



C.R.P(PD)No.3838 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.04.2022
Pronounced on	29.04.2022

Coram

The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

C.R.P(PD)No.3838 of 2016

1.K.Ganapathi

2.G.Jothi @ Sironmni

...Petitioners

Versus

1.P.Raman

2.Pattathu Rani

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 01.03.2016 in T.R.O.P.No.118 of 2015 on the file of the Principal District Court, Namakkal, pending disposal of above Civil Revision Petition.

For Petitioners : Mr.R.Subramanian

For Respondents : Mr.T.R.Rajaraman



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ORDER

This Civil Revision Petition has been filed by the petitioners challenging the fair and decreetal order passed by the learned Principal District Judge, Namakkal in T.R.O.P.No.118 of 2015 dated 01.03.2016, allowing the transfer original petition filed by one P.Raman (first respondent) under Section 24 of C.P.C, seeking to transfer the suit O.S.No.154 of 2014 pending on the file of the District Munsif Court, Rasipuram to the file of Sub Court, Rasipuram and try along with O.S.No.55 of 2015 pending on the file of Sub Court, Rasipuram.

2. The learned counsel for the petitioners submitted that the suit O.S.No.154 of 2014 was filed by one G.Jothi @ Sironmani (second petitioner), for a relief of permanent injunction restraining the said Raman (first respondent), his men, from in any way disturbing her peaceful possession and enjoyment over the suit properties. The written statement was filed on 01.06.2015 by Raman (first respondent). Thereafter, the suit O.S.No.55 of 2015 on the file of Sub Court, Rasipuram, for partition was



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filed by P.Raman (first respondent) against K.Ganapathi (first petitioner),
G.Jothi @ Sironmani (second petitioner) and Pattathu Rani (second
respondent).

2.1. The written statement in O.S.No.55 of 2015 was filed by G.Jothi @ Sironmani (second petitioner) on 18.12.2015, which was adopted by K.Ganapathi (first petitioner). A transfer petition in T.R.O.P.No.118 of 2015 was filed under Section 24 of C.P.C before Principal District Court, Namakkal by Raman (first respondent), to order to transfer the suit O.S.No.154 of 2014 pending on the file of District Munsif Court, Rasipuram to the file of Sub Court, Rasipuram and try along with O.S.No.55 of 2015 pending on the file of Sub Court, Rasipuram.

2.2. The learned counsel further submitted that the said transfer petition is not maintainable and this apart, the said G.Jothi @ Sironmani (second petitioner) has filed the suit O.S.No.154 of 2014 before District Munsif Court, Rasipuram, for permanent injunction with respect to Item Nos.2 to 8 of the properties mentioned in the transfer petition. The said



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Raman (first respondent) has also filed a partition suit in O.S.No.55 of 2015 before Sub Court, Rasipuram. It is absolutely false to state that the issues to be decided in both the suits are one and the same and also, there will be conflict of judgement if both the suits are tried separately. On that account, both the suits have to be tried jointly. There is absolutely no necessity to try both the suits together. The cause of action found in the partition suit O.S.No.55 of 2015 is that of a different one from the suit O.S.No.154 of 2014 which was filed for permanent injunction. The suit O.S.No.154 of 2014 is pending on the file of District Munsif Court, Rasipuram and the same need not to be transferred to Sub Court, Rasipuram in order to try along with O.S.No.55 of 2015 which is pending on the file of the Sub Court, Rasipuram.

2.3. The transfer petition has been filed by Raman (first respondent) in order to delay the proceedings and to prevent G.Jothi @ Sironmani (second petitioner) from getting immediate relief of temporary injunction in the permanent injunction suit O.S.No.154 of 2014 filed by G.Jothi @ Sironmani (second petitioner).



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3. The learned counsel appearing for the respondents submitted that G.Jothi @ Sironmani (second petitioner) has filed suit O.S.No.154 of 2014 before District Munsif Court, Rasipuram for permanent injunction against the said Raman (first respondent). Subsequently, Raman (first respondent) has filed the suit O.S.No.55 of 2015 before Sub Court, Rasipuram for the relief of declaration that Will dated 18.01.1985 executed in favour of K.Ganapathi (first petitioner) by one Pattayammal and the Settlement Deed Documents dated 09.10.2003 alleged to have been executed by K.Ganapathi (first petitioner) in favour of G.Jothi @ Sironmani (second petitioner) as null and void and also, for the relief of permanent injunction. He further submitted that both the suits are related to same subject matter with regard to the property and the parties are also one and the same. Hence, suit O.S.No.154 of 2014 (permanent injunction suit) on the file of District Munsif Court, Rasipuram has to be transferred to Sub Court, Rasipuram and tried along with O.S.No.55 of 2015 (partition suit) pending on the file of Sub Court, Rasipuram. The transfer petition in T.R.O.P.No.118 of 2015 was allowed and the suit O.S.No.154 of 2014 on the file of District Munsif



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Court, Rasipuram was ordered to be transferred to the file of Sub Court, Rasipuram and to be tried along with suit O.S.No.55 of 2015 which is pending on the file of the Sub Court, Rasipuram.

