

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.920 of 2017
and C.M.P.No.4571 of 2017

R.Karunasekar

.. Petitioner

Vs.

1.A.Gurusamy Naidu

2.A.G.Ramesh

3.A.Narendran

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.11.2016 passed by the Principal District and Sessions Court, Thiruvallur in Tr.O.P.No.2 of 2016.

For Petitioner : Mr.Ravikumar Paul,
Senior Counsel
for M/s.Paul and Paul

For Respondents : Mr.R.Krishnaswamy

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed challenging the fair and decretal order dated 30.11.2016 made in Tr.O.P.No.2 of 2016 transferring O.S.No.199 of 2014 from the file of the District Munsif Court, Ponneri to the file of IV Additional District Munsif Court, Ponneri, to be tried along with O.S.No.173 of 2014 on the file of IV Additional District Munsif Court, Ponneri.

2.The petitioner is the plaintiff and the respondents are defendants in O.S.No.199 of 2014 on the file of the District Munsif Court, Ponneri. The petitioner filed the said suit for declaration of title, recovery of possession and for damages against the respondents herein. The respondents herein filed Tr.O.P.No.2 of 2016 for transferring O.S.No.199 of 2014 on the file of the District Munsif Court, Ponneri, to the file of IV Additional District Munsif Court, Ponneri, to be tried along with O.S.No.173 of 2014 filed by the petitioner and three others for partition.

According to the respondents, the parties in both the suits are one and the same and issues to be decided are also the same. In order to avoid conflicting judgments, prayed for transfer of O.S.No.199 of 2014 pending on the file of the District Munsif Court, Ponneri, to be tried along with O.S.No.173 of 2014 pending on the file of the IV Additional District Munsif Court, Ponneri.

2(a).The petitioner filed counter and denied all the averments and stated that he claimed title based on the Will executed in O.S.No.199 of 2014. O.S.No.173 of 2014 is filed for partition claiming that the property is ancestral property. In view of the same, the issues arising in both the suits are different and the evidences are also different and hence both the suits cannot be tried jointly. The claim of the respondents that both the parties are same and there are common question of law is not correct. The respondents filed Transfer O.P. with an intention to drag on the proceedings and prayed for dismissal of Tr.O.P.

2(b).The learned Principal District and Sessions Judge, Thiruvallur allowed the Tr.O.P. on the ground that the suit in O.S.No.173 of 2014 pending on the file of IV Additional District Court, Ponneri, is a comprehensive suit for dispute and the relief sought for in O.S.No.173 of 2014 is for larger relief. The learned Judge also held that the properties and parties in both the suits are one and the same.

3.Against the said order dated 30.11.2016 made in Tr.O.P.No.2 of 2016, the petitioner has come out with the present Civil Revision Petition.

4.The learned Senior Counsel appearing for the petitioner submitted that the learned Judge without considering the fact that the parties and issues are different, erroneously ordered for joint trial. The learned Judge failed to follow the procedures contemplated under Section 22 of C.P.C., wherein the defendant has to file application for transfer at the earliest possible opportunity and in cases where issues are settled at

or before such settlement. In the present case, in O.S.No.173 of 2014 pending before the IV Additional District Munsif Court, Ponneri, the trial has commenced and in O.S.No.199 of 2014 pending before the District Munsif Court, Ponneri, amendment petition is pending and it is not in the list for trial. The learned Senior Counsel appearing for the petitioner further submitted that the suit properties in both the suits, cause of action and the legal position are also different. The learned Judge erroneously allowed Tr.O.P.No.2 of 2016 holding that the properties and the parties are one and the same. In view of the interim order granted in the Civil Revision Petition, both the suits are tried separately. In O.S.No.199 of 2014 also, trial commenced and now it is in the stage of cross-examination of P.W.2 and prayed for allowing the Civil Revision Petition.

5.The learned counsel appearing for the respondents submitted that the parties and properties in the suits are one and the same. O.S.No.173 of 2014 pending on the file of the IV Additional District Munsif Court,

Ponneri, is a comprehensive suit. The learned Judge, in order to avoid conflicting judgments, ordered transfer of the suit in O.S.No.199 of 2014 pending before the District Munsif Court, Ponneri, to be tried along with O.S.No.173 of 2014 pending on the file of the IV Additional District Munsif Court, Ponneri. The petitioner has admitted the relationship and both the petitioner and respondents are claiming through their ancestor Govinda Naidu. The suit filed for partition is a comprehensive suit. The learned Judge after considering all the materials available on record, rightly allowed Tr.O.P.No.2 of 2016 and there is no irregularity or illegality in the order of the learned Judge warranting interference by this Court and prayed for dismissal of the Civil Revision Petition.

6.Heard the learned Senior Counsel appearing for the petitioner as well as the respondents and perused the entire materials available on record.

7.From the materials available on record, it is seen that the respondents, who are defendants in O.S.No.199 of 2014 filed Tr.O.P.No.2

of 2016 under Section 24 of C.P.C. for transferring O.S.No.199 of 2014 pending on the file of the District Munsif Court, Ponneri, to the file of the IV Additional District Munsif Court, Ponneri, to be tried along with O.S.No.173 of 2014. According to the respondents, parties, properties, issues and cause of action are one and the same. The said contention is contrary to the materials on record. O.S.No.199 of 2014 pending on the file of the District Munsif Court, Ponneri, is filed for declaration and injunction based on the registered Will for Punjai S.Nos.174/1A, 175/1, 175/3A and 175/3B1, whereas O.S.No.173 of 2014 is filed for partition of several properties in Punjai S.Nos.169/2, 169/3A, 169/3B, 170/1B, 174/1B, 174/2, 175/2A1 and 175/2A2. The suit property in O.S.No.199 of 2014 is not the subject matter of O.S.No.173 of 2014 and it relates to some other properties. In view of the same, the cause of action and issues are different. The learned Judge without properly verifying the schedule of the properties erroneously held that the properties in both the suits are one and the same. In view of the fact that the cause of action, issues and properties are different, the order of the learned Judge dated 30.11.2016

made in Tr.O.P.No.2 of 2016 is erroneous and suffers from illegality. The order of the learned Judge is liable to be set aside, it is hereby set aside and Tr.O.P.No.2 of 2016 is dismissed.

8.In the result, the Civil Revision Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

15.09.2020

Index : Yes/No

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To

1.The Principal District and Sessions Judge
Thiruvallur.

2.The District Munsif
Ponneri.

3.The IV Additional District Munsif
Ponneri.

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V.M.VELUMANI, J.

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