



CRP No.4225 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.4225 of 2023

and

CMP.No.25687 of 2023

G.Yengaiah

... Petitioner

/vs/

Tamilselvam

... Respondent

PRAYER : This Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order in Tr.O.P.No.170/2023, dated 20.09.2023 on the file of the Principal Judge, City Civil Court, Chennai and consequently, transfer the suit in O.S.No.5622/2021 pending on the file of the XV Assistant City Civil Court, Chennai to the XVI Additional City Civil Court, Chennai to be tried jointly along with O.S.No.2855/2023.

For Petitioner ... Mr.K.Karthikeyan

For Respondent ... Mr.P.Rajkumar Pandian



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ORDER

This Civil Revision Petition has been filed to set aside the order in Tr.O.P.No.170/2023, dated 20.09.2023 on the file of the Principal Judge, City Civil Court, Chennai and consequently, transfer the suit in O.S.No.5622/2021 pending on the file of the XV Assistant City Civil Court, Chennai to the XVI Additional City Civil Court, Chennai to be tried jointly along with O.S.No.2855/2023.

2.The petitioner herein has filed O.S.No.5622/2021 before the XV Assistant City Civil Court, Chennai seeking permanent injunction, restraining the respondent/defendant from interfering with his peaceful possession and enjoyment of the suit schedule property, except due process of law. The respondent herein has filed O.S.No.2855/2023 on the file of the XVI Additional City Civil Court, under Order 37 of CPC, for recovery of money. The petitioner has filed Tr.OP No.170/2023 before the Principal Judge, City Civil Court, Chennai to transfer the O.S.No.5622/2021 from the file of the XV Assistant City Civil Court to XVI Additional City Civil



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Court, Chennai to be tried along with O.S.No.2855/2023. According to the petitioner, both the suits are based on the same cause of action and the parties are also one and the same and hence he has filed the above transfer original petition. However, the learned Judge has dismissed the above petition. Challenging the same, the present civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent and I have also perused the materials on record.

4. Admittedly, the petitioner herein has filed the O.S.No.5622/2021 seeking permanent injunction and the respondent herein has filed the O.S.No.2855/2023 for recovery of money under Order XXXVII CPC. While dismissing the transfer petition filed by the petitioner, the learned Principal Judge, City Civil Court, Chennai has observed as follows.

“ On careful perusal of the records, it appears there exists money transaction between the parties. The case of the petitioner (plaintiff in O.S.No.5622/2021) is that he had availed the loan from the respondent and repaid major portion of the loan amount and due to Covid, he was unable to pay the balance amount and for which the respondent attempted to grab the property and threatened the



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petitioner to execute the sale deed and hence, he filed the suit for permanent injunction, It is an ordinary civil suit, where the defendant gets a right to defend the suit even though he may not have any reliable evidence to prove his case. But, the suit filed by the respondent in O.S.No.2855/2023 is for recovery of money filed under Order 37 of CPC based on the cheque/negotiable instrument bearing No.222955, dated 16.02.2023 for a sum of Rs.25,00,000/-. Summary suit (Order 37, Code of Civil Procedure) is a different procedure that offers speedy disposal of the suit, as here the defendant (petitioner herein) is not required to defend as a matter of right. The procedures of trial in both the suits are different and also the appeal right would be curtailed, if the suit in O.S.No.5622/2021 is transferred. Hence, this petition is liable to be dismissed.”

5. It is argued by the learned counsel for the petitioner that, the petitioner never issued any cheque to the respondent, however, the respondent himself has created the cheque; and bounce the alleged cheque in the account of the petitioner; and had filed the above summary suit. He further submitted that, both the cases have been filed for same cause of action and the parties are also one and the same, however, without considering the case of the petitioner in proper perspective, the learned Judge has dismissed the petition and hence, the impugned order is liable to be dismissed and the case may be transferred as prayed for by the petitioner.



WEB COURT

6. The learned counsel for the respondent filed counter affidavit stating that, though the parties to both the suits are one and the same, the cause of action for filing the above suits are different and hence, he justified the order passed by the learned Principal Judge, City Civil Court, Chennai.

