



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :08.03.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (MD)No.2684 of 2014 (PD)

MP(MD) No.1 of 2014

Lakshmi

.. Petitioner

Vs.

- 1.Ganesa Pillai
- 2.Gandhimathi
- 3.Murugesan
- 4.Kumaresan
- 5.Malini
- 6.Ramasamy
- 7.Jegajothi
- 8.Tamilarasi
- 9.Maheswari
- 10.Geetha
- 11.Rajendran

.. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed by the Principal District Court, Pudukottai, dated 26.11.2013 in T.O.P.No.15 of 2012.

For Petitioner	: Mr.K.N.Govardhanan
For R4 & R5	: Mr.G.Sridharan
For R1 to R3 & R6 to R11	: No appearance

O R D E R

The petitioner seeks transfer of proceedings in E.A.No.130 of 2011, filed by her under Order 21 Rule 97 of Code of Civil Procedure, claiming that she alone entitled to the suit properties, subject matter of O.S.No.72 of 2004 and hence the decree in the said suit cannot be executed against her. The suit in O.S.No.72 of 2004 is a suit for specific performance filed by the fourth and fifth respondents against the respondents 1 to 3 herein. The suit came to be decreed and the said decree was put in execution in E.P.No.16 of 2017. Sale deed was also executed by the Court and when delivery was ordered, the petitioner herein has come up with E.A.No.130 of 2011, seeking for the reliefs stated supra. Not stopping there, the petitioner also filed a suit for partition in O.S.No.28 of 2011, on the file of the Principal District Court, Pudukottai. The petitioner filed transfer O.P.No.15 of 2012, seeking transfer of execution proceedings in E.A.No.130 of 2011, to the file of the Principal District Court, to be taken up along with the suit. The only contention of the petitioner is that the questions to be decided in the Suit as well as the application, which is filed under Order 21



Rule 97 is the right, title and interest of the petitioner, if trial is conducted separately, may result in conflicting judgments and therefore, both proceedings should be tried together.

2.The learned Principal District Judge, who heard the transfer petition dismissed the same, concluding that it is the Executing Court, which has the power to decide of questions relating to right title and interest to the property, subject matter of execution before it. Therefore, the learned District Judge relying upon the judgment of this Court in **2013 3 TNLJ 207** dismissed the transfer original petition. The petitioner has come up with this revision, as against the said order.

3.I have heard Mr.K.N.Govardhanan, the learned counsel appearing for the petitioner and Mr.G.Sridharan, the learned counsel appearing for the respondents 4 & 5. The object of the petitioner is to delay the proceedings. She had filed a suit for partition and also filed an Execution Application. In terms of Order 21 Rule 101 of Civil Procedure Code, the Executing Court is vested with the power to decide all questions including the questions relating to the right title and interest of the property arising between the parties to the proceedings on an application under Rule 97 Order 99 or Order 21 of Code of Civil Procedure. Therefore, the Executing Court being a competent Court, I do not see any reason to transfer the Execution Proceedings, to the file of the Principal District Court. In order to prevent any possibility of there being, conflicting judgments, if the proceedings go on separately, I am of the opinion that this is a fit case, where, I can invoke my power under Article 227 of Constitution of India and stayed the proceedings in partition suit till such time the execution proceedings are disposed of. In view of the same, Civil Revision Petition is dismissed. Proceedings in O.S.No.28 of 2011 will stand stayed, till the disposal of the Execution Application No.130 of 2011 by the Executing Court.

4.Considering the fact that the decree for specific performance is of the year 2004, the Executing Court namely, the Subordinate Court, Pudukottai is directed to dispose of the Execution Application No.130 of 2011, within a period of 8 months from the date of receipt of a copy of this order, in this Revision. No costs. Registry is directed to circulate this order to the Subordinate Court, Pudukottai. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

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Sub Assistant Registrar(CS)



To

1 The Principal District Court, Pudukottai

2 The Subordinate Court, Pudukottai.

+1cc to Mr.K.N.Govardhanan, Advocate Sr.No.9995

+1cc to Mr.G.Sridharan, Advocate Sr.No.9606

Order made in

C.R.P. (MD) No.2684 of 2014 (PD)

MP (MD) No.1 of 2014

08.03.2021

NR(26.03.2021) 3P:5C