

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

Tr.C.M.P. No. 246 of 2015

&

M.P. No. 1 of 2015

1. Mrs. Meena Bai
 2. Mrs. Sona Bai
 3. Mrs.M. Indumathi
 4. P. Murthy
 5. S. Balaji
- ...Petitioners/Defendents 1,2 and 5 to 7

Vs.

1. Mrs. Sarojammal
2. Mrs. Shanthi
3. Mrs. Amudha
4. Mr. Vijayan
5. Mr. Ramesh
6. Mr. Mugundan
7. Mrs. Bommi
8. Mrs. Mallika
9. Mrs. Maragatham
10. Mrs. Murugammal
11. Mr.M. Rajesh
12. Miss. Geetha
13. Mr.S. Mugundan

14. The Sub-Registrar,
Madhavaram Sub-Registration
Office,
Madhavaram,
Chennai - 600 060.

15. The District Collector,
Thiruvallur District,
Thiruvallur.
- ...Respondents/Respondents

Prayer: Petition to withdraw and transfer the suit pending in O.S. No. 201 of 2013 on the file of Additional District Judge at Ponneri, so as to be tried along with O.S.No. 13012 of 2009, pending on the file of XV Assistant City Civil Court at Chennai.

For Petitioners :: Mr.N. Jothi for
Mr.M.C. Govindan

For Respondents :: Ms.I. Navaneetha Rani
 for R1 to R4
 Mr.C. Samadharmarasu for
 R5 & R6
 Mr.E.J. Ayyappan for
 R7 to R13

O R D E R

Defendant Nos.1, 2, 5, 6 & 7 in O.S. No. 201 of 2013 on the file of Additional District Judge, Ponneri are the petitioners before this Court seeking to transfer the said suit to the file of XV Assistant City Civil Court, Chennai, to be tried along with O.S. No. 13012 of 2009 pending therein.

2. Mr.N. Jothi, learned counsel for the petitioners would submit that originally, respondents 7 to 13 herein along with another as plaintiffs filed a suit in O.S. No. 244 of 2008 before the District Munsif cum Judicial Magistrate at Thiruvottiyur as against petitioners 2 to 4 herein seeking the relief of permanent injunction and by virtue of orders passed by this Court, the said suit was transferred from the file of District Munsif cum Judicial Magistrate, Thiruvottiyur, to the file of XV Assistant City Civil Court, Chennai and renumbered as O.S. No. 13012 of 2009. According to the learned counsel, if the two suits in question, namely, O.S. Nos. 201 of 2013 & 13012 of 2009 are allowed to be tried in two different forums, there is likelihood of conflicting decisions with regard to the same issue where the parties are one and the same in both the cases. Most of the plaintiffs as well as defendants in O.S. No. 13012 of 2009, pending on the file of XV Assistant City Civil Court, Chennai are the defendants in O.S. No. 201 of 2013 pending on the file of Additional District Court, Ponneri. According to the learned counsel, as the parties are substantially the same and the property is also one and the same in both the suits, the balance of convenience lies in transferring the suit in O.S. No. 201 of 2013 on the file of Additional District Court, Ponneri to the file of XV Assistant City Civil Court, Chennai where the suit in O.S. No. 13012 of 2009 is pending. He also relied on the judgments of the Honourable Apex Court rendered in Chitivalasa Jute Mills V. Jaypee Rewa Cement reported in (2004) 3 SCC 85 and Kulwinder Kaur alias Kulwinder Gurcharan Singh V. Kandi Friends Education Trust and Others reported in (2008) 3 SCC 659 in support of his contention. The learned counsel would further submit that this Court can either dismiss the transfer petition or grant the relief as prayed for or permit the petitioners to withdraw the same, but this Court, by a judicial order, cannot transfer the suit in O.S. No. 13012 of 2009 on the file of XV Assistant City Civil Court, Chennai, to the file of Additional District Court, Ponneri, to be tried along with O.S. No. 201 of 2013, in the absence of such a prayer and it can be done only by way of an administrative order.

3. On the other hand, Ms. I. Navaneetha Rani, learned counsel for respondents 1 to 4 herein stoutly opposed the request made by the learned counsel for the petitioners to withdraw the transfer petition and prayed for dismissal of the same. According to the learned counsel, the plaintiffs, who filed the suit in O.S. No. 201 of 2013 before the Additional District Court, Ponneri, are not parties to the suit in O.S. No. 13012 of 2009. Secondly, she would submit that when almost, all the parties are residing within Madhavaram Taluk, which is outside the jurisdiction of XV Assistant City Civil Court Chennai, the transfer sought by the petitioners is not sustainable and if at all, this Court is of the opinion that both the suits have to be tried together, then, it is the suit in O.S. No. 13012 of 2009, pending before the XV Assistant City Civil Court, Chennai, which has to be transferred to the file of Additional District Court, Ponneri and not viceversa.

