

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No. 558 of 2019

Deivathal

..Petitioner

Vs

1.Sree Chitral Mills,
Rep. By its Partner S.Kumar,
11, Rajarav Street,
Tirupur.

2.A.Natarajan
3.N.K.Sengalippan
4.N.Sangameshwaran

5.M/s.Pentool Steels Products Pvt Ltd.,
Rep. By its Manager,
No.17, 18 Ranga Konar Street,
Coimbatore - 641 009.

..Respondents

Petition filed under Section 24 of CPC to transfer the proceedings pending in E.P.No. 185 of 2008 in O.S.No. 568 of 1992 on the file of I Additional Sub Court, Coimbatore to the file of Principal Sub Court, Tirupur to try along with the suit in O.S.No. 439 of 2016.

For Petitioner : Ms.N.Nathami
For Respondents : Mr.K.S.Viswanathan
for Mr.S.Sivakumar for R1
No appearance for R4
R2 - died (steps due)
R3 and R5 no such addressee

ORDER

The transfer petition under Section 24 of the CPC is filed to transfer the E.P.No. 185 of 2008 in O.S.No. 568 of 1992 on the file of the I Additional Sub Court, Coimbatore to the Sub-Court, Tiruppur to be tried along with O.S.No. 439 of 2016.

2. The issues involved in the suit are unnecessary as far as the present transfer petition is concerned. The only question arises is whether the execution proceedings now pending before the I Additional Sub-court, Coimbatore may be transferred to the Court at Tiruppur to be tried along with the subsequent suit in O.S.No. 439 of 2016.

3. It is an admitted fact that the judgment and decree passed in O.S.No. 568 of 1992 was confirmed by the First Appellate Court and in the Second Appeal and thereafter before the Apex Court of India. Thus, the judgment and decree in O.S.No. 568 of 1992 became final and the execution proceedings were instituted in E.P.No. 185 of 2008. Thereafter, the petitioner filed another suit in O.S.No. 439 of 2016.

4. Learned counsel appearing for the petitioner contended that the subject-matter is interconnected and the execution proceedings is to be adjudicated along with the suit in O.S.No. 439 of 2016 and to decide the issues in common.

5. Learned counsel appearing for the first respondent objected the said contention stating that even in case of some link between the properties and that the parties are one and the same as far as the execution proceedings are concerned, the judgment and decree became final in all respects and, therefore, the decree holder cannot be prevented from pursuing the execution proceedings independently to realize the decree passed by the trial Court. Such a right is an absolute right and by instituting another suit, the petitioner cannot prolong and protract the issues which would infringe the rights of the decree holder under the provisions of CPC.

6. This Court is of the considered opinion that any such tactical method adopted by the parties to prolong or protract the civil proceedings can never be encouraged by the Courts. It is not as if the transfer can be granted in a routine manner. A simple submission that the parties are one and the same and the suit properties involved in the execution proceedings as well as in the fresh suit are one and the same would not be a ground to grant transfer of case. The rights of the parties are to be ascertained independently with reference to the judgment and decree already confirmed up to the Hon'ble Supreme Court of India. Thus, the petitioner is at liberty to pursue the remedy with reference to the fresh suit instituted in O.S.No.439 of 2016. However, the execution proceedings filed in E.P.No. 185 of 2008 in O.S.No. 568 of 1992 is to be decided independently on its own merits. The decree holder at any circumstances can be prevented from executing the decree and any other subsequent suit cannot be a bar for filing an independent execution proceedings. In the present case, the rights of the decree holder became crystallized and, therefore, the executing court is directed to proceed with the execution proceedings and dispose of the same as expeditiously as possible.

With these observations, the transfer civil miscellaneous petition stands dismissed. Consequently, the connected C.M.P.No. 15786 of 2019 is closed.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

ssm

To

1. The I Additional Sub Court, Coimbatore.
2. The Principal Sub Court, Tirupur.

+lcc to Mr.S.Sivakumar, Advocate SR.No.11997
+lcc to Mr.T.S.Baskaran, Advocate SR.No.12457

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KKV/04/03/2021



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