

M.Dhanabalan. Vs. Kavitha and ors.

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Court : Chennai

Decided On : Jul-24-2012

Judge : V.Dhanapalan, J.

Acts : [Code of Civil Procedure,\(CPC\) 1908](#) - Section 24; [Constitution of India](#) - Articles 227

Appeal No. : C.R.P.(PD).No.2546 of 2012 & M.P.No.1 of 2012

Appellant : M.Dhanabalan

Respondent : Kavitha and ors.

Advocate for Pet/Ap. : Mr.Sarfuddin Ali Ahamed, Adv

Judgement :

Civil Revision Petition under Article 227 of the [Constitution of India](#), against the order dated 11.6.2012 in Tr.O.P.No.31 of 2012 on the file of the Principal District Court, Salem.

ORDER

1. This Civil Revision Petition is filed challenging the order dated 11.6.2012 in Tr.O.P.No.31 of 2012 on the file of the Principal District Court, Salem.

2. The revision petitioners are defendants 3 and 4 in O.S.No.1073 of 2010 on the file of the Principal District Munsif Court, Salem and the first revision petitioner is the plaintiff in O.S.No.150 of 2008 on the file of the I Additional Sub-Court, Salem.

3. O.S.No.150 of 2008 has been filed for the relief of declaration, partition and permanent injunction and the same was posted for trial on 21.2.2012. The first respondent herein filed another suit in O.S.No.1073 of 2010 for permanent injunction and it was posted for examination of the plaintiff's evidence on 1.2.2012. The property involved in both the suits, the subject matter and the issues to be decided in both the suits are one and the same. Therefore, to avoid multiplicity of proceedings and conflicting judgments, the revision petitioners moved Principal District Court, Salem in Tr.O.P.No.31 of 2012 under Section 24 of the Code of Civil Procedure to transfer the suit in O.S.No.1073 of 2010 pending on the file of the Principal District Munsif Court, Salem, to the file of the I Additional Sub-Court, Salem, to be tried for joint trial along with O.S.No.150 of 2008.

4. The Principal District Court, Salem, on a consideration of the case and having noticed the plaint in both the cases, the subject property, the issues involved therein as well as the cause of action, came to the conclusion that the suit in O.S.No.150 of 2008 is for the relief of declaration of the sale deed dated 28.3.2008 in favour of the first defendant as null and void and to pass a preliminary decree of partition by dividing the suit property into three equal shares and allot one such share to the first petitioner/plaintiff with possession and also to restrain the first respondent/fourth defendant from encumbering the suit property and such suit is pending for trial; the other suit in O.S.No.1073 of 2010 is for permanent injunction restraining the defendants from trespassing into the suit property and therefore, both the suits are not having the same cause of action and the issues are not same; on the other hand, the cause of action for the other suit is distinct one and the issue as to whether a party to the proceedings could file a separate suit seeking relief of permanent injunction or the same could be sought for in the existing suit, was raised by the petitioners, and considering the nature of both the suits and the stage of one suit is in part-heard stage and the cause of action for both the suits are different and distinct and therefore, there is no need for joint trial and no prejudice will be caused to the parties to the petition if the suit is not

transferred and the said Tr.O.P. was dismissed, against which, the present C.R.P. is filed by the petitioners.

5. Mr.Sarfuddin Ali Ahamed, learned counsel representing Mr.D.Velu, learned counsel for the petitioners, consistently pleaded that the cause of action and the subject matter are one and the same and therefore, both the suits have to be decided commonly on joint trial, particularly to avoid multiplicity of proceedings and conflicting judgments.

6. It is seen that the trial Court, on a perusal of both the cases, came to the conclusion that the cause of action for both the suits are distinct and different and one suit is for declaration, partition and permanent injunction and it was at the part-heard stage and the other suit filed by the party to the earlier suit, is seeking for the relief of permanent injunction as there was trespass into the suit property, could not be tried along with the suit in question and therefore, there is no compelling circumstance to order joint trial and accordingly, the Tr.O.P. was dismissed.

7. Such a view taken by the trial Court cannot be found fault with, as there is no reason to club both the suits together for joint trial in the light of the fact that one suit is already in the part-heard stage and the other suit is in the stage of examination of witnesses. If such things are allowed to happen, there will be prejudice to the parties, and therefore, the view taken by the trial Court, in my considered opinion, does not suffer from infirmity and there is no reason to interfere with the impugned order. Accordingly, the C.R.P. is dismissed. No costs. The Miscellaneous Petition is closed.

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