7. On perusal of the plaint in O.S.No.5622/2021 filed by the petitioner herein before the XV Assistant Judge, City Court, Chennai, it is averred that, he is the owner of the suit property and he obtained loan from the respondent and for the same, he gave the household documents and other documents, as claimed by him. Further, he had paid major amount of Rs.16,50,000/- to the defendant and only a sum of Rs.4,82,000/- is the balance, payable to the respondent. Though the petitioner is ready to pay the balance amount with interest regularly, the respondent/defendant did not accept the same and demanded to pay Rs.40,00,000/- and also he threatened the plaintiff that, he will forcibly evict the petitioner and his family members from the suit property. Further, at paragraph No.14 of the plaint, it has been stated as follows.



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14. The plaintiff submits that, as his words were not accepted by the defendant and the defendant going on repeatedly demanding to pay Rs.40,00,000/- or the plaintiff will be forcibly taken into the nearby Sub Registrar Office for registering the suit schedule property in his name. At one stage, the defendant started severally attacking the plaintiff by his hands and the henchmen and rowdy elements showed knife and threatened the plaintiff to yield to the illegal demand made by the defendant. All this had happened on 26.07.2021.”

8. In the plaint in O.S.No.2855 of 2023 filed by the respondent herein, he prayed for recovery of a sum of Rs.25,00,000/- from the petitioner herein. Further, it is averred in the above suit at paragraph No.6 as follows.

" 6. The plaintiff submits that subsequently the defendant approached the plaintiff once again stating that he was facing financial pressure from other persons for the debts so that he had proposal to sell his property in favour of the plaintiff. The defendant had stated to the plaintiff that the defendant would execute the sale deed in respect of the said property, if the plaintiff pays Rs.15,50,000/- (Rupees Fifteen Lakhs Fifty Thousand only), after deducting the outstanding dues payable by the defendant to him. The said proposal was accepted by the plaintiff, since he wanted to realize the money, which he lent to the defendant.

...

8. The plaintiff submits that on 29.01.2020, the plaintiff went to the Sub Registrar office at Mylapore for registration of sale deed in respect of the



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said property along with witness. When the document was presented for registration, the defendant disclosed that there was no patta issued for the said property and thereby the concerned authorities of Mylapore, SRO refused to accept the document for registration. ..."

9. Though the suit in O.S.No.5622/2021 filed by the petitioner and the suit in O.S.No.2855/2023 filed by the respondent have to be tried in a different procedure, considering the averments made in the above said complaints, this court has clarified with the counsel appearing on either side, as to whether both the suits are interlinked or not?

10. In reply to the same, the learned counsel for the respondent fairly submitted that both the suits are interlinked. Admittedly, it is the contention of the learned counsel for the petitioner that both the suits had arisen out of same cause of action and the parties are one and the same.

11. Therefore, considering the facts and circumstances of both the suits and also taking into account the submission made by both the counsel, this court is inclined to transfer the suit, as prayed for the by the petitioner.



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12. Accordingly, the suit in O.S.No.5622/2021 is directed to be withdrawn from the file of the XV Assistant City Civil Court, Chennai and transferred to the XVI Additional City Civil Court, Chennai. The XV Assistant Judge, City Civil Court is directed to send the entire records to the XVI Additional City Civil Court, Chennai within a period of two weeks from the date of receipt of a copy of this order and on receiving the same, the learned XVI Additional Judge, City Civil Court, Chennai is directed to issue notice to both the parties and take both the suits in O.S.No.5622/2021 and O.S.No.2855/2023 for simultaneous trial and dispose of the same on merits as early as possible.

13. With the above direction, this civil revision petition is allowed and the impugned order passed by the learned Principal Judge, City Civil Court is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

15.02.2024

Index: Yes/No
Internet : Yes/No
mst



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To
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- 1.The Principal Judge, City Civil Court, Chennai.
- 2.The XVI Additional Judge, City Civil Court, Chennai.
3. The XV Assistant Judge, City Civil Court, Chennai.



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V.SIVAGNANAM ,J.

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