



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

CORAM

THE HON'BLE Mr.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2269 of 2021

and

C.M.P.Nos.17234 & 17235 of 2021

1.L.Muruganantham

2.L.Sumithra Devi

...Petitioners/Petitioners

-Vs.-

1.D.Karthikeyan

2.K.Padmavathy

3.R.Dhandapani

...Respondents/Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 24<sup>th</sup> September 2021 passed in TROP.No.69/2021 on the file of the Principal District Judge, Tiruppur.

For Petitioner : Mr.M.Shankar

O R D E R

This Petition is filed challenging the order passed in Tr.O.P.No.69/2021 passed by the learned Principal District Judge, Tiruppur on 24.09.2021.

2.Learned counsel for the Petitioner submitted that O.S.No.58 of 2005 was filed by one Ms.Sumithradevi against one Ms.K.Padmavathy and Mr.R.Dhandapani, seeking relief of specific performance of contract on the basis of sale agreement dated 19.01.1998. O.S.No.233 of 2021 was filed by one Mr.Karthikeyan against one Mr.L.Muruganantham, the 1<sup>st</sup> Petitioner herein for the relief of partition of suit property into two shares and allot one such share to Mr.Karthikeyan. It is the submission of the learned counsel for the Petitioner that the property in both the Suits is one and the same and there is only one property. Plaintiff in O.S.No.233 of 2021 viz., Mr.Karthikeyan is the son of the 2<sup>nd</sup> defendant viz., Mr.R.Dhandapani in O.S.No.58 of 2005. The defendant in O.S.No.233 of 2021 viz., L.Muruganantham is the son of Ms.Sumithradevi, who is the Plaintiff in O.S.No.58 of 2005. When the suit in O.S.No.58 of 2005 is pending, Mr.Karthikeyan



filed a Suit for partition in O.S.No.233 of 2021 viz., suppressing the fact that O.S.No.58 of 2005 is pending. Since the property in both the Suits is one and the same and the parties are closely related to each other, both the Suits have to be tried together to avoid conflict judgments. Therefore, Tr.OP.No.69 of 2021 was filed. However, it is submitted by the learned counsel for the Petitioner that the learned Principal District Judge, Tiruppur has not considered the merits of the Petitioners' claim and dismissed the Petition. Challenging the said order, this Civil Revision Petition is filed.

3.The reading of the order of the learned Principal District Judge, Tiruppur in Tr.O.P.No.69 of 2021, dated 24.09.2021 shows that Suit in O.S.No.58 of 2005 was filed in the year 2005 on the basis of sale agreement dated 19.01.1998. This case is pending for cross examination of PW1. Pending suit, the Petitioner therein viz., Sumithradevi had allowed the suit to be dismissed for default and later the same was restored. Suit in O.S.No.233 of 2021 was filed for partition. An application for rejection of plaint in O.S.No.233 of 2021 is pending. It is the duty of the Petitioner to prove his readiness and willingness and enforceability of the agreement before the trial Court in the Suit for specific performance. It is also observed that at this stage, especially when the Suit for specific performance is pending for 16 years, Petitioner cannot seek for joint trial of Suit in O.S.No.233 of 2021 for the reason that issues which are to be decided in both the cases are not the same issues. Not only that, the parties are different and the cause of action for both the Suit is different and relief sought for is also different. With these observations, the learned Principal District Judge, Tiruppur dismissed the Tr.OP.No.69 of 2021.

4.Consideration of the materials and submission of the learned counsel for the Petitioner show that the Suit for specific performance in O.S.No.58 of 2005 was filed in the year 2005 and it is pending. Partition Suit in O.S.No.233 of 2021 was filed in the year 2021. Admittedly, the parties in the partition suit are not the same parties in the specific performance suit. The Suit property in both the cases is one and the same, but the parties in both the Suit are different, relief sought for in both the Suit are different and the cause of action for filing both the Suit are different. Top it all, Suit for specific performance in O.S.No.58 of 2005 was filed in the year 2005. If Suits are tried together, it will further delay the progress of O.S.No.58 of 2005 as the relief sought in O.S.No.58 of 2005 is only for specific performance. In the Partition Suit, preliminary decree has to be passed and then final decree has to be passed. It will consume lot of time for finally disposing both the suits. In the interest of justice and on the merits of case, this Court is of the considered view that joint trial of both cases is not feasible and not necessary. The learned Principal District Judge,



Tiruppur, considering all these aspects dismissed the Tr.OP.No.69 of 2021 and this Court finds no reason to interfere with the order of the learned Principal District Judge, Tiruppur passed in Tr.OP.No.69 of 2021 on 24.09.2021.

WEB COPY

5. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

sai

To

The learned Principal District Judge,  
Tiruppur.

C.R.P.No.2269 of 2021

and

C.M.P.Nos.17234 & 17235 of 2021

NMI (CO)

PR (01/12/2021)