4. Learned counsel appearing for respondents 5 and 6 and 7 to 13 expressed "No objection" either for transfer of the suit in O.S. No. 201 of 2013 on the file of Additional District Court, Ponneri to the file of XV Assistant City Civil Court, Chennai or viceversa.

5. Heard the parties and perused the records.

6. There is no dispute with regard to the schedule of property, which is the subject matter of both the suits and the description is as hereunder:

"All that piece and parcel of lands situate at Madhavaram Municipality, No. 30, Madhavaram Village, Saidapet Taluk, Chengai M.G.R. District, Madhavaram, Chennai - 600 030, measuring 62 cents of Nanjai lands and comprised in Survey No. 915 and bounded on the;

North By : Nanjai Survey No. 916
South By : Nanjai Survey No. 912
East By : Nanjai Survey No. 913 & 914
West By : Nanjai Survey No. 673 and
lands in Nanjai Survey No. 732.

situate within the Registration District of North Madras and Sub-Registration District of Sembium."

The aforementioned property is situated in Madhavaram, which is outside the jurisdiction of the City Civil Court, Chennai and as per Section 16 of Code of Civil Procedure, 1908, any proceedings with regard to immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. No doubt, the suit in O.S. No. 244 of 2008, filed before the District Munsif cum Judicial Magistrate Court, Thiruvottiyur, was transferred to the file of XV Assistant City Civil Court, Chennai, by virtue of orders passed by this Court. However, the only issue to be decided is with regard to the balance of convenience in conducting the trial of

the suits. As already observed, the property is located in Madhavaram Taluk and almost, all the parties are residing at Madhavaram. That apart, the suit in O.S. No. 201 of 2013 filed by respondents 1 to 4 herein is a comprehensive suit for the reliefs as hereunder:

"(a) To declare that the sale deed in favour of the 1st and 2nd defendants dated 03.01.1995 registered under Document No. 5096 of 1995 is null and void;

(b) To declare that the sale deed to an extent of 3600 sq.ft bearing Plot Nos. 3 and 4 in favour of the 3rd and 4th defendant's father Sarangapani Iyyanger registered on 22.03.1999 under Document No. 1724 of 1999 is null and void;

(c) To declare that the Settlement Deed executed by the 2nd defendant in favour of the 5th defendant on 04.11.2004 registered under Document No. 8791 of 2004 to an extent of 54 cents is null and void;

(d) To declare that the sale agreement executed by 8 to 13 defendants in favour of the 14th defendant on 13.06.2013 registered under Document No. 3666 of 2013 in respect of S.No. 915 to an extent of 62 cents is null and void;

(e) For permanent injunction restraining defendants 1 to 14, their men, agents, servants not to interfere with the plaintiffs' peaceful possession and enjoyment of the suit property;

(f) For permanent injunction restraining defendants 3 to 14, their men, agents, servants not to alienate or encumber the suit property through the 15th defendant's office;

(g) Direct the defendants to pay the cost and;"

Most of the plaintiffs as well as defendants in O.S. No. 13012 of 2009, pending on the file of XV Assistant City Civil Court, Chennai are the defendants in O.S. No. 201 of 2013 pending on the file of Additional District Court, Ponneri and there are other parties as well, who are shown as defendants and who are not parties to O.S. No. 13012 of 2009. When the suit property is located within the jurisdiction of Ponneri Court and almost all the parties are residing within the jurisdiction of Ponneri Court and when respondents 1 to 4 herein are not parties to O.S. No. 13012 of 2009, the suit filed in O.S. No. 201 of 2013 cannot be transferred to the file of XV Assistant City Civil Court, Chennai to be tried along with O.S. No. 13012 of 2009.

7. As rightly pointed out by the learned counsel for the petitioners, relying upon the judgment of the Honourable Apex Court in Kulwinder Kaur alias Kulwinder Gurcharan Singh V. Kandi Friends Education Trust and Others reported in 2008 3 SCC 659 that while considering the question of transferring a matter, the Court is duty bound to see (i) balance of convenience or inconvenience of either parties or witnesses; (ii) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; (iii) the issues raised by the parties etc. And the relevant paragraph, namely, paragraph No. 23 of the said

judgment is usefully extracted as follows:

"23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by courts. They are witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the Court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; "interest of justice" demanding for transfer of suit, appeal or other proceedings, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a "fair trial" in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order."

