

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD.No. 160 of 2018

and

C.M.P.No.921 of 2018

S.Dhineshraj

...Petitioner

Vs.

1.P.Purushothaman

2.N.S.Palanisamy

3.Visalakshi

4.Bhuvaneswari

5.Pushpa

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.08.2017 made in Tr.O.P.No.43 of 2017 on the file of the Principal District Judge, Coimbatore in O.S.No.175 of 2016, on the file of the District Munsif Court, Mettupalayam.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondents : Mr.C.R.Prasanan for R1

R2 to R5 - Given up

O R D E R

This revision is against the order of the learned Principal District Judge dismissing the transfer petition filed by the 5th defendant in O.S.No. 175 of 2016 seeking transfer of the said suit to the District Court, Coimbatore to be tried along with O.S.No.467 of 2016.

2. The suit in O.S.No.175 of 2016 has been filed by the plaintiff for partition and separate possession for his 1/5th share in the suit schedule properties, declaration that the settlement deed dated 10.03.2016 by the first defendant in favour of the 5th defendant as null and void and for an injunction restraining the 5th defendant from alienating or encumbering the suit property. This suit was instituted on 18.08.2016. Subsequently, after service of summons in the O.S.No.175 of 2016, the 5th defendant filed a suit in O.S.No.467

of 2016 on the file of the Principal District Court, Coimbatore seeking a declaration of his title based on the settlement deed executed by the grand father in favour of the first defendant on 10.03.2016 and for consequential injunction.

3. Immediately, thereafter on 04.02.2017, the plaintiff in O.S.No.467 of 2016 filed Tr.O.P.No.43 of 2017 on the file of the Principal District Judge, Coimbatore seeking to transfer the suit in O.S.No.175 of 2016 on the file of the District Munsif, Mettupalayam to IV - Additional District Court, Coimbatore be tried along with the later suit namely, O.S.No.467 of 2016.

4. The learned Principal District Judge rightly dismissed the suit on the ground that it is an attempt by the petitioner to multiply litigation and to deprive the plaintiff in O.S.No.175 of 2016 of a right of appeal, which would be otherwise available to him, if the suit is taken up, particularly by the learned District Munsif. I am in entire agreement with the reasoning of the learned Principal Judge.

5. The first suit namely, O.S.No.175 of 2016, is a comprehensive suit filed for partition, declaration that the settlement deed 10.03.2016 as null and void and for consequential injunction. After service of summons in the said suit, the 5th defendant, who claims under the settlement deed dated 10.03.2016 would have defended the suit and kept quiet. He wantonly valued the property at Rs.15,00,000/- and filed a suit for declaration and consequential injunction on the file of the Principal District Munsif to just deny the plaintiff in O.S.No.175 of 2016 of a right of appeal which would otherwise be available to him. The learned District Judge was perfectly justified in dismissing the transfer petition concluding that the suit itself is an abuse of process of Court and refusing to transfer O.S.No.175 of 2016 to the file of the IV Additional District Judge. In fact, this is a case where Section 10 of C.P.C, would apply on all fours. The validity of the settlement deed dated 10.03.2016 is the core issue in both the suits. Therefore, leaving it open to the plaintiff in O.S.No.175 of 2016 to seek stay of the subsequent suit in O.S.No.467 of 2016 under Section 10 r/w 151 C.P.C, this civil revision petition is dismissed, the order of the District Judge in Tr.O.P.No.43 of 2016 is affirmed. No costs.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:

1.The Principal District Judge,
Coimbatore .

2.The District Munsif,
Mettupalayam.

+1cc to Mr.C.R.Prasanan, Advocate, sr no.31826

C.R.P(PD.No. 160 of 2018
and
C.M.P.No.921 of 2018

GMR (CO)
RMP (29/10/2020)



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