



C.R.P.(MD)No.2336 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2336 of 2024

and

C.M.P.(MD)No.13252 of 2024

M.Micheal Selvaraj

... Petitioner / Petitioner

Vs.

1.I.Serman

2.S.Sundraraj

3.Sathiyavani Muthu

4.Valasudamani

5.Shanmugavadivoo

... Respondents / Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order passed in T.R.O.P.No.309 of 2022 on the file of Principal District Judge, Triunelveli dated 02-07-2024 and allow the Civil Revision petition.

For Petitioner : Mr.T.Selvan

For Respondents : Mr.R.J.Karthick for R1

* * *



C.R.P.(MD)No.2336 of 2024

ORDER

Heard the learned counsel for the revision petitioner and the learned counsel for the first respondent.

2.The revision petitioner is figuring as the defendant in as many as five suits. The first respondent herein filed O.S.No.68 of 2021 on the file of the III Additional District Court, Tirunelveli for the relief of specific performance. The second respondent herein filed O.S.No.196 of 2021 on the file of the III Additional District Court, Tirunelveli for recovery of money. The third respondent herein filed O.S.No.370 of 2021 on the file of the III Additional District Court, Tirunelveli for recovery of money. The fourth respondent herein filed O.S.No.22 of 2022 on the file of the Additional Sub Court, Tirunelveli for recovery of money. The fifth respondent herein filed O.S.No.167 of 2022 on the file of the Principal Sub Court, Tirunelveli for recovery of money. The petitioner herein filed Tr.O.P.No.309 of 2022 on the file of the Principal District Court, Tirunelveli for transferring the suits instituted in O.S.No.167 of 2022 on the file of the Principal Sub Court, Tirunelveli and O.S.No.22 of 2022 on the file of the Additional Sub Court, Tirunelveli to the Court of III Additional District Court, Tirunelveli, to be tried along with the other three suits mentioned above. The Court below vide order dated 02.07.2024 dismissed the



C.R.P.(MD)No.2336 of 2024

transfer original petition. Questioning the same, this civil revision petition came to be filed.

3.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of the civil revision petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.I am not swayed by the submissions of the learned counsel for the revision petitioner. As rightly pointed out by the learned counsel for the first respondent, Tr.O.P.No.309 of 2022 itself is not maintainable. Rule 46(3) of the Civil Rules of Practice deals with applications for transfer. The said rule is as follows:-

“46.Application for transfer:-

(1)

(2)

(3) Separate application:- A separate application shall be presented in respect of each suit of which transfer is sought and the court shall, in each case record in writing its reasons for its order.”



C.R.P.(MD)No.2336 of 2024

WEB COPY

5. When the rule envisages filling of a separate application in respect of each suit which is sought to be transferred, the petitioner herein could not have filed a consolidated / composite transfer original petition for transferring two suits pending before two different Courts. The Hon'ble Division Bench of the Kerala High Court in the decision reported in **2016 1 KLT 696 (Dhanu Joby Vs. Joby Cheriyan)** held that when more than one proceedings are sought to be transferred, separate application shall be filed in respect of each of such proceeding. The petition filed by the petitioner herein is not in consonance with Rule 46(3) of the Civil Rules of Practice. I, therefore, hold that the transfer petition is not maintainable.

6. There is yet another reason for negating the petitioner's request. The petitioner might be the common denominator in all the five suits. He is figuring as the sole defendant. But the plaintiffs are different. The cause of action is also different. While the suit filed by the first respondent herein is for specific performance, the other suits are for recovery of money. When the cause of action is not one and the same, it would not be proper to club them for joint or even simultaneous trial.



C.R.P.(MD)No.2336 of 2024

7.The learned counsel for the petitioner also pointed that the transfer original petition was filed under Section 22 r/w. Section 24 of Civil Procedure Code. While Section 22 of Civil Procedure Code enables the litigants to seek transfer, Section 24 pertains to the power of the High Court and District Court to pass an order on transfer. Section 22 of Civil Procedure Code is as follows:-

“22.Power to transfer suits which may be instituted in more than one Court- *Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.”*

8.Section 22 will apply only if the suit that may be instituted in any one of two or more Courts and is instituted in one of such Courts, the defendant at the earliest possible opportunity and before settlement of issues seek transfer of the suit from one Court to the other Court. In other words, there must be scope for instituting the suit in question before any other Court. If there is no such scope, Section 22 of Civil Procedure Code cannot be invoked. That apart, the applicant for transfer cannot take his own time to file the petition. It must be filed at the earliest opportunity and before settlement of issues.



C.R.P.(MD)No.2336 of 2024

WEB COPY

9. In the case of hand, O.S.No.167 of 2022 and O.S.No.22 of 2022 have been filed on the file of the Sub Courts, Tirunelveli. These suits could not have been instituted before the District Court. Therefore, Section 22 of Civil Procedure Code could not have been invoked. Thus, for the aforesaid reasons, the order impugned in this civil revision petition is sustained and the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

26.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
ias

To:

The Principal District Court,
Tirunelveli.



WEB COPY



C.R.P.(MD)No.2336 of 2024



WEB COPY



C.R.P.(MD)No.2336 of 2024

G.R.SWAMINATHAN, J.

ias

C.R.P.(MD)No.2336 of 2024

26.09.2024