

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.(NPD) No.2344 of 2019

P.Apparsamy

...Petitioner

Vs

1.R.Perumal@ Kaliaperumal

2.K.Ramesh,

3.The Registrar of Firms,

O/o. The Registrar of Companies,

At No.35, Elango Nagar, I Floor, II Cross,

Pondicherry-605001

...Respondents

Prayer: Civil Revision Petition filed under Section 25 of Lease of Rent Control Act to set aside the Fair and Decretal order dated 04.03.2019 in T.O.P.No.36 of 2018 on the file of Principal District Judge at Pondicherry, and allow the Civil Revision Petition.

For Petitioner : Mr.K.S.Kamatchi
For R1 : Mr.D.Ravichander
For R2 : V.Manohar

ORDER

This Civil Revision Petition has been filed against the order dated 04.03.2019 passed in T.O.P.No.36 of 2018 on the file of Principal District Judge at Pondicherry,

2. The petitioner herein has filed the T.O.P.No.36 of 2018 before the learned Principal District Judge, Pondicherry. The petitioner and the 1st respondent are partners of M/s.Balaji theatre, Pondicherry.

3.The partners of Balaji Theatre filed the suit in O.S.No.115 of 2011 with a prayer:

*(a) declaration that the plaintiff Firm
M/s.Balaji Theatre is dissolved as on the date of*

*presentation of the plaint in O.S.130 of 2008 I.e.,
04.06.2007 and on the date of pronouncement of the
judgment I.e., 01.10.2010 on the file of the Hon'ble
III Additional District Judge at Pondicherry;*

(or)

*Alternatively if this Hon'ble Court comes to
the conclusion that the erstwhile partnership Firm
M/s. Balaji Theatre, Pondicherry, consisting of
plaintiffs and 1st defendant was not dissolved to grant
a decree for the dissolution of the said partnership
Firm between the plaintiffs and the 1st defendant in
the name and style of M/s/. Balaji Theatre,
Pondicherry.*

*(b) direct the 2nd defendant by a decree of
mandatory injunction to make an amenment in the
entry of the register of firms relating to the plaintiff
firm M/s. Balaji Theatre recording dissolution of the*

firm M/s.Balaji Theatre, Pondicherry.

(c) permanent injunction restraining the 1st defendant herein and his men and agents or anyone claiming under him from in any manner interfering with the conduct of the business and administration of the plaintiffs Firm and from claiming any rights in any manner the Firm in any manner whatsoever.

4. The above mentioned suit is pending on the file of the learned Principal Sub Judge, Pondicherry. Pending suit, the petitioner filed this Transfer O.P. in T.O.P.No.36 of 2018 to transfer the above suit to the file of learned III Additional District Judge, Pondicherry to try along with I.A.No.44 of 2017, E.P.No.158 of 2015 in O.S.No.130 of 2018.

5. The learned Principal District Judge, Pondicherry, after considering the arguments of the counsel for the parties dismissed the petition on the ground that this Court has already directed to dispose of the

suit in O.S.No.115 of 2011 within six months and the jurisdiction of the executing Court is entirely different from the Court which exercises the original jurisdiction. Aggrieved by this order the Revision Petition is filed.

6. The learned counsel for the petitioner submitted that the order of the trial Court is contrary to law and it failed to consider the facts of the case that in both the cases, parties are one and the same and if both are tried together, multiplicity of proceedings could be avoided. It has to be decided by the same Judge and reiterated other grounds raised in the Revision Petition and thus pleaded to set aside the order of the learned District Principal Court, Pondicherry and allowed the Revision Petition.

7. The learned counsel for the respondents supported the order of the learned District Principal Judge, Pondicherry. Further, stated the nature of the proceedings in EP and the suit is different. There is no merit in the Civil Revision Petition and he pleaded to dismiss the Revision Petition.

8. Heard the learned counsel for both parties and perused the materials available on record.

9. The suit in O.S.No.115 of 2011 is filed by partners of M/s.Balaji theatre, pondicherry with the following prayer:

(a) declaration that the plaintiff Firm M/s.Balaji Theatre is dissolved as on the date of presentation of the plaint in O.S.130 of 2008 I.e., 04.06.2007 and on the date of pronouncement of the judgment I.e., 01.10.2010 on the file of the Hon'ble III Additional District Judge at Pondicherry;

(or)

Alternatively if this Hon'ble Court comes to the conclusion that the erstwhile partnership Firm M/s. Balaji Theatre, Pondicherry, consisting of plaintiffs and 1st defendant was not dissolved to grant a decree for the dissolution of the said partnership Firm between the plaintiffs and the 1st defendant in the name and style of M/s/. Balaji Theatre, Pondicherry.