4. Heard the learned counsel on both sides and perused the materials available on record.

5. It can be seen from the records that the suit O.S.No.154 of 2014 on the file of District Munsif Court, Rasipuram was filed by G.Jothi @ Sironmani (second petitioner) against Raman (first respondent), for the relief of permanent injunction and the suit O.S.No.55 of 2015 on the file of Sub Court, Rasipuram was filed by Raman (first respondent) against K.Ganapathi (first petitioner), G.Jothi @ Sironmani (second petitioner) and Pattathu Rani (second respondent), for partition. The written statement in O.S.No.154 of 2014 was filed on 01.06.2015 and the written statement in O.S.No.55 of 2015 was filed on 18.12.2015. While the aforesaid suits are pending, a transfer petition in T.R.O.P.No.118 of 2015 was filed by Raman (first respondent) under Section 24 of C.P.C, seeking to transfer the suit



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O.S.No.154 of 2014 on the file of District Munsif Court, Rasipuram to the file of Sub Court, Rasipuram and try the suit O.S.No.154 of 2014 along with suit O.S.No.55 of 2015 pending on the file of Sub Court, Rasipuram.

6. It is pertinent to extract Section 24 of C.P.C hereinbelow:

“24. General power of transfer and withdrawal – (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage -

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section, -



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(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) “proceeding” includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]”

7. The suit O.S.No.154 of 2014 which was transferred to the file of Sub Court, Rasipuram was renumbered as O.S.No.35 of 2016. It is to be further noted that the relief sought for in O.S.No.154 of 2014 and the relief sought for in O.S.No.55 of 2015 are totally different. The parties to the suit O.S.No.55 of 2015 are not the parties in O.S.No.154 of 2014 and the judgement in one suit will certainly bind the persons who are not the parties before it. The prayer in O.S.No.154 of 2014 is for permanent injunction and the prayer in O.S.No.55 of 2015 is for partition relief of declaration to declare the Will and the Settlement Deed Documents dated 18.01.1985 and 09.10.2003 as null and void. The suit O.S.No.55 of 2015 is not maintainable since the same has been filed belatedly after 30 years and 12



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years respectively and only in order to overcome the same, T.R.O.P.No.118 of 2015 for joint trial was filed by Raman (first respondent).

8. The Item Nos.1 & 4 in the schedule of the property in O.S.No.55 of 2015 are not the subject matter in O.S.No.154 of 2014. Further, the extent of Item Nos.2, 3, 4 & 8 are not one and the same in both the suits. The suit O.S.No.154 of 2014 was filed by G.Jothi @ Sironmani (second petitioner) against Raman (first respondent), whereas, the suit O.S.No.55 of 2015 was filed by Raman (first respondent) against K.Ganapathi (first petitioner), G.Jothi @ Sironmani (second petitioner) and Pattathu Rani (second respondent), which clearly shows that the parties in both the suits are one and the same.

9. The parties in both the suits are one and the same but the subject matter property in both the suits are not the same. The learned Principal District Judge, Namakkal has erred in holding that the subject matter property in both the suits are one and the same and allowed T.R.O.P.No.118 of 2015 and ordered to transfer the suit O.S.No.154 of 2014 on the file of



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the District Munsif Court, Rasipuram to the file of Sub Court, Rasipuram and try the suit O.S.No.154 of 2014 along with suit O.S.No.55 of 2015.

10. This Court is not inclined to interfere with the first part of the order passed by the learned Principal District Judge, Namakkal, ordering the transfer of O.S.No.154 of 2014 on the file of District Munsif Court, Rasipuram to the file of Sub Court, Rasipuram.

11. In regard to the second part of the order for joint trial of suit O.S.No.154 of 2014 along with suit O.S.No.55 of 2015, this Court is of the view that the same is liable to be set aside on the ground that even though the parties in both the suits are one and the same but the subject matter properties are not one and the same.

12. In view of the facts and circumstances of the case and also, for the foregoing reasons, the order passed by the learned Principal District Judge, Namakkal, in regard to the transferring of suit O.S.No.154 of 2015 to the file of Sub Court, Rasipuram which has been subsequently renumbered



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as O.S.No.35 of 2015 is hereby confirmed, but, the order in regard to the joint trial of the suit O.S.No.154 of 2014 with suit O.S.No.55 of 2015 is liable to be set aside and accordingly, the same is set aside. The Sub Court, Rasipuram is directed to conduct the trial of the suits O.S.No.154 of 2014 (renumbered as O.S.No.35 of 2015) and O.S.No.55 of 2015 separately.

13. In the result, this Civil Revision Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

29.04.2022

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

To

1.Principal District Court,
Namakkal.

2.Sub Court,
Rasipuram.

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J.SATHYA NARAYANA PRASAD, J.

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Pre-Delivery order
in C.R.P(PD)No.3838 of 2016

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