have been tried by an inferior Court.

9. Further, Section 24 of CPC specifies the general power of the High Court to transfer or withdrawal of any suit, appeal or other proceedings to the Courts subordinate to it. Before an application under this Section can be allowed, it is implicit that two conditions should be satisfied, viz., (1) proceedings to be transferred should be subordinate to the High Court or the District Court and (2) such transferee court shall be competent to try and dispose of the case. In the present case, the transfer is sought for from the I Additional Sub Court to the Additional District Court. As held in the above judgment, a Court cannot be said to be not having jurisdiction over suits below its minimum pecuniary jurisdiction and therefore, both the conditions under Section 24 CPC are satisfied. Though there is a delay in filing the transfer petition, since pleadings and evidence in both the suits are one and the same, to avoid multiplicity of proceedings, this Court is of the view that ends of justice would be met if both the suits are directed to be tried jointly.

10. Accordingly, the order dated 29.01.2019 passed in Tr.O.P.No.214 of 2018 on the file of the Principal District Judge, Kanyakumari District at Nagercoil, is set aside and the learned Judge, I Additional Sub Court, Nagercoil, is directed to transmit the case papers in O.S.No.45/2017 to the Additional District Court, Nagercoil within a period of four weeks from the date of receipt of a copy of this order. On receipt of the case papers in O.S.No.45/2017, the learned Additional District Judge, Nagercoil, is directed to conduct joint trial of O.S.No.15/2016 and O.S.No.45/2017 and dispose of the same in accordance with law within a period of six months from the date of receipt of records in O.S.No.45/2017.



With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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// True Copy //

Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar(CS)

To

- 1)The Principal District Judge,
Kanyakumari District at Nagercoil.
- 2)The I Additional Sub Judge,
Nagercoil.
- 3)The Additional District Judge,
Nagercoil.

Copy to: The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to M/s.R.MURUGAN, Advocate SR-94124.
+1 CC to M/s.T.LAJAPATHI ROY, Advocate SR-94532.

Order made in
C.R.P (NPD) (MD) No.646 of 2019
24.10.2019

bala

CS (07.11.2019) 4P 8C