(b) direct the 2nd defendant by a decree of mandatory injunction to make an amendment in the entry of the register of firms relating to the plaintiff firm M/s. Balaji Theatre recording dissolution of the firm M/s.Balaji Theatre, Pondicherry.

(c) permanent injunction restraining the 1st defendant herein and his men and agents or anyone claiming under him from in any manner interfering with the conduct of the business and administration of the plaintiffs Firm and from claiming any rights in any manner the Firm in any manner whatsoever.

10. O.S.No.130 of 2018 was decreed on 01.10.2020 and the decree holder filed E.P.No.158 of 2015 for executing the decree which is pending on the file of learned III Additional District Judge, Pondicherry. O.S.No.130 of 2018 was tried along with another suit in O.S.No.45 of 2009. The judgment was pronounced on 01.10.2010. Against the judgment and decree in O.S.No.45 of 2009, a suit was preferred in A.S.No.16 of 2011 before this Court in which it was directed to work out the remedy in

O.S.No.115 of 2011 with a direction to dispose of the suit in O.S.No.115 of 2011 at the earliest. Under these circumstances, this transfer O.P was filed. Further, the nature of the proceedings in EP and the nature of the proceedings in the suit is different. Though parties to the EP proceedings and the proceedings in O.S.No.115 of 2011 are one and the same, it cannot be clubbed together. The Revision Petitioner has not assigned valid acceptable reasons in his affidavit in the transfer O.P for transferring the suit on the file of III Additional District Judge, Pondicherry to try along with E.P.No.158 of 2015 in O.S.No.130 of 2008. There is no substantial reason to support the case of the Revision Petitioner. I find no error in the impugned order of the learned Principal District Judge, Pondicherry and I confirm the same

11. Accordingly, the Civil Revision Petition stands dismissed. No Costs.

Index: Yes/No
Speaking Order: Yes/No
vsn

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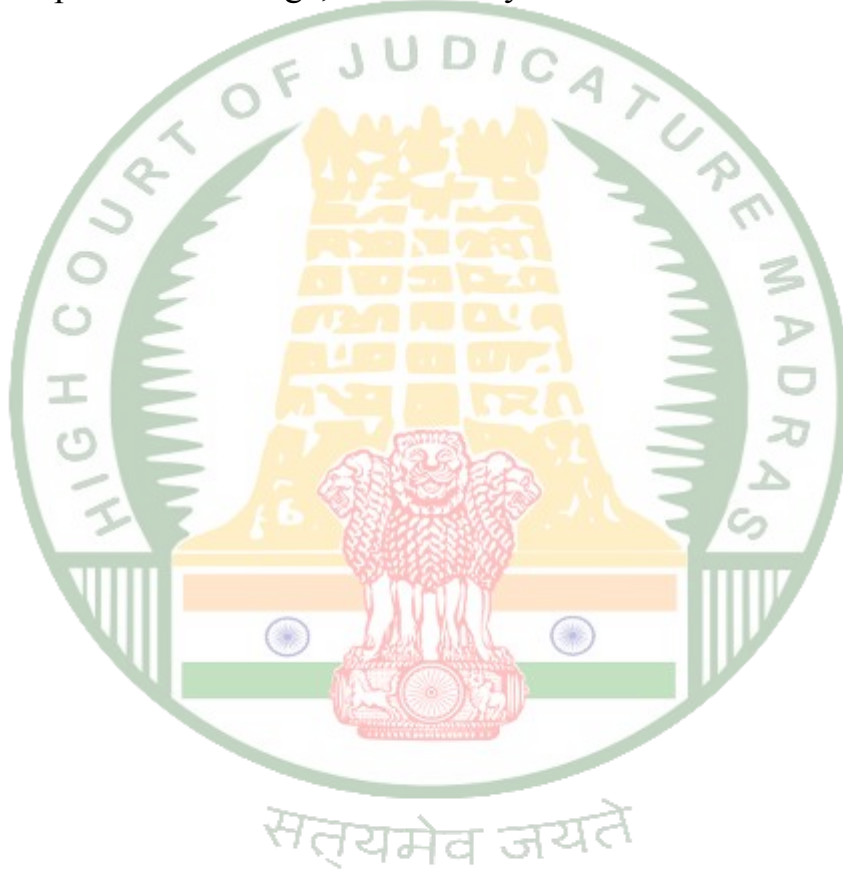
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07.12.2019

To

1.The III Additional District Judge, Pondicherry.

2. The Principal District Judge, Pondicherry



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V.SIVAGNANAM.J,

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