Similarly, in the judgment in Chitivalasa Jute Mills V. Jaypee Rewa Cement reported in 2004 3 SCC 85, taking into consideration that the issues arising for decision are substantially common; that the same set of evidence is needed for determining the issues of facts and law, and that there is possibility of conflicting decrees being rendered, if separate trials are held, the Honourable Apex Court, finally, ordered transfer of latter suit to the Court where the suit, earlier in time, was filed. Paragraph No. 9 of the said judgment is extracted as follows:

"9. On the facts averred in the two complaints filed by the two parties before two different Courts, it is clear that the parties are substantially the same. Jaypee Rewa have alleged and Willard India or Chitivalasa Jute Mills do not deny that Chitivalasa Jute Mills is nothing but a division of Willard India Limited. The fact remains that the cause of action alleged in the two complaints refers to the same period and the same transactions i.e., the supply of jute bags between the period 7-1-1992 and 31-12-1993. What is the cause of action alleged by one party as foundation for the relief prayed for and the decree sought for in one case is the ground of defence in the other case. The issues arising for decision would be substantially common. Almost the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits before two different Courts.

Thus, there will be duplication of recording of evidence if separate trials are held. The two Courts would be writing two judgments. The possibility that the two Courts may record findings inconsistent with each other and conflicting decrees may come to be passed cannot be ruled out."

As stated above, at the risk of repetition, this Court reiterates that the suit property is situated outside the jurisdiction of the City Civil Court; almost all the parties are residing outside the jurisdiction of the said Court and respondents 1 to 4 and 5 & 6 are not parties to the suit pending before the XV Assistant City Civil Court, Chennai, namely, O.S. No. 13012 of 2009. Therefore, the balance of convenience is against the petitioners and therefore, the suit in O.S. No. 201 of 2013 pending before Additional District Court, Ponneri, cannot be transferred to the file of XV Assistant City Civil Court, Chennai, as sought by the petitioners.

8. When the suit is for permanent injunction, it only refers to the alleged control and possession of the plaintiffs. If the possession of the landed property is sought to be reserved by way of permanent injunction, it is necessarily a suit for land and Section 16 will come into play. The suit in O.S. No. 13012 of 2009 cannot be maintained before the XV Assistant City Civil Court, Chennai, in the ordinary sense, though it has been transferred by virtue of a judicial order. It has to be necessarily transferred to the jurisdiction Court where the suit in O.S. No. 201 of 2013 is pending in which all the parties in O.S. No. 13012 of 2009 are arrayed as defendants. In such circumstance, there is absolutely no impediment in dismissing the petition filed by the petitioners. If the transfer petition is dismissed and both the Courts are allowed to deal with the matters separately, definitely, there is possibility of conflicting decisions being rendered with regard to the same issue. Therefore, while dismissing the petition filed by the petitioners, interest of justice requires this Court to invoke the power under Article 227 of the Constitution of India and transfer the suit in O.S. No. 13012 of 2009 to the file of Additional District Court at Ponneri, even though respondents 1 to 4 have not made such a request. As already observed, since, almost all the parties are substantially the same, the evidence to be recorded would be common. Therefore, balance of convenience lies in transferring the suit in O.S. No. 13012 of 2009 to the file of Additional District Court, Ponneri.

9. Though the learned counsel for the petitioners would submit that this Court can only negative the petitioners' request for transfer and that this Court cannot pass orders transferring the suit in O.S. No. 13012 of 2009 before the XV Assistant City Civil Court, Chennai, to the Additional District Court, Ponneri, which is not

sought in the petition and if at all, this Court intends to do so, it can be only by way of an administrative order, however, as stated above, this Court, in an endeavour to do substantial justice, suo motu, invokes the inherent powers, not only under Article 227 of the Constitution of India, but also under Sections 151 and 24 CPC, to transfer the suit in O.S. No. 13012 of 2009 to the file of Additional District Court, Ponneri, so that conflicting decisions can be avoided. It is not necessary that an administrative order has to be passed separately for transferring the suit pending before the XV Assistant City Civil Court to the Additional District Court, Ponneri. In this context, it would be relevant to extract Section 24 CPC:

"24. General Power of transfer and withdrawal: - (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage -

(a) transfer any suit, or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which ¹²[is thereafter to try or dispose of such suit or proceeding] may subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which was transferred or withdrawn.

¹³[(3) For the purposes of this section,-

(a) Courts of Additional and Assistant Judges shall be deemed to subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under the section from Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

¹⁴[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try

it.]”

