



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P. (PD).NO.2294 OF 2016

AND

C.M.P.NO.11880 OF 2016

1. P.Karthikeyan
2. Rukmini Karthikeyan
3. M/s.Turya Style Furniture and Dream Homes Pvt.Ltd
Rep. By its Director P.Karthikeyan
S/o.Padmanabhan
Registered Office at No.2/141 A,
Theethipalayam Road,
Coimbatore - 641 010.

... Petitioners

Versus

1. M/s.Trishul Shelters Private Limited,
Rep. By its Chief Executive Officer Momita Sen Sarma
Flat No.A1, S.F.No.435 / 3,
Aadhi Vinayaka and Murugan Koil Street,
Near PSG Primary School,
Gopal Nagar, Peelamedu,
Coimbatore-641 004.
2. Vellingiri Swaminathan
Director M/s.Trishul Shelters Private Limited
3. Puneet Nanda
Managing Director M/s.Trishul Shelters Private Limited

... Respondents

PRAYER:Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order of the Principal District Court, Coimbatore in Tr.O.P.No.232 of 2015 dated 29.04.2016.

For Petitioner : Mr.Venkadasubbu
for M/s.Sarvabhauman Associates.

For Respondents : Mr.M.Sriram



ORDER

The Revision petitioners have filed Tr.O.P.No.232 of 2015 before the learned Principal District Court, Coimbatore under Section 24 of CPC seeking transfer of the suit in O.S.No.1512 of 2014, which is pending on the file of the I Additional District Munsiff, Coimbatore, to be tried along with the suit in O.S.No.38 of 2015 pending before the IV Additional District Court, Coimbatore.

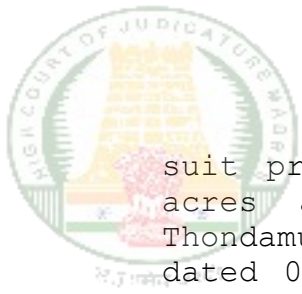
2.The respondents objected and stated that the issues, which have to be decided in two suits, are different and if the suit pending before the No.I Additional District Munsiff Court, Coimbatore is transferred to the IV Additional District Court, Coimbatore, they would lose their rights to prefer an appeal before the Sub-Court.

3.The learned District Judge concluded that the issues involved in both suits are different and if they are transferred, it would create multiplicity of proceedings, besides the parties in O.S.No.1512 of 2014 would lose their right of appeal. Accordingly, the petition was dismissed on 29.04.2016. Aggrieved by the said order, the petitioners have preferred this revision.

4.At the time of arguments, the learned counsel for the revision petitioners submitted that the parties and the suit properties are also one and same and the relief sought in both the suits are also related to each other, but without considering this aspect, the learned District Judge has erroneously dismissed the petition. Hence, he prayed to allow this Civil Revision Petition.

5.By way of reply, the learned counsel for the respondents submitted that they filed a suit in O.S.No.1512 of 2014 before the No.I District Munsiff Court, Coimbatore, for the relief of declaration. Subsequently, these petitioners filed another suit in O.S.No.38 of 2015 before the learned District Judge, Coimbatore, for mandatory injunction and the relief sought for are different in nature. Accordingly, the learned District Judge appreciated these facts and dismissed the transfer application. Hence, they prayed to dismiss this revision petition as no merits.

6. Considering the submissions made on both sides, and on a perusal of records, it reveals that O.S.No.1512 of 23014 on the file of No.I, Additional District Munsif Court, was filed by the respondents herein as a plaintiff for the relief of declaration and other consequential relief with regard to the



suit property situated in S.F.No.17/1A with an extent of 2.26 acres along with the amenities in Theethipalayam Village, Thondamuthur, Coimbatore village, which is related to sale deed dated 07.11.2005. In that suit, these respondents are named as defendants in O.S.No.38 of 2015 filed by the present respondents against these petitioners before the learned District Judge, Coimbatore, for the relief of mandatory injunction to perform the Memorandum of Understanding, dated 27.09.2013 and to sell the properties of the company and also to submit the accounts as well as the money claims.

7. On considering the plaint averments made in O.S.No.38 of 2015, it is seen that the cause of auction for the suit arose on 06.07.2005 with other subsequent events with regard to the execution of Memorandum of Understanding dated 27.09.2013. According to the plaint averments, one of the understanding between the parties is that the landed property to an extent of 2.26 acres in S.F.No.17/1A in Theethipalayam Village, Thondamuthur, Coimbatore, shall be transferred in the name of 1st respondent /defendant by the 1st petitioner / plaintiff by way of sale deed.

8. Further, the plaint averments reveals that the 1st defendant failed to perform the said Memorandum of Understanding, and they filed the suit with a prayer to direct the respondents/ defendants to perform the terms of Memorandum of Understanding, dated 27.09.2013. Therefore, the suit in O.S.No.38 of 2015 was filed for the relief of mandatory injunction, but the subject matter of the issue involved is landed property in S.F.No.17/1A, with an extent of 2.26 acres of Theethipalayam Village, Thondamuthur, Coimbatore, which is the suit property in O.S.No.1512 of 2014 wherein, these respondents are claiming absolute right over the property.

9.Hence, in both suits, parties are same and the issues involved in the suits are related to the right and title in respect of S.F.No.17/1A with an extent of 2.26 acres. Both the parties are claiming right over the property by throwing allegations against each other. Therefore, the title of the said property is mainly involved in both the suits, and other consequential reliefs with regard to the accounts and other money claimed, which are also the subject matter of Memorandum of Understanding between the parties. The right and title of the property in S.F.No.17/1A, is a subject matter, which has to be decided in both suits.

10. Hence, if both the suits are tried separately, it would lead to multiplicity of proceedings and would not end in fair adjudication, and therefore, it is just and necessary to decide



the issue between the parties. Both cases should be tried jointly in one Court i.e., Additional District Court, Coimbatore. But, without considering these factual issues involved in both suits, the learned Judge erroneously dismissed the transfer application. Hence the order passed by the learned District Judge is set aside and the Tr.O.P.No.232 of 2015 filed by the plaintiffs are allowed.

11. Accordingly the suit in O.S.No.1512 of 2014 pending before the learned No.I, Additional District Munsiff, Coimbatore shall stand transferred and tried along with O.S.No.38 of 2015 on the file of No.IV, Additional District Court, Coimbatore and both suits shall be disposed of, as early as possible without unnecessary delay.

12. Accordingly, Civil Revision Petition is allowed and the order passed by the learned trial Judge is set aside and the learned No.IV, Additional District Judge, Coimbatore is directed to dispose of both the suits as jointly as early as possible. Consequently, connected Miscellaneous Petition is Closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court,
Coimbatore.
2. The Ist Additional District Munsif,
Coimbatore.
3. The IV Additional District Court,
Coimbatore.

+1cc to Mr.M.Sriram, Advocate, S.R.No.62278

+1cc to M/s.Sarvabhauman Associates, Advocate, S.R.No.62927

C.R.P. (PD) .No.2294 of 2016
and
C.M.P.No.11880 of 2016

AD(CO)
RLP(10/12/2021)