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C.R.P(PD)(MD).No.2327 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.04.2023

Pronounced on : 19.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.2327 of 2018

and

C.M.P(MD)No.10380 of 2018

1.Karuppasamy

2.Maruthathal

... Revision Petitioners

Vs.

1.Sumathi

2.Krishnan

3.Balamurugan

4.Umaparvathi

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.08.2018 passed in I.A.No.113 of 2018 in O.S.No.185 of 2014 on the file of the Subordinate Court, Sankarankovil, Tirunelveli District.

For Petitioner : Mr.R.J.Karthick

For Respondent : Mr.S.Meenakshisundaram
Senior Counsel
for Mr.N.GA.Natraj



ORDER

This Civil Revision Petition is filed against the order dated 20.08.2018 passed in I.A.No.113 of 2018 in O.S.No.185 of 2014 on the file of the Subordinate Court, Sankarankovil, Tirunelveli District.

2. The brief facts of the case:

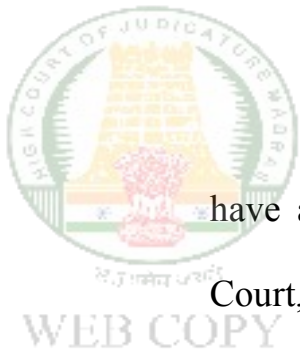
The revision petitioners are the defendants 1 and 2 in O.S.No.185 of 2014 on the file of the Subordinate Court, Sankarankovil. They have filed the petition in I.A.No.113 of 2018 to let in common evidence in O.S.No.185 of 2014, O.S.No.190 of 2014 and in E.A.No.173 of 2014 in E.P.No.48 of 2010 in O.S.No.68 of 2005 pending on the file of the Subordinate Court, Sankarankovil for convenience of the parties and to avoid separate over lapping of evidence. The contesting respondents 1 and 2 have resisted the said application by filing detailed counter. After hearing both, the Trial Court has dismissed the petition in I.A.No. 113 of 2018 in O.S.No.185 of 2014 on 20.08.2018. Aggrieved by the order of the Trial Court, the petitioners moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.



4. The learned counsel appearing for the petitioners has argued that there are two suits in O.S.Nos.185 of 2014 and 190 of 2018 and E.A.No. 173 of 2014 in E.P.No.48 of 2010 in O.S.No.68 of 2005 on the file of the Subordinate Court, Sankarankovil are pending between the parties. The questions to be decided in the above proceedings are common and in order to avoid overlapping evidence common evidence is necessary. Claim and counter claim over the properties in question have been raised by the parties. In such circumstances, common trial has to be ordered to avoid separate overlapping evidence being taken in the above proceedings and letting in common evidence will be more convenience to the parties. But, the trial court without considering the rival claim of the parties, dismissed the petition filed by the petitioners. Therefore, the revision petition may be allowed by setting aside the impugned order. In support of his argument, the learned counsel for the petitioners has relied on the decision of the **Hon'bls Supreme Court reported in (2007) 1 Supreme Court Cases, 97** in the case of **State Bank of India Vs. Ranjan Chemicals Ltd., and Another.**

5. The learned counsels appearing for the contesting respondents 1 and 2 vehemently contended that the Trial Court has correctly discussed the facts of the case and rightly dismissed the petition. The petitioners



have already filed Tr.O.P.No.129 of 2014 before the Principal District Court, Tirunelveli, to transfer the suit in O.S.No.115 of 2012 on the file of the Additional District Munsif Court, SankaranKoil and O.S.No.257 of 2006 on the file of the Principal District Munsif Court, Sankarankoil for joint trial along with E.A.No.173 of 2014 in E.P.No.48 of 2010 in O.S.No.68 of 2005 on the file of the Subordinate Court, Sankarankovil. That Tr.O.P.No.129 of 2014 was allowed specifically directing simultaneous trial of the suits along with E.A.No.173 of 2014 in E.P.No.48 of 2010 in O.S.No.68 of 2005. The petitioners have not preferred any revision or appeal against that order. Further, the claim sought in E.A.No.173 of 2014 in E.P.No.48 of 2010 in O.S.No.68 of 2005 to order the decree passed therein as null and void is not entertainable. The matter has been decided in O.S.No.68 of 2005 and the decree is pending before the execution court to execute the decreetal order. A judgment debtor cannot be allowed to revert back to earlier stage of proceedings and cannot reagitate the decided subject matter in an earlier suit. Except execution proceedings, two suits are pending between the parties. The evidence let in original suits and in execution proceedings cannot let in commonly. The Trial Court has correctly dismissed the petition and hence, this Civil Revision Petition has to be dismissed. In support of his arguments, the respondents counsel has relied on the following decisions:



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(i) (1976) 4 Supreme Court Cases 66 (Y.B.Patil and Ors. Vs. Y.L.Patil)

(ii) (2008) 4 Supreme Court Cases 615 (Barkat Ali and Anr. Vs. Badrinarain (Dead) by Lrs.)

(iii) (2002) 7 Supreme Court Cases 447 (C.V.Rajendran and Anr. Vs. N.M.Muhammed Kunhi)

6. On hearing both and on perusal of records, it is clear that the petitioners are defendants 1 and 2 in O.S.No.185 of 2014 and plaintiffs in O.S.No.190 of 2014. The respondents, who are plaintiffs in O.S.No.185 of 2014 obtained decree after contest and filed execution proceedings in E.P.No.48 of 2010 to execute the decree. The 2nd respondent is one of the defendant in another suit. The petitioners have filed claim petition in E.A.No.173 of 2014 in E.P.No.48 of 2010 in O.S.No.68 of 2005. It is settled principle of law that the Executing Court can only proceed to execute the decree and not go beyond the decree and the parties to the suit must obey the command of the decree, until the decree is set aside by the subsequent constitutional proceedings or by the appellate court. On hearing both, it is admitted fact that the revision petitioners have filed petition in Tr.O.P.No.129 of 2014 on the file of the Principal District Court, Tirunelveli for joint trial of both the suits in O.S.No.115 of 2012



and O.S.No.257 of 2006 along with E.A.No.173 of 2014 in E.P.No.48 of 2010 in O.S.No.68 of 2005 on the file of the Subordinate Court, Sankarankovil and in that petition it was directed simultaneous trial of the suits along with E.A.No.173 of 2014 in E.P.No.48 of 2010 in O.S.No. 68 of 2005. The revision petitioners have not preferred any revision or appeal against that order. But, the revision petitioners have chosen to file petition in I.A.No.113 of 2018 in O.S.No.185 of 2014 seeking the very same prayer for letting in common evidence. As stated supra, the Executing Court cannot go beyond the decree, which is reached upon discussion of evidence adduced in that suit. The petition in E.A.No.173 of 2014 in E.P.No.48 of 2010 in O.S.No.68 of 2005 is filed under Section 47 and 151 of Civil Procedure Code with a prayer to set aside the decree as null and void. Therefore, prayers in the said E.A.No.173 of 2014 and in both the suits cannot be presumed to let in evidence commonly. Both facts and circumstances are seemed to be different on the fact of the said proceedings. Hence, the trial Court has correctly discussed the petition in I.A.No.113 of 2018 in O.S.No.185 of 2014 and passed the impugned order, which needs no interference by way of this Civil Revision Petition and thus, this Civil Revision Petition fails and the same is liable to be dismissed.



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7.In the result, this Civil Revision Petition is dismissed. No cost.

Consequently, connected miscellaneous petition stands dismissed.

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19.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd

To

- 1.The Subordinate Court,
Sankarankovil,
Tirunelveli District.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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