From the above, it is clear that after hearing the parties, this Court, on its own motion, without such notice, can also order transfer on the administrative side. If both the parties are present before the Court and the transfer petition is also pending before this Court, necessarily, this Court has to exercise judicial powers. Exercising administrative powers is something different where both parties may not have applied for transfer. In this case, some of the parties have approached this Court. When that issue is decided, this Court has got necessary powers to pass orders and it is not necessary to pass orders on administrative side alone. Moreover, Section 24 (1)(a) CPC categorically states transfer of any suit, not only the suit, which has been sought, but also other suits. Therefore, there is no prohibition for this Court, under Section 24 CPC or other provisions to exercise suo motu power or exercise power under Section 24(1)(a) CPC to transfer the suit O.S. No. 13012 of 2009 on the file of XV Assistant City Civil Court, Chennai, to the file of Additional District Court, Ponneri, where O.S. No. 201 of 2013 filed by respondents 1 to 4 is pending.

10. Therefore, while dismissing the transfer C.M.P. filed by the petitioners, this Court, as stated above, withdraws O.S. No. 13012 of 2009 from the file of XV Assistant City Civil Court, Chennai and transfers the same to the file of Additional District Court, Ponneri, where O.S. No. 201 of 2013 is pending, for joint trial and disposal in accordance with law.

11. The XV Assistant City Civil Court, Chennai, is directed to send the records relating to O.S. No. 13012 of 2009, to the Additional District Court, Ponneri, within two weeks from the date of receipt of a copy of this order. On receipt of the same, the Additional District Court, Ponneri, is directed to fix a date and issue summons to all the parties; the written statement shall be filed at the earliest and thereafter, the Trial Court is directed to expedite the trial.

12. The transfer C.M.P. is dismissed with the above direction. No costs. Connected M.P. is closed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

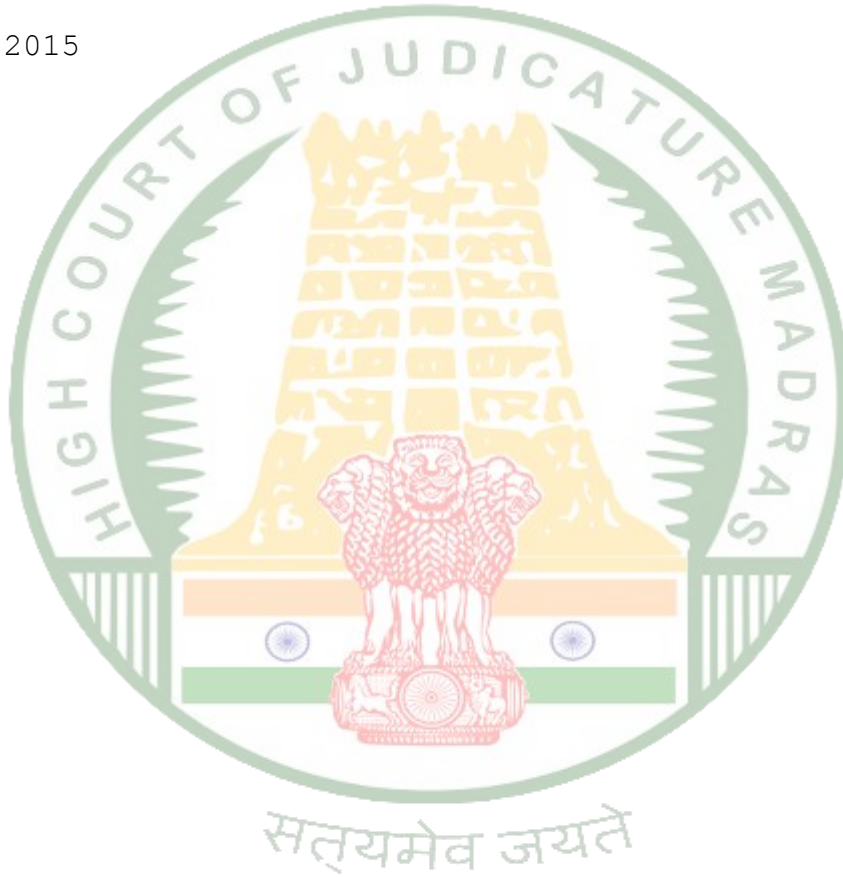
To

The XV Assistant City Civil Court, Chennai.
The Additional District Court, Ponneri.

+1cc to Mr. Sarvabhauman associa, Advocate sr.no.36481
+2cc to Ms.I.Mavanee rani, Advocate sr.no.36771
+1cc to Mr.Mc.Govindan, Advocate sr.no.36733

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