
(2008) 11 MAD CK 0120

In the Madras High Court

Case No : C.R.P.PD. No. 3121 of 2008 and M.P. No's. 1 and 2 of 2008

S. Kousalya

APPELLANT

Vs

P.K. Ilavarasan, P. Pugalendhi and N. Velmurugan

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2008) 11 MAD CK 0120

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Bhiman, for the Appellant; P. Giridharan, for R1 and R2 and V. Lakshminarayana, for V. Raghavachari for R3, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The revision petitioner herein is the petitioner in Tr.O.P. No. 259 of 2007 before the Principal Judge, City Civil Court,

Chennai. The revision petitioner herein has filed Tr.O.P. No. 259 of 2007 u/s 24 of CPC before the Principal Judge, City Civil Court, Chennai

praying for an order to withdraw and transfer the suit O.S. No. 5232 of 2007 on the file of VII Assistant Judge, City Civil Court, Chennai to be

tried along with O.S. No. 3596 of 2007 on the file of XII Assistant Judge, City Civil Court, Chennai for effectual adjudication and determination of

the issues between the parties herein and after contest, the learned Principal Judge, City Civil Court, Chennai has dismissed the petition.

2. The learned Principal Judge, City Civil Court, Chennai, while passing orders in Tr.O.P. No. 259 of 2007 has inter alia opined that " if the

transfer is allowed, it would only create confusion and delay the proceedings ultimately resulting in undesirable results and it is for the plaintiffs to

choose the Court and he cannot compelled to allow his case to be tried along with another suit where he is not a party and in this case, if transfer is

ordered then the respondents 1 and 2 who are the plaintiffs in O.S. No. 5232 of 2007 will be compelled to conduct the suit which they are not

concerned with and resultantly has dismissed the petition.

3. The learned Counsel appearing for the revision petitioner submits that the learned Principal Judge, City Civil Court, Chennai has failed to note

that the issues are common by virtue of the fact that the property concerned with the schedule of the suit is one and the same and even the interests

claimed by the petitioner and respondents 1 and 2 herein as plaintiffs in O.S. No. 5232 of 2007 is common in nature and therefore, the transfer

petition ought to have been allowed by the Court in the interest of justice and the balance of convenience and further that the property in regard to

O.S.No.5232 of 2007 pending on the file of VII Assistant Judge, City Civil Court, Chennai and O.S. No. 3596 of 2007 pending on the file of XII

Assistant Judge, City Civil Court, Chennai pertaining to property is one and the same should have allowed by the Principal Judge, City Civil Court,

Chennai and further that the Principal Judge, City Civil Court, Chennai has taken into account that the first respondent and the second respondent

are not parties in O.S. No. 3596 of 2007 filed by the petitioner as plaintiff, has come to a conclusion in dismissing the transfer petition ignoring the

fact that the property concerned with the main issue of holding possession under law is one and the same and the very right which is claimed by the

petitioner as well as the respondents 1 and 2 are only way of emanating the rights accrued from the third respondent as legal heir of deceased

mother who claimed the absolute ownership and these aspects have not taken note of by the Principal Judge, City Civil Court, Chennai while

dealing with the transfer petition and that the balance of convenience and also the property in respect of both the suits by way of schedule is one

and the same and these aspects of the matter has not been borne in mind by the learned Principal Judge, City Civil Court, Chennai and therefore

prays for allowing this revision petition in the interest of justice.

4. It is the stand of respondents 1 and 2 that the decision to be rendered in O.S. No. 3596 of 2007 will have bearing on the present proceeding is

clearly devoid of merits and that O.S. No. 3596 of 2007 has been filed for the

relief of permanent injunction against the third respondent as well as for the relief of mandatory injunction for a direction to return the original documents has no reliance to the present suit filed by the respondents and further that O.S. No. 4293 of 2007 has been filed for a Specific Performance, directing the third respondent to execute the sale deed in favour of the petitioner herein and that the suit for Specific Performance which has been projected in pursuance of an agreement of sale dated 11.3.1992 has no nexus to O.S. No. 3596 of 2007 and the consolidation of two suits does not arise and more over that in O.S. No. 4293 of 2007, the respondents are not parties and therefore, the order passed by the trial Court in Tr.O.P. No. 259 of 2007 need not be interfered with by this Court sitting under revision.

5. The learned Counsel appearing for the respondents 1 and 2 cites the decision reported in Lalita Rajya Lakshmi and Another Vs. State of Bihar and Another, wherein it has been observed as follows:

Now, the question is, whether all the circumstances stated above taken together justify the cases to be transferred to another court, as prayed for

by the petitioners. In support of their respective contentions, the parties have placed before me several decisions in order to show what are good

grounds and, what are not sufficient grounds for, transfer. Such cases are: Mohur Singh v. Ghuriba 15 W.R. (P.C) 8 (at P.10) (A); Jawahir Kumar

Devi v. Naresh Chandra AIR 1920 Pat. 365 : 1 Fat L.T. 389 (B): Mula Naramma Vs. Mula Rengamma, (C) Khuaja Ahad Shah v. Mt. Ayshan

Begum AIR 1923 Lah 564 (D) and Binode Behary Bannerjee Vs. King-Emperor, (E). From the above cases, the following grounds of transfer,

inter alia are well established. They are (1) When the Superior Court is satisfied that the proceedings in one Court constitute an abuse of the

process of the Courts (2) When it is clear that some prejudice has been created, and that a fair hearing, and an impartial adjudication, could not be

reasonably expected, even though such a state of things has been brought about by the conduct of the very party applying for the transfer (3)

Where there is any reasonable ground-for supposing that a prejudice against a party's pleader has in any manner or measure affected the Judicial

attitude of the Court towards the petitioner, or his case; and (4) if a party feels that he is not likely to have a fair trial before a particular Court. In

such a case, however, it is true that the reasonable apprehension on the part of the litigant should receive consideration, but at the same time the apprehension must be such as a reasonable man might reasonably be expected to have.

