

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 864 of 2018

in

C.M.P.No. 4743 of 2018

M.Duraisamy

..Petitioner/Plaintiff

Vs.

1.Marammal

2.M.Thangaraj

3.M.Sakthivel

4.M.Gunasekaran

..Respondents/Defendants

Prayer: Petition filed under section Article 227 of Constitution of India, seeking to set aside the fair and decreetal order dated 03.10.2017 in Tr.O.P.No. 53 of 2017 in O.S.No. 531 of 2014 on the file of the Principal District Judge.

For Petitioner : Mr.R.Rajarajan

For Respondents : Mr.V.Ashokkumar

O R D E R

This Civil Revision Petition has been filed by the plaintiff in O.S.No. 531 of 2014, challenging the dismissal of Tr.O.P.No. 53 of 2017 wherein he prayed for transfer of O.S.No. 922 of 2015 on the file of the III - Additional District Munsif, Coimbatore to the file of the I - Additional Sub-Court, Coimbatore to be tried along with O.S.No. 531 of 2014.

2. The suit in O.S.No. 531 of 2014 was filed by the petitioner as plaintiff seeking partition and separate possession of his 1/5th share claiming that the suit properties along with larger extent was allotted to one Subbe Gounder, father of the first defendant under a partition deed dated 01.05.1921. After the death of Subbe Gounder, his sons, first defendant and one Ranagarajan partitioned the property orally and the first defendant was allotted the Item 1 of the suit property.

3. According to the plaintiff, he and the defendants 3 to 5, who are sons of first defendant became coparcener by birth along with first defendant. It is also claimed that the defendants 1, 3 to 5 jointly purchased other properties. Some of the properties were purchased in the name of the second defendant, Marammal, the plaintiff and the defendants 3 to 5. It was also claimed that the properties that stood in the name of the Marammal are also liable to partition. Pending suit for partition, defendants 4 and 5 filed a suit in O.S.No. 522 of 2015 on the file of the Additional District Munsif, Coimbatore against the 3rd defendant claiming that the petitioner's mother, Marammal had executed settlement deed in favour of the plaintiffs on 03.01.2014 and sought for bare injunction restraining the defendant in O.S.No. 531 of 2014 from interfering with their alleged possession. Coming to know about the said suit, the plaintiff filed Tr.O.P.No. 53 of 2017 before the District Court, Coimbatore seeking transfer. The learned District Judge by an order dated 03.10.2017, dismissed the petition concluding that since the petitioner is not a party to the suit for injunction, he cannot seek for transfer of the suit. Aggrieved, the petitioner has come up with this Civil Revision Petition.

4. Heard Mr.R.Rajarajan, learned counsel appearing for the petitioner and Mr.V.Ashokkumar, learned counsel appearing for the respondents.

5. Mr.R.Rajarajan, learned counsel appearing for the petitioner would submit that the learned Principal District Judge was not right in dismissing the transfer petition on the ground that the petitioner is not a party. He would point out that the alleged settlement deed said to have been executed by Marammal dated 03.01.2014 is put in issue in both the suits. The validity of the settlement deed executed by Marammal dated 03.01.2014 is the fulcrum of both the suits. The defence of the defendants 4 and 5, who are the plaintiffs in the suit for injunction is based on settlement deed dated 03.01.2014. If the suits are tried separately, there is definitely a chance of conflicting judgments being rendered. The learned Principal District Judge has dismissed the transfer petition solely on the ground that the petitioner is not a party to the suit for injunction. That is not only factor that should weigh in the mind of the Court, while considering the transfer petition, the Court must also consider whether there is a possibility of conflicting judgments, if the suits in question are allowed to be tried separately.

6. As already pointed out, the main issue in both the suits is validity or otherwise of the settlement deed dated 03.01.2014, there is definitely a chance of conflicting

judgments being rendered, if the suits are tried separately. Therefore, it will be in interest of the justice that both the suits are tried together. Hence, the order of the learned District Judge, Coimbatore in Tr.O.P.No. 53 of 2017 is set aside, the Tr.O.P will stand allowed, the O.S.No. 922 of 2015 on the file of the III - Additional District Munsif Court, Coimbatore is withdrawn and transferred to the I - Additional Subordinate Court, Coimbatore to be tried along with O.S.No. 531 of 2014.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:-

1. The Principal District Judge, Coimbatore.
2. The III - Additional District Munsif, Coimbatore.
2. The I - Additional Subordinate Court, Coimbatore.

+1cc to Mr.Rajan, Advocate, Sr.No.25070

C.R.P.No. 864 of 2018
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