



C.R.P.(PD).No.320 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.320 of 2020

and

C.M.P.No.1646 of 2020

Periyayi

.. Petitioner

Vs.

1.Sekar

2.Angammal

3.Chinnasami

4.Thavamani

5.Palani Ammal

6.Arjunan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 15.10.2019 in Tr.O.P.No.154 of 2018 on the file of the Principal District Judge, Villupuram.

For Petitioner : Mr.Kumaraguru
for Mr.T.Saikrishnan

For Respondents : Mr.A.P.Neelamegavannan

ORDER



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The order challenged in this Revision is the order transferring O.S.No.76 of 2006 pending on the file of the learned Principal District Munsif, Gingee to the file of the learned Additional District Court, Villupuram to be tried along with O.S.No.92 of 2014.

2. The learned Principal District Judge allowed the transfer on the ground that both the suits being for partition of same estate, they will have to be tried together, since there is a strong possibility of conflicting verdicts, if they are tried in two different Courts.

3. Mr.Kumaraguru, learned counsel appearing for the petitioner in this Revision would vehemently contend that the respondents who had suffered an *ex parte* decree in O.S.No.76 of 2006, cannot seek transfer of the said suit to be tried along with O.S.No.92 of 2014, which has been initiated by them after the grant of *ex parte* decree.

4. The argument looks very attractive, but, on facts, I find a fallacy in



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the argument. Of course, the suit in O.S.No.76 of 2006 was decreed *ex parte* on 15.12.2006. The application in I.A.No.1181 of 2012 seeking condonation of delay in filing the application to set aside the *ex parte* decree filed by the respondent herein as the 5th defendant in the suit was dismissed. The Revision against that dismissal in C.R.P.No.594 of 2014 was also dismissed, confirming the said order.

5. However, at the instance of the other defendants in O.S.No.76 of 2006, the *ex parte* decree came to be set aside. Being a partition suit, the *ex parte* decree had to be set aside as a whole and it cannot be retained as against one of the defendants. Therefore, the suit in O.S.No.76 of 2006 was restored to file and it is now pending.

6. The objection of Mr.Kumaraguru is that having been set *ex parte* in O.S.No.76 of 2006, the respondent herein has no right to seek transfer of the suit. I am unable to accept the said submission, once the *ex parte* decree is set aside, all the defendants in a partition suit are entitled to defend the same. Admittedly the suit in O.S.No.92 of 2014 pending on the file of the



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Additional District Court, Villupuram also relates to the same estate. As rightly pointed out by the learned Principal District Judge there is a strong possibility of there being conflicting verdicts, if the two suits are tried separately.

7. Hence, I do not see any reason to interfere with the order of transfer passed by the learned Principal District Judge, Villupuram. The Revision therefore fails and it is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

15.12.2021

dsa

Internet : Yes

Index : No

Speaking order



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To

The Principal District Judge, Villupuram.

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R.SUBRAMANIAN, J.

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