Another decision is pressed into service on the side of respondents 1 and 2 in Surapuneni Rani Vs. Surapuneni Latha and Another, wherein it has been held as follows:

Normally, the proceedings are transferred from one Court to another, at the instance of defendants, mostly on the grounds of convenience or absence of territorial jurisdiction in the Courts, where the proceedings are instituted. It is in exceptional cases, that the proceedings are transferred at the instance of the plaintiffs/petitioners on the grounds of convenience. It is the petitioners, who have chosen the respective Courts, having been convinced that the territorial jurisdiction vested in the respective Courts as regards the concerned subject-matter. The same state of affairs continues. The reliefs claimed in all the four suits are separate and independent of each other. The possibility of emergence of any conflicting decisions is too remote.

6. The learned Counsel appearing for the third respondent submits that there is no commonality of issues involved and no case has been made out

by the revision petitioner for transferring the suits from one Court to another as mentioned in the transfer original petition and further that the

learned Principal Judge, City Civil Court, Chennai has passed a reasoned and cogent order in dismissing the application and the same need not be

interfered with by this Court. He further contends that the civil revision petition filed by the revision petitioner is not maintainable in law and to lend

support of his contentions relies on the decision reported in Surya Dev Rai v. Ram Chander Rai and Ors. 2003 STPL (LE) 32172 SC 32 (para8)

wherein the Honourable Apex Court has observed as follows:

The High Court in exercise or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of

evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

He also further relies on the decision reported in Asrumati Debi Vs. Kumar Rupendra Deb Raikot and Others, wherein inter alia held that "...the

order in the present case neither affects the merits of the controversy between the parties in the suit itself, nor does it terminate or dispose of the suit on any ground. An order for transfer cannot be placed in the same category as an order rejecting a plaint or one dismissing a suit on a preliminary ground....

7. On an over all assessment of the facts and circumstances of the case, this Court is of the considered view that in a civil suit the plaintiff is a dominus litus and it is for him/her to choose the proper and competent forum and he/she cannot be forced to allow the case to be tried along with another suit to which he/she is not admittedly a party. The learned Counsel appearing for the revision petitioner submits that the respondents 1 and 2 in the revision petition have admitted that they are tenants and therefore there is no impediment for allowing the transfer petition in the interest of justice.

8. It is an axiomatic fact that when a Court allows or dismisses the transfer original petition, then the Court of law is not dealing with the rights and liabilities of parties. The prime consideration for a Court of law is to see whether in the suits, common issues are involved or not. Admittedly, in the present case on hand, there is no commonality of issues between the two suits. Therefore, it cannot be said that the plurality of proceedings has to be avoided etc. If a transfer is allowed, then the respondents/plaintiffs in O.S. No. 5232 of 2007 will be perforced to conduct the trial of the suit over rival claims in regard to the property to which they do not have any concern. Suffice it to point out that the balance of convenience is not in favour of the revision petitioner/transfer original petitioner and that the revision petitioner/petitioner/plaintiff has not made out a case to the satisfaction of this Court to transfer the suit in O.S. No. 5232 of 2007 on the file of the VII Assistant Judge, City Civil Court, Chennai to be tried along with O.S. No. 3596/2007 which is pending on the file of the XII Assistant Judge, City Civil Court, Chennai and viewed in that perspective, the order passed by the learned Principal Judge, City Civil Court, Chennai in dismissing the transfer original petition is correct in the eye of law and the same is not to be interfered with by this Court sitting in revision and resultantly, the civil revision petition fails and the same is hereby dismissed in the interest of justice.

9. At this juncture, the learned Counsel appearing for the revision petitioner brings it to the notice of this Court that I.A. No. 13499 of 2008 in

O.S. No. 3596 of 2007 has been filed by the revision petitioner before the XII Assistant Judge, City Civil Court, Chennai and the same has been

posted to 28.11.2008 for impleading the proposed parties viz., Respondents 1 and 2 in this petition/tenants.

10. In fine, this civil revision petition is dismissed. The order passed by the trial Judge in Tr.O.P. No. 259 of 2007 on the file of the Principal

Judge, City Civil Court, Chennai is affirmed. It is made clear that the learned XII Assistant Judge, City Civil Court, Chennai is directed to deal with

the I.A. No. 13499 of 2008 in O.S. No. 3596 of 2007 pending on his file independently uninfluenced with any of the observations made by this

Court in this revision and to dispose of the same, after giving due opportunity to all the parties and to proceed with further in the manner known to

law. No costs. Consequently, connected M.P. Nos 1 and 2 are also dismissed.